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YEARBOOK
ON
HUMAN RIGHTS
FOR 1952

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THE UNITED NATIONS AND HUMAN RIGHTS

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INTRODUCTION

The *Yearbook on Human Rights* is an official publication of the United Nations in which developments of the law and usage relating to human rights are annually recorded. It is prepared in pursuance of resolutions 9 (II) and 303 H (XI) of the Economic and Social Council.

This is the seventh volume of the *Yearbook*. As in previous years, it is composed of four parts:

I. States (National Laws and Decisions of National Courts);

II. Laws and other Texts on Human Rights in Trust and Non-Self-Governing Territories;

III. International Treaties and Agreements and other Texts adopted by Specialized Agencies and other Inter-Governmental Organizations;

IV. The United Nations and Human Rights.

An index of constitutional provisions, an index of laws, decrees and regulations and a table of cases are appended.

The *Yearbook on Human Rights* is a co-operative undertaking in which many persons and agencies in all parts of the world participate. To those who have contributed to this volume, the Secretary-General of the United Nations wishes to express his sincere appreciation.

PART I

STATES (NATIONAL LAWS AND DECISIONS OF NATIONAL COURTS)

AFGHANISTAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. On the subject of the political rights of women, the representative of Afghanistan, reviewing the domestic law of his country in relation to the principles of the United Nations Charter, has proclaimed his support for the Universal Declaration of Human Rights and the Convention on Political Rights of Women, with the proviso that the Government of Afghanistan does not admit the slightest obligation in this respect. That is to say, Afghanistan supports the principles of women's rights, but has accepted no responsibility for the signature of this Convention.

2. About three million Afghans always carry their homes on their backs and are registered as nomads, and it is therefore difficult to train and instruct them properly in permanent schools. The Ministry of Education has fitted out mobile schools for the free education of the children of these Afghans, so that they also may have a share in modern education.

3. In order to strengthen and speedily develop plans for public information within the country, the Ministry of Information is elaborating a general plan of information, which it has referred for study to a special commission. Steps have also been taken to regulate information matters and extend their various branches and to participate in some of the general purposes of the International Postal Union by mutually agreed methods.

4. To increase the resources of the country, the Ministry of National Economy has started to compile a five-year economic plan; it has done the preparatory work and has referred the schemes to a special commission for study and investigation. It is hoped that the scheme will be carried out in the near future.

5. With the agreement and assistance of the World Health Organization, the Ministry of Health has opened a venereal disease clinic and is taking steps for the protection of mothers and children against contagious disease. It has also under consideration a campaign against tuberculosis.

The Ministry of Health has reported its success in stamping out typhus with DDT powder, and has further noted that it has opened the UNICEF laboratory in Kabul and has assigned a number of young Afghans for study there so that branches of the service may be expanded in the provinces as well.

In collaboration with the UNICEF Institute, the Ministry of Health has furthermore opened in the capital a modern obstetrical clinic for the protection of mothers and children, in which is offered a course in midwifery enabling Afghan women, after training, to start branch clinics in the provinces.

[1]This note is based on information received through the courtesy of Mr. Fazal Ahmad Zormati, chief of section in the Department of the Press of the Ministry of Foreign Affairs, Kabul.

AUSTRALIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

Legislation related to personal rights, social service rights, industrial and economic rights and the right to education may be found on the statute books of the Commonwealth and states of Australia for 1952. Notes on statutes and regulations of interest in this respect are given below, under the heading of the particular right concerned.

Court decisions relating to human rights were chiefly concerned with rights of employees under the industrial laws of the Commonwealth and states. These and other cases are listed below, with a note on each in so far as it affects human rights. Cases the reports of which were first published during 1952 are included, though the decision may have been given during the previous year.

Notes on the legislation of Territories within Australia's sphere of responsibility are given in other parts of this *Yearbook*.[2]

Personal Rights

Lunacy (Amendment) Act, 1952 (New South Wales). This Act regulates the performance, on patients in institutions for the insane, of the brain operation known as leucotomy and the giving to such patients of electro-convulsive therapy, electro-narcosis therapy, insulin shock and such other operations or medical or therapeutic treatments to which the Governor by proclamation may apply the provisions of the legislation.

No patient is to be subjected to any such operation or treatment unless the Inspector-General of the Insane has consented thereto. The Inspector-General is not to give his consent unless he is satisfied, upon the report of the superintendent of any hospital for the insane, that the operation or treatment is necessary or desirable for the safety or welfare of the patient and, in the case of leucotomy and any other operation or treatment in respect of which a consultative committee has been constituted, the appropriate consultative committee has recommended the subjection of the patient to the operation or treatment.

No patient is to be subjected to the operation or treatment if the spouse, parent or guardian of the patient, who must be notified of the proposed operation or treatment, expresses disapproval of the operation or treatment. If the approval is unjustifiably or unreasonably withheld, the Inspector-General may refer the matter to the Master in Lunacy, who may hear interested persons and make a decision.

A consultative committee for the purpose of making recommendations to the Inspector-General relating to the subjection of patients to the operation of leucotomy is to be constituted, and provision for the constitution of consultative committees in relation to other operations and treatments is made. A consultative committee is to consist of such legally qualified medical practitioners and other persons as the Minister may appoint.

The Right to Education

Education Act 1952 (Tasmania). This Act deletes the provision in the principal Act of 1932, as amended, authorizing the payment of fees in state schools other than primary state schools.[3] The principal Act now provides, in effect, that no fees shall be charged or payable for instruction in state schools of any description.

Education Regulations, made under the Education Act 1928 as amended (Victoria). The regulations have been amended so as to enable the Minister, on the recommendation of the Director of Education, to establish special schools for mentally deficient, deaf and dumb, blind and other physically handicapped children.

Industrial and Economic Rights

Workers' Accommodation Act of 1952 (Queensland). This Act reconstitutes the law on the subject of workers' accommodation. Its principal provision is that where workers during their employment reside on premises in connexion with which they are employed, accommodation proper and sufficient for their comfort and health, and complying with requirements specified by the Act, shall be provided in buildings on those premises.

Conciliation and Arbitration Act 1952 (Commonwealth). This Act amends the principal Act of 1904–1951 by readjusting the powers of the Commonwealth Court

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[1] Note prepared by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra.

[2] See pp. 339–340.

[3] See *Yearbook on Human Rights for 1949*, p. 15.

of Conciliation and Arbitration and the Conciliation Commissioners so as to provide, among other things, for an appeal from conciliation commissioners in certain circumstances to the court in matters where there had previously been no appeal. The object of the Act is to obtain co-ordination and authoritative decision on large questions of industrial principle by constituting the court the common appellate tribunal in such matters, and to promote efficiency in the speedy settlement of disputes by enlarging the field of jurisdiction of conciliation commissioners and single judges of the court.

There is now an appeal, by leave of the chief judge, from an order, award or decision of a conciliation commissioner.

A dispute may now be referred by a conciliation commissioner, with the concurrence of the chief judge, to the court if the matter is such that the conciliation commissioner is of opinion that it should, in the public interest, be dealt with by the court, and the court shall hear and determine the matter.

A conciliation commissioner may now include in an award a provision providing for, or altering a provision for, annual or other periodical leave with pay, or sick leave with pay; and the power of the court in respect of these matters has been omitted.

The number of matters in which jurisdiction may be exercised by a single judge has been enlarged, and provision has been made for the continuation of the hearing where one judge sitting as a member of the court is unable to continue, and for the reference of a question of law by a single judge to the full court.

Industrial Conciliation and Arbitration Acts Amendment Acts of 1952 (Nos. 1 and 2) (Queensland); Industrial Arbitration (Amendment) Act, 1952 (New South Wales). The Act (No. 1) of Queensland makes various amendments to the principal Act of 1932 to 1948, the most important being a requirement of the insertion in all awards and industrial agreements of a provision entitling employees to long-service leave on full pay.

The principal Act of 1940–1951 of New South Wales already contained a similar requirement, and the Act (No. 2) of Queensland and the 1952 Act of New South Wales proceed to indicate what shall be regarded as "service" for the purpose of calculating long-service leave. A requirement common to both Acts is that a period of service with an employer is not to be regarded as broken by reason of any interruption or termination which

(i) Has been made by the employer with the intention of avoiding any obligation imposed on him by an award; or

(ii) Has arisen directly or indirectly from an industrial dispute; or

(iii) Has been made by the employer by reason of slackness of trade.

The period during which the contract was so interrupted or determined is not to be regarded as a break in the continuity of service, but is not itself, by reason only of this provision, to be counted as part of the period of service.

II. JUDICIAL DECISIONS

Personal Rights

Engineering and Water Supply Department Board Case (1950)[1]

South Australian Industrial Court

Duty of tribunal to hear evidence

The chairman of an industrial board rejected an application of a member of the board (a representative of employees) to call one G. as a witness.

The court held that the chairman's refusal was a violation of the principle that the interests of justice demand that no tribunal is entitled to refuse evidence which is material, no matter what the tribunal's own opinion of that evidence may be.

Stapleton v. *the Queen (1952)*[2]

High Court of Australia

Criminal law—Defence of insanity

The question was whether a defence to a charge of murder, on the ground that the accused was insane at the time of the offence, can be upset merely by showing that the accused knew that his act was against the law.

The court held that upon a criminal trial when the defence raised is that of insanity, the test to be applied is whether the accused knew that the act constituting the offence was an act which, according to the standards of reasonable men, he ought not to do. The question was not whether he knew the act was against the law.

Taylor v. *Chandler (1950)*[3]

Commonwealth Court of Conciliation and Arbitration

Propriety of court as constituted hearing matters—Similar evidence involved in previous matters—Impartial justice

Proceedings were brought in the court against C. and H. for alleged breaches of section 78 of the Commonwealth Conciliation and Arbitration Act 1904–1948 in that being officers of a union they encouraged members of the union to refrain from

[1] *24. S.A.I.R.* (South Australian Industrial Reports.)

[2] *A.L.R.* (Argus Law Reports) *929.*

[3] *66 C.A.R.* (Commonwealth Arbitration Reports) *200.*

working in accordance with the award. In previous proceedings before the court, constituted by the same justices, for cancellation of the registration of the union, it was alleged that the union by its officers, including C. and H., had directed or incited its members to refuse to continue working in accordance with the award. Similar evidence was involved in both proceedings.

The court held that in view of the importance—particularly in the industrial world—of giving the appearance of complete and impartial justice, as well as the fact of complete and impartial justice, the court as constituted should refrain from hearing the proceedings against C. and H.

Personal and Industrial Rights

Little v. *Flockhart (1951)*[1]

Commonwealth Court of Conciliation and Arbitration

Union rules—Unreasonable conditions upon membership

A union rule required that no member might stand for election to office in the union unless he agreed to sign a declaration that he was in no way identified with any political body opposed to the platform of the Australian Labour Party.

The court held that the applicant was entitled to apply, under section 80 of the Conciliation and Arbitration Act, for an order disallowing the rule as imposing an unreasonable condition upon membership of the union, and granted the order sought.

Riordan v. *Federated Clerks' Union of Australia (1952)*[2]

Commonwealth Court of Conciliation and Arbitration

Union rules—Tyrannical or oppressive

Section 80 of the Conciliation and Arbitration Act 1904–1952 of the Commonwealth enables the Commonwealth Court of Conciliation and Arbitration to disallow any rule of an industrial organization which is, in its opinion (inter alia), "tyrannical or oppressive".

Rule 42 (d) (iii) of the Federated Clerks' Union of Australia, relating to the New South Wales branch of the organization provided:

"Only financial members who have been continuously financial members for at least one year shall be eligible for election to any position except in special circumstances where the Central Executive may otherwise decide."

The chief judge of the court, in his judgement, pointed out that prior to the making of rule 42 (d) (iii) in 1951–1952, the rule of the branch dealing with eligibility for election to union office provided that "only financial members who have been members for at least twelve months [should] be eligible for election to any position or office". Since a temporary state of not being "financial" did not terminate or even suspend membership, a member proposing to stand for election did not need to have been continuously "financial" throughout the previous year. So long as he had been a member for at least twelve months, he could, by making himself "financial", qualify immediately for candidature.

It was conceded by the Union that of the full membership of the branch of 10,130 members, approximately 1,500 only were eligible to nominate for positions under the provisions of the new rule. Some 3,000 to 4,000 members who would have been eligible to nominate for office under the old rule would not be eligible under the new. Temporary lack of financial status was notoriously common in organizations such as this one where members frequently paid their dues and subscriptions to organizers who visited their places of work, or to union representatives thereat, or at meetings of the organization.

To the extent that the new rule excluded a large number of members who would, under the old rule, have been entitled to nominate for office, it was oppressive upon such members and upon those who might have supported their candidature.

The court accordingly directed the alteration of the rule.

Morrison and Colgan v. *Bogue (1951)*[3]

Supreme Court of Western Australia

Meaning of the word "strike"

Section 6 of the Industrial Arbitration Act, 1912–1950 of Western Australia defines "strike" as including "any cessation of work . . . by any number of workers acting in combination . . . with a view to compel their employer or to aid any other workers in compelling their employer to agree to or accept any terms or conditions of employment or with a view to enforce compliance with any demands made by any workers on any employer".

Section 132 provides that "No person shall take part in . . . any matter or thing in the nature of a lock-out or strike".

It was held by the Supreme Court that the ceasing of work for half a day by a person as a protest on behalf of a trade union leader who had been convicted of an offence did not amount to an infringement of section 132.

[1] *Law Book Company's Industrial Arbitration Service, Current Review 692.*

[2] *Law Book Company's Industrial Arbitration Service, Current Review 713.*

[3] *53 W.A.L.R.* (Western Australian Law Reports) *66.*

The cessation of work was not a "strike" within the meaning of section 6 unless its purpose was to compel some employer to comply with terms of employment demanded by some workers, and the onus of establishing such purpose was upon the prosecution.

Short v. *Wellings:* re *Federated Ironworkers' Association of Australia (1951)*

Commonwealth Court of Conciliation and Arbitration

Rules of an organization—Use of branch resources in support of candidature for office of certain nominators

This was a motion by Short, a member of the Federated Ironworkers' Association of Australia, an organization of employees registered under the Conciliation and Arbitration Act, for an order under section 81 of the Act, directing the respondents, who were officers of the Sydney Metropolitan Branch of the organization, to perform and observe certain rules of the organization—in particular, those dealing with its objects, the contributions to be made by members, and the funds of the organization.

The court held:

(1) That an organization may carry out its objects only in accordance with its rules;

(2) That the use by an organization of its resources and funds for the support of particular candidates at an election would deny the right of such candidates as were not so supported to the freedom and equality in their candidature to which the election rules of the organization imply they are entitled;

(3) That the Act and the regulations are directed to the end of having the management and control of the affairs and transactions of an organization reposed in a democratically and freely elected body of executive and administrative officers, and that every member qualified by the rules has the right to stand for election to an office, and to allow the resources of an organization to be used in a campaign for his defeat would be a denial of that fundamental right;

(4) That to permit the existing executive of an organization in whose hands the resources of the organization lie to use those resources to defeat all opposition to, or criticism of, its will could result in a complete tyranny and a permanent denial of the democratic nature of the organization which the Act and the regulations are calculated to ensure.

The order sought was made.

[1] *72 C.A.R. 84.*

Carey v. *McCarney (1951)*[2]

New South Wales Industrial Commission

Trade union—Improper exclusion of candidate from ballot—Interference by Commission

The following dictum is taken from the judgement of the President of the Commission:

"The rules of a trade union are the business of the union and its members, and generally they should be left to work out the problems arising in trade union management in their own way. Usually the Commission would be reluctant to interfere—at any rate this is my view—if the question in issue could be settled by the union body in a simple way and without injustice to anybody. A situation can arise, however, where the problem is not a simple one but is one of principle touching the settled rights of all the union members in a vital particular. Such a matter is the right of a union member to be put forward to his fellows as a candidate for union office. If he be, wrongly, prevented from being preferred in this way and relief is sought from this tribunal, I am clearly of opinion that whatever appropriate remedy is available should not be denied."

[2] *A.R.* ((*N.S.W.*) Arbitration Reports (New South Wales)) *768.*

AUSTRIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

A. Fundamental Freedoms

(a) *Freedom of Religion*

By an ordinance of the Federal Ministry of Education (*Bundesgesetzblatt* Nos. 39/1952 and 40/1952), permission was granted, in accordance with the provisions guaranteeing freedom of religion and conscience, for the setting up of a Jewish religious community at Innsbruck and the fixing of its diocese. In addition, regulations were made for the democratic election of the provisional council of the religious community. Similar provisions (Ordinances *B.G.Bl.* Nos. 184/1952 and 185/1952) referred to the setting up of the Jewish religious community at Salzburg.

(b) *Freedom of the Press*

In the Carinthian Cinema Act (*Landesgesetzblatt* No. 31/1952), the fulfilment of certain conditions was laid down for the exhibition of films.

(c) *Freedom to carry on an Occupation*

An important step in the establishment of freedom to carry on a trade without State supervision is represented by the repeal of the so-called "Prohibition Act" under which official authority had been required by persons wishing to carry on a trade. This Prohibition Act, dating from the year 1937, was repealed by the Trades Act Amendmend Act (*B.G.Bl.* No. 179/1952).

B. Cultural Rights

By the federal Act of 13 February 1952 (*B.G.Bl.* No. 44/1952) school attendance was made compulsory as from the completion of the sixth year. This federal Act has also been put into effect in the *Länder* by Acts of the *Länder* (as for example in Carinthia, *L.G.Bl.* No. 27/1952, Vorarlberg, *L.G.Bl.* No. 26/1952, etc.).

C. Legislation relating to Social Questions

(*a*) By the federal Act of 3 July 1952 (*B.G.Bl.* No. 163/1952) provisions were introduced laying down a certain standard as regards the production, condition and form of certain materials and commodities. These provisions are intended for the protection of the health of persons who come into contact with such objects in the course of their work.

(*b*) By virtue of two federal Acts (*B.G.Bl.* Nos. 166/1952 and 167/1952) measures were prescribed for the purpose of placing persons of German ethnic stock (*Volksdeutsche*) upon an equal footing with Austrian workers or citizens in the fields of labour legislation and maternal welfare. Similarly, provisions were laid down in connexion with the admission of persons of German ethnic stock to the nursing school (*B.G.Bl.* No. 168/1952).

(*c*) To remedy the housing shortage, which has remained acute on account of the war, an Act was promulgated for the levy of a housing contribution, the community being obliged to pay certain sums to the Federal Housing Fund, which is to subsidize building activity.

(*d*) In the *Land* of Upper Austria, a law on special assistance to midwives was put into force (*L.G.Bl.* No. 2/1952).

D. Legislation relating to Economic Questions

The Profiteering Act[1] mentioned in previous reports was extended, and the Housing Claims Act amended and extended.

II. JUDICIAL DECISIONS

(a) *Freedom of Expression*

The Constitutional Court announced in its judgement of 26 June 1952 (B.25/52), that the principle of the freedom of the press laid down in article 13, section 2, of the Constitution guarantees protection in the following three respects:

1. The press may not be restricted by a system of concessions.

2. The press may not be placed under censorship.

3. Administrative postal prohibitions do not apply to matter published in Austria.

[1]Note prepared by Dr. Felix Ermacora, senior officer in the Federal Chancellery, Vienna. English translation from the German text by the United Nations Secretariat.

[1]See *Yearbook on Human Rights for 1951*, p. 10.

(b) *Freedom of Association*

The Constitutional Court decided in its judgement of 25 March 1952 (B.275/51) that if an association was refused permission to hold a meeting on the ground that notice of the meeting had not been given in accordance with the by-laws, constitutionally guaranteed rights (namely, freedom of assembly and association) could be regarded as violated only if by such a decision the association was totally deprived of the possibility of reorganizing itself to meet changed political conditions.

(c) *Equality before the Law, and Political Rights*

It is stated in article 7, para. 2, of the Federal Constitution[1] that public employees are guaranteed the unrestricted exercise of their political rights. The Constitutional Court stated in its decision of 28 March 1952 (B.169/1952), that the expression "political rights" was to be understood to mean the rights which allowed those concerned an influence on the formation of public policy and particularly the right to vote for general representative bodies. The court said:

". . . First of all, as regards the right to equality, the existence of special disciplinary regulations applicable to employees of public corporations is (as stated in previous decisions) perfectly compatible with the constitutionally guaranteed right to equality before the law, subject only to the proviso that these regulations must have been made in pursuance of statutory provisions. The contested decision is based on the practice of the service concerned, and—as stated on earlier occasions—the Constitutional Court does not question the constitutionality of the practice. As interpreted by the Constitutional Court (*Erk. Slg.* No. 1232), the right to equality means in essence that all the laws in force in the State shall be applied equally to all citizens. The documents relating to the administrative proceedings which have been produced do not contain any evidence to show that the complainant, by reason of his personal circumstances, was treated otherwise than other members of the executive would be in identical circumstances. If the complainant regards the right to engage in trade union activities as a political right, in the exercise of which he claims to have been restricted by the contested decision, it is sufficient to refer him to decision No. 1359, in which the Constitutional Court declared that the 'political' rights referred to in article 7, paragraph 2, of the Federal Constitution—the exercise of which is also guaranteed, without restriction, to public servants—meant only political rights in the narrower sense—in other words, the rights by virtue of which those qualified to exercise them can influence the formation of public policy, the outstanding example of such a right being the right to vote for general representative bodies . . ."

III. INTERNATIONAL AGREEMENTS

A. Freedom of Movement

Bundesgesetzblatt No. 26/1952 published the exchange of notes between the Austrian Federal Government and the Government of the Kingdom of the Netherlands on the abolition of compulsory visas. As a result, citizens of both States are in principle allowed to cross the existing frontiers either in transit or for residence purposes with a valid passport or visa.

B. Legislation relating to Social Questions

The Convention between Austria and Switzerland concerning Social Insurance[2] has been put into force to the extent that an ordinance (*B.G.Bl.* No. 23/1952) has been issued making provision for the addition of increments to contributions transferred from the Swiss old age and survivors' insurance institution.

[1] See *Yearbook on Human Rights for 1947*, p. 9.

[2] See *Yearbook on Human Rights for 1951*, p. 515.

BELGIUM

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

A. Civil and Political Rights

The Act of 31 December 1951 to allow certain time limits for the acquisition of Belgian nationality was published in the *Moniteur belge* No. 16, of 16 January 1952. Extracts from this Act are reproduced in this *Yearbook*.

The circular of the Ministry of Justice of 8 February 1952 concerning the nationality to be conferred on Jews of German origin, deprived of their nationality by the German order of 25 November 1941, was published in the *Moniteur belge* No. 40, of 9 February 1952.

The Minister of Justice points out in this circular that, in accordance with the principle set forth in article 1 of the convention on certain questions relating to the conflict of nationality laws, signed at the Hague on 12 April 1930, his department considered that deprivations of nationality under the aforementioned German order "could not be regarded as effective in Belgium". The question was reconsidered, however, in view of the fact that, while the Allied Control Commission in Germany had revoked political and discriminatory Nazi legislation, it had not done so with retroactive effect, and the competent authorities had restored German nationality only to such former German nationals deprived of their nationality as had made application to that effect. Noting that foreign jurisprudence and doctrine are apparently unanimous in recognizing the validity of past deprivations of nationality, the Minister of Justice considers that deprivations of nationality under the German order of 25 November 1941, were confirmed by the competent German authorities in nationality matters, may henceforth be regarded as effective in Belgium. Subject to this condition and to certain formalities set out in the circular, persons claiming to have lost German nationality may be registered as stateless persons.

The Act of 28 March 1952 concerning the police supervision of aliens was published in the *Moniteur belge* Nos. 90 and 91, of 30 and 31 March 1952 respectively. Extracts from this Act are reproduced in this *Yearbook*.

The circular of the Ministry of Justice of 1 December 1952 concerning the police supervision of aliens was published in the *Moniteur belge* No. 348, of 13 December 1952.

B. Economic and Social Rights

The Act of 27 March 1952 to amend the consolidated Acts concerning the annual holidays of wage-earning and salaried workers of 9 March 1951, and to grant additional holidays based on length of service, was published in the *Moniteur belge* No. 151 of 30 May 1952.

Subject to certain rules, the Act grants workers with fifteen, ten and five years' service, additional holidays of six, four and two days respectively.

The Act of 27 March 1952 concerning the grant of additional holidays based on length of service during 1952 was published in the *Moniteur belge* No. 151, of 30 May 1952.

It established transitional arrangements during 1952 for the grant of holidays based on length of service.

II. INTERNATIONAL CONVENTIONS

The Act of 13 July 1951 to approve the convention concerning freedom of association and protection of the right to organize, adopted by the General Conference of the International Labour Organisation on 9 July 1948 at its thirty-first session, at San Francisco, was published in the *Moniteur belge* No. 16, of 16 January 1952.

The Act of 21 March 1952 to approve the convention concerning night work of women employed in industry, adopted by the General Conference of the International Labour Organisation on 9 July 1948 at its thirty-first session, at San Francisco, was published in the *Moniteur belge* No. 174, of 22 June 1952.

The convention concerning equal remuneration for men and women workers for work of equal value, adopted by the General Conference of the International Labour Organisation on 29 June 1951 at its thirty-fourth session, at Geneva, was ratified by Belgium on 23 May 1952 and published in the *Moniteur belge* No. 297, of 23 October 1952.

The convention concerning labour clauses in

[1] This note is based on texts and information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the *Institut international des sciences administratives*, Brussels.

public contracts, adopted by the General Conference of the International Labour Organisation on 29 June 1949 at its thirty-second session, at Geneva, was ratified by Belgium on 13 October 1952 and published in the *Moniteur belge* No. 313, of 8 November 1952.

NOTE: The latter two conventions were not submitted to the legislative chambers for approval, as they do not fall within the category of international instruments for which, under article 68 of the Belgian Constitution, such approval is required.

ACT TO ALLOW CERTAIN TIME LIMITS FOR THE ACQUISITION OF BELGIAN NATIONALITY[1]

of 31 December 1951

Art. 1. Persons who were born in Belgium of foreign parents (or born abroad of parents one of whom is or was a Belgian national) and who have not signed a declaration of option before the competent authorities within the time limits stipulated in the various earlier legislative provisions relating to nationality, or who have signed an invalid declaration, may opt for Belgian nationality within two years from the date on which this Act enters into effect, if they have been habitually resident either in Belgium, or in the colony since some date prior to 10 May 1940, or if, having been forced to leave their residence owing to the war, they resumed residence in Belgium (or in the colony), within two years from the date of the complete liberation of the territory.

Art. 2. Likewise, persons born before 20 September 1920 in the territory now comprised in the cantons of Eupen, Malmédy and Saint Vith or in the territory of the commune of La Calamine, and persons born of parents one of whom was himself born in the said territories before that date, may opt for Belgian nationality if they fulfil the other requirements stipulated in article 1.

Art. 4. Article 7 of the royal order of 14 December 1932 to consolidate the legislation relating to the acquisition, loss and recovery of nationality may not be invoked against any person who can show that he did not cause any prejudice to the nation, to Belgian nationals or to their allies during the war.

Art. 5. A woman who has ceased to be a Belgian national by reason of her marriage, or by acquiring a foreign nationality through her husband, may recover Belgian nationality within two years from the date on which this Act enters into effect if at that time she has been habitually resident in Belgium or in the colony for not less than one year.

Any woman as aforesaid who after 10 May 1940 married a national of a State at war with Belgium, or who acquired the nationality of such a State through her husband, shall be required to prove that she did not cause prejudice to the nation, to Belgian nationals or to their allies during the war.

The benefit of this article shall not extend to a woman who became a Belgian national solely by reason of marriage, nor to a woman who became a French national under the Franco-Belgian agreements of 12 September 1928 and 9 January 1947 on the nationality of married women, unless, in the latter case, the marriage has been dissolved.

[1] French text in *Moniteur belge* No. 16, of 16 January 1952, received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the *Institut international des sciences administratives*, Brussels. English translation from the French text by the United Nations Secretariat.

ACT CONCERNING THE POLICE SUPERVISION OF ALIENS[1]

of 28 March 1952

Art. 2. A. Authorization to enter or to reside in the Kingdom shall be granted by the Minister of Justice subject to the conditions and formalities stipulated by royal order.

B. An alien may not settle in the kingdom unless he has first obtained a permit for that purpose from the Minister of Justice. The Minister of Justice may debar an alien from settling in certain communities if the said Minister considers that the alien population in those communities is increasing unduly.

[1] French text in *Moniteur belge* Nos. 90 and 91, of 30 and 31 March 1952. Text received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut International des sciences administratives*, Brussels. English translation from the French text by the United Nations Secretariat.

Art. 3. 1. The Minister of Justice or the Chief of the Internal Security Service [Administrateur de la sûreté publique] may return to the frontier any alien who enters or entered the kingdom without the authorization referred to in article 2 A of this Act.

2. The Minister of Justice may order the deportation of any alien who fails to comply with the conditions attached to the authorization granted to him or whose presence he considers dangerous or harmful to the public peace or to the security or economy of the country.

In similar circumstances, the Minister of Justice may direct the alien to leave a certain locality or area and not to return thereto, or may direct him to reside in a specified locality.

Art. 4. A. The Crown may expel an alien who has received a permit to settle in the kingdom in any case where:

1. His presence is considered dangerous or harmful to the public peace or to the security of the country;

2. The alien is under prosecution for, or has been convicted, even outside the kingdom, of an extraditable crime or offence.

In similar circumstances, the Minister of Justice may direct the alien to leave a certain locality or area and not to return thereto, or may direct him to reside in a specified locality.

B. To qualify as a refugee, an alien must possess a certificate of recognition issued, on the recommendation of the Advisory Commission on Aliens [Commission consultative des étrangers], by the Minister of Justice, to whom the relevant application shall have been addressed, or documents issued in pursuance of international conventions to which Belgium is a party.

The said application shall be receivable only if submitted within one month after entry into the kingdom.

Aliens residing in the country at the time when this Act enters into force shall have a time limit of three months for submitting an application for recognition as refugees.

C. The Minister of Justice shall request the opinion of the Advisory Commission on Aliens before issuing an expulsion order pursuant to paragraph *A* above against an alien whose status as refugee has been recognized or is under consideration under article 4 *B*.

The expulsion order shall mention the conclusion contained in that opinion.

D. An expulsion order made under paragraph *A* 1 by reason of the political activities of the alien concerned shall be discussed in the Council of Ministers.

Art. 5. An expulsion order may not be issued against any of the undermentioned persons except on the recommendation of the Advisory Commission provided for in article 10 of this Act and, where appropriate, in conformity with the provisions of article 4 *D*—that is to say:

1. An alien authorized to establish his domicile in Belgium under article 13 of the Civil Code;
2. An alien married to a Belgian woman by whom he has at least one child born of this marriage while he was resident in the Kingdom;
3. An alien who has been continuously resident in the Kingdom for a period of five years and who is married to a Belgian woman;
4. An alien who fulfils the statutory conditions for the acquisition of Belgian nationality by option or for the recovery of Belgian nationality;
5. A woman who, being a Belgian national by birth, has lost Belgian nationality through marriage or because her husband acquired a foreign nationality;
6. An alien who has been continuously resident in the kingdom, in the colony or in the Trust Territories for a period of ten years.

The royal expulsion order shall mention the conclusion contained in the opinion of the Commission.

Art. 10. An Advisory Commission on Aliens is hereby established to advise the Minister of Justice on the cases referred to in article 4 *B* and *C* and article 5 of this Act.

The Commission shall be composed of three members, appointed by the Crown for a term of three years—viz.:

1. An honorary judge, to be its chairman;
2. A lawyer who has been a member of the bar for ten years;
3. A person of Belgian nationality who is over the age of thirty years and who engages, or has engaged in the past, in refugee relief work.

The first two members and their alternates shall be appointed by the Crown for a term of three years. The third member shall be selected by the alien from a panel to be established by royal order every three years.

The titular members and their alternates must possess a sufficient knowledge of both national languages.

The Chief of the Internal Security Service or his deputy shall attend the Commission's proceedings but shall not take part in its decisions.

Cases shall be referred to the Commission either at the request of the Minister of Justice or, in the case of the recognition of refugee status, at the request of the alien concerned.

The proceedings shall be oral. The alien concerned may be assisted by a counsel of his choice.

The procedure shall be laid down by royal order.

BOLIVIA

SUPREME DECREE NO. 03128 CONCERNING THE RIGHT TO VOTE[1]

of 21 July 1952

Art. 1. All Bolivians, both men and women, who have atteined the age of twenty-one years, if unmarried, or eighteen years, if married, shall have the right to vote in the election of public officials, irrespective of their degree of education, occupation, or income.

Art. 2. The following are excluded from the provisions of the foregoing article:

(*a*) Deaf-mutes who cannot make themselves understood in writing, lunatics and insane persons;

(*b*) Vagrants deemed to be such in conformity with the law;

(*c*) Traitors to their country on whom a judicial sentence has been passed;

(*d*) Persons who have lost their citizenship by accepting posts in foreign countries, or foreign decorations without the requisite permission;

(*e*) Persons sentenced to a term of imprisonment or to loss of public employment or removal from a public office, until their rehabilitation;

(*f*) Persons convicted of perjury or electoral offences, until their rehabilitation, or persons deprived by a sentence of a law court of the trusteeship or guardianship of minors;

(*g*) Persons dismissed from the Army, with loss of rank, or for desertion, until their rehabilitation;

(*h*) Embezzlers of public funds, sentenced by a law court or in pursuance of an administrative order;

(*i*) The owners or managers of brothels;

(*j*) Debtors to the revenue authorities when the time-limit for payment under an enforceable payment order has expired.

Art. 3. Existing civil registers in the republic are hereby cancelled. The new registers shall be opened simultaneously throughout the country on the first day of October of this year and shall be subject to the form and conditions to be laid down by executive decree.

Art. 4. The conditions of eligibility for public offices shall be laid down by special decree.

Art. 5. All provisions contrary to the present decree are hereby repealed.

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[1]Spanish text in *Anales de Legislación Boliviana* (published by the Faculty of Law of the University Mayor de San Andrés de La Paz) No. 14, p. 122, received through the courtesy of Dr. Eduardo Arze Quiroga, Permanent Representative of Bolivia to the United Nations. English translation from the Spanish text by the United Nations Secretariat. According to the provisions previously in force, Bolivian women had the right to vote only in municipal elections (Article 45 of the Constitution). See the previous electoral provisions in *Yearbook on Human Rights for 1948*, pp. 279–281.

BRAZIL

ACT NO. 1667 REPEALING ARTICLE 530, PARAGRAPH A, OF DECREE-LAW No. 5452 AND MAKING OTHER PROVISIONS[1]

of 1 September 1952

Art. 1. Article 530, paragraph a, of decree-law No. 5.452 of 1 May 1943[2] (Labour Law Consolidation Law) is herewith repealed.

Art. 2. It is unlawful to request, under whatever pretext or in whatever form, any evidence of the ideological belief or anything else designed to determine or inquire into the political, religious or philosophical convictions of a trade unionist.

. . .

[1] Portuguese text in *Diario Oficial*, Section 1, No. 206, of 5 September 1952. English translation from the Portuguese text by the United Nations Secretariat. This decree-law entered into force on the day of its publication in the *Diario Oficial*.

[2] Article 530, para. *a*, of that decree-law reads as follows:

"No person who professes an ideology incompatible with the institutions or interests of the nation may be elected to an administrative function or a representative function of an economic or occupational character."

BULGARIA

LABOUR CODE[1]

of 9 November 1951

SUMMARY

The Labour Code regulates conditions of employment with the aim of implanting, realizing and consolidating socialist principles of work organization, raising labour productivity, increasing the well-being of the workers, protecting their health and providing security in the event of incapacity for work.

There are no restrictions on the organization of wage and salary earners and civil servants on an occupational basis. The trade unions are public, non-party organizations uniting manual and office workers and civil servants on a voluntary basis without distinction of race, nationality, sex or religion. The trade unions and their subdivisions have the right to represent their members in relation to State authorities and third parties in all matters affecting employment and living conditions. They also have the right to represent their members in the courts with powers of attorney.

Part II of the Code deals with employment relations. Chapter III of that part provides for a standard working day of eight hours in the case of day work and of six hours in the case of night work. A reduced working day may be fixed for manual and office workers and civil servants employed on work which is harmful to health or work of a special character. No lengthening of the standard working day is permitted. Overtime work is forbidden; while exceptions are permitted in certain specified cases, the total overtime worked by any wage or salary earner may not exceed 150 hours a year, save in the case of work connected with the defence of the People's Republic and work to overcome a disaster or peril to the community. Workers are entitled to sixteen hours of rest in every twenty-four and to an uninterrupted weekly rest of thirty-six hours.

Leave is regulated by part II, Chapter IV. A worker who has served continuously for eleven months or more in the same undertaking, establishment or organization is entitled to paid annual leave of fourteen working days. Where a worker has not received cash compensation in lieu of leave from the undertaking where he was previously employed, the period of service in that undertaking is included in the period of eleven months. Some categories of workers employed in particularly unhealthy or dangerous occupations are entitled to supplementary paid annual leave, which may not, however, exceed twelve working days.

Part II, chapter V, deals with remuneration, which is based on the amount and quality of the work done. Overtime is remunerated at time-and-a-quarter rates for the first two hours and at time-and-a-half rates for every succeeding hour. Under part II, chapter VI, workers unable, for reasons connected with the operation of the undertaking, establishment or organization, to take the annual paid leave to which they are entitled receive cash compensation for the number of days of leave to which they are entitled.

Part II, chapter VII, deals with occupational hygiene and safety. The labour protection agencies are responsible for ensuring compliance with the provisions relating to the protection of the health and safety of the workers, while the agencies of the Ministry of Health and Social Welfare are responsible for supervising the application of the provisions relating to industrial sanitation and hygiene. No young person below the age of fourteen years may be employed. Young persons between the ages of fourteen and sixteen years may be employed in exceptional cases with the permission of the labour inspectorate, but may not be required to do particularly laborious or unhealthy work or to be employed on night work. Overtime and night work and employment on laborious and unhealthy work are forbidden in the case of pregnant women, after the beginning of the fifth month of pregnancy, and of mothers of children under the age of eight months. Pregnant women employed on laborious work are transferred to lighter work from the commencement of the fifth month of pregnancy, without any reduction in remuneration.

Part II, chapter VIII, contains provisions relating to labour discipline, and lists rewards, distinctions and disciplinary penalties. Chapter IX deals with labour disputes; it provides that proceedings in

[1] Bulgarian text of the Code published in the *Journal of the Presidium of the National Assembly*, No. 91, of 13 November 1951. French text of the Code in *Documentation juridique étrangère* (published by the *Service de législation étrangère du Ministère des Affaires étrangères et du Commerce extérieur*), Brussels, 1953, No. 1. Summary by the United Nations Secretariat.

labour matters shall be free of charge and that disputes relating to the following measures shall not be referable to the conciliation boards or to the courts: the release of elected manual and office earners and the dismissal of other responsible manual and office workers specified by ordinance; the imposition of disciplinary penalties other than dismissal; dismissal at the request of the central committee of the trade union; and dismissal at the request of the State Control Commission. Such disputes are settled administratively by the next higher agency or organization, with the exception of dismissals at the request of the State Control Commission, which are within the sole jurisdiction of that Commission.

Part III is devoted to State social insurance, under which workers are guaranteed cash compensation and benefits during periods of temporary incapacity due to illness, pregnancy, confinement or employment accidents; disability and old age pensions; survivors' pensions for members of the family in the event of the death of the breadwinner; rehabilitation facilities for persons injured at work and facilities for improving the cultural and living conditions of workers and pensioners; the provision of the necessary orthopaedic and prosthetic appliances; a grant on the birth of each child; monthly allowances in respect of children; and funeral benefits. The Code specifies the cash compensation and the amounts of the pensions payable in the various cases.

Part IV contains the penalties and general and transitional provisions, and repeals a number of earlier laws dealing with matters covered by the Code.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

REPORT OF THE STATISTICAL BOARD OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1952[1]

EXTRACTS

Fulfilment of the Trade Turnover Plan

In 1952, the development of State and co-operative trade continued.

The latest—the fifth in succession—reduction in the State retail prices of staple foodstuffs instituted by the Government of the USSR on 1 April 1952 promoted a further increase in the purchasing power of the population.

The volume of retail trade was greater in 1952 than in 1951.

In 1952 more silk textiles, knitwear, hosiery, leather and rubber footwear and other goods were sold to the population than in 1951.

The annual retail trade plan for 1952 was fulfilled by the trading organizations of the Byelorussian SSR to the extent of 99 per cent, the degree of fulfilment being 100 per cent in the case of local trade and 98 per cent in the case of the consumers' co-operatives.

Considerably more wheat, flour, vegetables, butter, eggs and poultry were sold to the population at the collective farm markets of the Byelorussian SSR in 1952 than in 1951.

[1] Russian text transmitted through the courtesy of the Permanent Delegation of the Union of Soviet Socialist Republics to the United Nations, at the request of the Ministry of Foreign Affairs of the Byelorussian Soviet Socialist Republic. English translation from the Russian text by the United Nations Secretariat.

CAMBODIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. During 1952, provisions on human rights of the Constitution and the laws of the Kingdom of Cambodia, which are modelled on the laws of the French Republic, did not undergo any notable change. No decisions constituting important developments in the field of human rights were made by the courts of Cambodia.

2. Cambodia has adhered to the Agreement on the Importation of Educational, Scientific and Cultural Materials,[2] sponsored by UNESCO and signed at Lake Success on 22 November 1950. It has signed with UNESCO an agreement for technical assistance[3] (fundamental education and free and compulsory education) and an agreement with the United Nations Children's Fund.[4]

3. The number of students in establishments of primary education has increased from 196,000 to 221,000 and in establishments of secondary education from 2024 to 2190, figures attesting the effort to make education available to larger numbers of children.

[1] This note is based on information received through the courtesy of the Minister of Foreign Affairs, Phnom-Penh.

[2] See the text of this agreement in *Yearbook on Human Rights for 1950*, pp. 411–415.

[3] For a survey of these agreements, see pp. 403–405 of this *Yearbook*.

[4] For a survey of these agreements, see p. 407 of this *Yearbook*.

CANADA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In the legislation passed by the Federal Parliament and the Provincial Legislatures in 1952, no single step was taken which could be called an important development respecting human rights, but changes in a number of laws have a bearing on the rights set out in the Universal Declaration. These changes are described below. The texts of two federal measures seeking to ensure equality of opportunity in employment, and of one provincial equal pay law are reproduced in this *Yearbook*.

I. LEGISLATION

A. Federal Legislation

Anti-Discrimination Measures

A new fair employment practices provision was added to the Unemployment Insurance Act placing an obligation on the Unemployment Insurance Commission to ensure that there shall be no discrimination, in referring any worker to employment, because of his racial origin, colour, religious belief or political affiliation.[2] This incorporated in the statute a policy already set out in the administrative rules governing the National Employment Service. The Amendment of 1952 to the Unemployment Insurance Act of 1940 is reproduced in this *Yearbook*.

A similar requirement was laid down by the Federal Government in an amendment to its legislation requiring the payment of "fair wages" in employment in the execution of government contracts. From 1 January 1953, a clause must be inserted in all government contracts for construction, remodelling, repair or demolition of public buildings or other works or for the manufacture and supply of equipment, materials and supplies, prohibiting discrimination in hiring or employment because of race, national origin, colour or religion. The Minister of Labour is authorized to investigate any alleged failure to comply with the non-discrimination clause. Non-compliance constitutes a breach of the contract. The Minister's decision concerning any complaint may be subject to judicial review. Order in Council No. 4138, which provided for this addition is reproduced in this *Yearbook*.

Unemployment Insurance

Benefits under the contributory unemployment insurance scheme were increased without any corresponding increase in the rates of contribution, and the number of "waiting days" of unemployment before benefit becomes payable was reduced from eight to five.[3] The period during which "supplementary benefit" may be paid was extended, and is now the period between 1 January and 15 April in each year. During this period, when seasonal employment in Canada reaches its lowest point, unemployed workers are eligible for supplementary benefit, which is a little less than normal benefit, without fulfilling all the usual conditions in respect to contribution.

Rehabilitation of the Disabled

A national programme of rehabilitation for the civilian disabled was begun in 1951 at a national conference called by three federal departments—Labour, National Health and Welfare and Veterans Affairs. In 1952, a National Advisory Committee on Rehabilitation was set up,[4] consisting of representatives of the Federal and Provincial Governments, health and welfare voluntary agencies, the medical profession, organized labour, employers, universities and others. To co-ordinate the efforts of public and private agencies throughout Canada working on behalf of the handicapped, a national co-ordinator was appointed. During 1952, the co-ordinator and the Committee explored the field to find out the needs of the disabled and the services now being provided, and made recommendations towards the development of a comprehensive programme.

Training Opportunities

An effort was made during the year to increase opportunities for the training of apprentices in the skilled trades. In May 1952, the Department of Labour called a national conference on apprenticeship training which was attended by representatives of the Federal and Provincial Governments, and of employers and workers. The purpose was to review existing apprenticeship plans and training programmes in all provinces, with a view to increasing their effectiveness, where needed, and extending such

[1] Note received through the courtesy of Mr. A. H. Brown, Deputy Minister of Labour, Ottawa.

[2] *Statutes of Canada*, 1952, c. 51, s. 16.

[3] *Statutes of Canada*, 1952, c. 51.

[4] *P.C. 6806*, December 29, 1951.

programmes to meet the needs of all skilled trades. Two major problems were discussed by the conference—the need for employers to increase their training facilities, and better ways of making opportunities for apprenticeship training known to young persons. In order to develop co-operative and co-ordinated activities for the promotion of apprenticeship training, the conference recommended that a national apprenticeship training advisory committee be set up.[1] The committee held two meetings in 1952 and is working towards uniformity of apprenticeship standards, so that qualifications of apprentices trained in one province may be accepted, or at least properly evaluated, in all the others.

Apprenticeship training in Canada is provided for under legislation in each province applicable to most skilled trades, and is aided by conditional grants from the Federal Government.

Improved Procedure under Combines Investigation Legislation

In accordance with the recommendations of a committee appointed to study combines legislation, amendments were made to the Combines Investigation Act in 1952.[2] The Act provides for the investigation of trade combinations or monopolies alleged to have operated to the detriment of the public through limiting production, fixing or enhancing prices, limiting competition, or otherwise restraining trade. Organizations of this nature are defined by the Act as combines, and participation in the formation or operation of a combine is an indictable offence. The amendments, effective from 1 November 1952, revised the administrative organization by separating into two parts the functions formerly performed by the Commissioner. A Director of Investigation and Research will carry out inquiries, and a Restrictive Trade Practices Commission will appraise the evidence obtained in investigations and make a report. The change is intended to provide a more workable and suitable procedure under the Act. The Commission is to allow any person against whom an allegation is made in the statement submitted by the Director full opportunity to be heard. At the hearing, the Director also may make representations. In this manner the two sides will be heard in a judicial manner by the Commission.

New Powers for Territorial Council

The Northwest Territories Act, which was amended in 1951 to give the residents of the territories the opportunity to elect three out of the eight members of the Territorial Council, was replaced by a new Act in 1952[3] to be brought into effect on proclamation. In the new Act, additional responsibilities were placed on the territorial government in keeping with its new status. The Council of the Territories was authorized to deal with certain matters in respect of which the provinces normally have jurisdiction—namely, roads, wills, the property of married women, coroners and inquests, controverted elections, manufacture and possession of intoxicants, establishment, maintenance and management of hospitals, and agriculture. These matters were formerly within the jurisdiction of Parliament. A new provision in the Act sets up a territorial court to facilitate the administration of justice, since the growth of population in recent years has resulted in an increase in the number of civil and criminal cases requiring trial by an experienced judge.

Ratification of Genocide Convention approved

In May 1952, both houses of the Canadian Parliament approved the ratification by Canada of the Convention on the Prevention and Punishment of the Crime of Genocide, as signed by Canada on 28 November 1949. The Canadian instrument of ratification was deposited with the Secretary-General of the United Nations on 3 September 1952, and this Convention came into force in Canada on 2 December 1952.

B. Provincial Legislation

Social Security

Before the end of 1952, all provinces had passed legislation authorizing the provincial government to participate on a fifty-fifty basis with the Federal Government in the provision of an old age assistance pension to persons between sixty-five and sixty-nine years of age in cases of need, and of assistance to needy blind persons over the age of twenty-one.[4] Blind pensions are financed by a 75 per cent contribution by the Federal Government and one of 25 per cent by the province. The joint federal/provincial old age and blind persons assistance programme, which provides for a pension of up to $40 a month, supplements the federal pension plan for persons over seventy.

In one province, Alberta, as a result of a new Act passed in 1952, a widow in needy circumstances may receive a pension from the provincial government for the five years before she might normally become eligible for old age assistance. Under the Widows' Pension Act,[5] a widow between the ages of sixty and sixty-five, who is not receiving a mother's allowance or blind person's pension, may, subject to a means test and residence requirements, be paid a pension of $40 a month.

In Ontario, a monthly pension to persons who are totally and permanently disabled, and so unable to

[1] *P.C. 3600*, 6 August 1952.

[2] *Statutes of Canada*, 1952, c. 39.

[3] *Statutes of Canada*, 1952, c. 46. For the Act of 1951, see *Yearbook on Human Rights for 1951*, p. 37.

[4] See *Yearbook on Human Rights for 1951*, p. 36.

[5] *Statutes of Alberta*, 1952, c. 105.

earn their livelihood, was provided for. The new Act[1] provides for a pension, again of $40 a month, subject to a means test, to any such person between eighteen and sixty-five if he is not otherwise pensioned and if he has resided in Ontario for ten years.

Equal Pay

The Saskatchewan Legislature passed an Equal Pay Act[2] similar to the one enacted in Ontario in 1951.[3] The Act, which came into effect on 1 January 1953, requires employers to pay women at the same rate as men when they are employed to do work of comparable character in the same establishment. Investigation of complaints by the inspection services of the Department of Labour, and if necessary, by a special board of inquiry, may be followed by a ministerial order requiring compliance with the Act. This Act is reproduced in this *Yearbook*.

Jury Duty

In Manitoba, an amendment to the Jury Act[4] permitted women to serve on juries. A woman not wishing to serve, on receiving a summons, may apply for a year's exemption. Women are now eligible to serve on juries in Alberta, British Columbia, Ontario and Saskatchewan, as well as in Manitoba, and the Nova Scotia legislation does not specifically exclude women.

Labour Legislation

The trend towards higher workmen's compensation benefits was indicated in amendments to the legislation in all ten provinces in 1952. In four provinces, the percentage rate of earnings used as a base for the payment of compensation for disability was increased. The percentage rate now varies from 66⅔ to 75. The maximum yearly earnings on which compensation is based were also increased in five provinces. Benefits payable to dependants in death cases were increased in seven provinces. Two provinces brought new classes of workers under the Act.

The Apprenticeship Act was replaced in Nova Scotia,[5] and the Act in Manitoba amended,[6] for the purpose of encouraging and promoting apprenticeship training.

Minimum wage rates applicable to a substantial number of workers were increased in most provinces.

New legislation and regulations, designed to provide safe working conditions, were enacted in several provinces, covering employment such as construction work, mining, welding operations, etc. In one province, medical examinations were made compulsory for workers in silica exposure industries.[7]

II. JUDICIAL DECISIONS

No major issue affecting human rights has been before the courts in any new aspect during the year under review, but in numerous decisions the courts have applied the principles of the common law for the protection of the basic rights of the individual. This is indicated in the cases cited below.

In a case in which a longshoreman claimed damages for having been wrongfully expelled from his union, with consequent loss of employment, the court held that the union had not acted in accordance with its constitution, and that the expulsion order was invalid. The union was required to reinstate the longshoreman and to pay damages for his loss of earnings. The trial judge pointed out that a person who joins a union becomes subject to its constitution and by-laws, but that the union does not acquire any other control of him. In disciplining a member, the union must follow the procedure contained in the constitution. (*McRae* v. *Local 1720, the Cargo and Gangway Watchmen's Union of the Port of Saint John, N.B.* (*ILA*) et al. (1953) 1 *DLR* (*Dominion Law Reports*) 327.)

In several cases in which the courts reviewed decisions of labour tribunals, they found the tribunals to have failed in the full exercise of their responsibilities or to have overstepped the jurisdiction conferred upon them, and quashed decisions which were held to have prejudiced the rights of the parties concerned. (*Toronto Newspaper Guild* v. *Globe Printing Company* (1952) 2 *DLR* 302, *The King* v. *the Labour Relations Board* ex parte *Gorton-Pew* (*New Brunswick*) *Limited* in re *Canadian Fish Handlers Union Local No. 4* (1952) 2 *DLR* 621, re *Labour Relations Board* (*Nova Scotia*), (1952) 3 *DLR* 42.) In another case, enforcing the statute guaranteeing the right of an employee to join a trade union, the court fined an employer $400 for discriminating against his employees for union activity. (*Federal Labour Union No. 24833, Bay Roberts*, v. *Fishery Products Ltd., St. John's*, Magistrate's Court, Harbour Grace, Newfoundland, 12 November 1952.) In connexion with a dispute involving laundry workers, the right to peaceful picketing was upheld by the court, but parading and congregating were forbidden by injunction. (*Peerless Laundry and Cleaners Limited* v. *Laundry and Dry Cleaning Workers Union* et al. (1953) 6 *WWR* (NS) (*Western Weekly Reporter* (Nova Scotia)) 443.)

[1] *Statutes of Ontario*, 1952, c. 22.
[2] *Statutes of Saskatchewan*, 1952, c. 104.
[3] See *Yearbook on Human Rights for 1951*, p. 40.
[4] *Statutes of Manitoba*, 1952, c. 37.
[5] *Statutes of Nova Scotia*, 1952, c. 5.
[6] *Statutes of Manitoba*, 1952, c. 3.
[7] *O.Reg.* 204/52, 4 May 1952, under the Silicosis Act, 1950, c. 76.

Federal Legislation

ACT TO AMEND THE UNEMPLOYMENT INSURANCE ACT, 1940[1]

(assented to 4 July 1952)

. . .

16. Section eighty-eight of the said Act, as amended by section twenty-three of chapter sixty-eight of the statutes of 1946, is further amended by adding, immediately after sub-section two thereof the following as sub-section three, and renumbering the remaining sub-sections accordingly:

"(3) It shall be the duty of the Commission to ensure that there shall be no discrimination in referring any worker seeking employment, subject to the needs of the employment, either in favour of, or against any such worker, by reason of his racial origin, colour, religious belief or political affiliation."

. . .

[1]English text in *Statutes of Canada*, 1952, pp. 387–396, received through the courtesy of Mr. A. H. Brown, Deputy Minister of Labour, Ottawa. Extracts from the Unemployment Insurance Act 1940 as amended 1945, 1946, 1947, 1948, 1949 and 1950 are published in the *Yearbook on Human Rights for 1950*, pp. 38–40.

ORDER IN COUNCIL No. 4138 ADDING A NON-DISCRIMINATION PROVISION TO ORDER IN COUNCIL No. 5547, OF 3 NOVEMBER 1949[1]

dated 25 September 1952

3. The following provisions shall be inserted in all contracts entered into on behalf of the Government of Canada on or after the first day of January 1953, to which by the provisions of this order[2] the conditions set out in schedule "A" or schedule "B" to this order are applicable or may at any time hereafter be made applicable:

NON-DISCRIMINATION PROVISION

(1) In the hiring and employment of labour for the execution of this contract the contractor shall not refuse to employ or otherwise discriminate against any person in regard to employment because of that person's race, national origin, colour or religion, nor because the person has made a complaint or given information with respect to an alleged failure to comply with the provisions of this clause.

(2) If any question arises at any time as to whether or not there has been a failure on the part of the contractor to comply with the provisions of this clause, the Minister or Deputy Minister of Labour or any other person designated by the Minister of Labour for the purpose shall decide the question, subject to sub-clause (5), and his decision shall be final for the purpose of this contract.

(3) The contractor shall make available to the Minister or Deputy Minister of Labour or any person instructed by the Minister or Deputy Minister of Labour to inquire into any complaint of non-compliance with the provisions of this clause or to otherwise make inquiries as to compliance by the contractor with the provisions thereof, his books and records and shall furnish to him such additional information as is required by him for the purposes of the inquiry.

(4) Failure of the contractor to comply with any of the provisions of this clause shall constitute a material breach of the contract.

(5) If the contractor is dissatisfied with a decision under sub-clause (2) of this clause, he may, within thirty days after the decision was made, request the Minister of Labour to refer the question to a judge, and thereupon the Minister of Labour shall refer the question to a judge of a superior, county or district court, whose decision is final for the purposes of this contract.

[1]Text of Order in Council No. 4138 in *Canada Gazette*, Part II—Statutory Orders and Regulations No. 19, Ottawa, 1952, received through the courtesy of Mr. A. H. Brown, Deputy Minister of Labour, Ottawa.

[2]Order No. 5547, of 3 November 1949.

Provincial Legislation

SASKATCHEWAN

EQUAL PAY ACT, 1952[1]

1. This Act may be cited as The Equal Pay Act, 1952.

2. In this Act the expression:

1. "Director" means the Director of the Wages and Hours Branch of the Department of Labour;

2. "Establishment" means a place of business or the place where an undertaking or a part thereof is carried on;

3. "Inspector" means an inspector of the Wages and Hours Branch of the Department of Labour;

4. "Minister" means the Minister of Labour;

5. "Pay" means remuneration in any form.

3. (1) No employer and no person acting on his behalf shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for work of comparable character done in the same establishment.

(2) A difference in the rate of pay between a female and a male employee based on any factor other than sex shall not constitute a failure to comply with this section.

4. The complaint of any person that she has been discriminated against contrary to section 3 shall be in writing on the form prescribed by the director and shall be mailed or delivered to the director at his office.

5. (1) The minister may on the recommendation of the director designate an inspector to inquire into the complaint.

(2) The inspector so designated shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(3) The inspector shall report the results of his inquiry and endeavours to the director.

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

7. The board or, if there is more than one member of the board, the member designated by the minister as the chairman thereof shall have all the powers conferred upon commissioners by sections 3 and 4 of the Public Inquiries Act.

8. The board shall give the parties full opportunity to present evidence and to make submissions and if it finds that the complaint is supported by the evidence it shall recommend to the director the course that ought to be taken with respect to the complaint.

9. If the board is composed of more than one person the recommendations of the majority shall be the recommendations of the board.

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

11. The minister, on the recommendation of the director, may issue whatever order the minister deems necessary to carry the recommendations of the board into effect, and the order shall be final and shall be complied with in accordance with its terms.

12. Every person who fails to comply with any provision of this Act or with any order made under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding $100.

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

14. Each member of a board appointed under this Act shall be paid such compensation for his services and expenses as may be determined by the Lieutenant Governor in Council.

15. This Act shall come into force on a day to be fixed by proclamation of the Lieutenant Governor.

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[1]Source: *Statutes of Saskatchewan*, 1952, c. 104. Text received through the courtesy of Mr. A. H. Brown, Deputy Minister of Labour, Ottawa.

CEYLON

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

Three laws affecting human rights were promulgated during 1952, as follows:

(1) Maternity Benefits (Amendment) Act, No. 26 of 1952, assented to 31 October 1952. This Act is published in: *Parliament of Ceylon, 1st session 1952*, Ceylon Government Press, Colombo. The principal Act is published in: Ceylon, *Statutes, Ordinances*, 1939–1941.

The Act of 1952 supplements the Maternity Benefits Ordinance, No. 32 of 1939. It provides that where a change of employer occurs in any shop, mine, estate or factory in which a woman worker is employed, service rendered by that worker under the old employer shall be deemed to be service rendered under the new employer for the purpose of computing the period of employment by virtue of which she may be entitled to maternity benefit.

The liability of an employer to pay any sum of money as maternity benefits to a woman worker employed by him shall be a first charge on the assets of his shop, mine, estate or factory.

(2) Kandyan Marriage and Divorce Act, No. 44 of 1952. This Act amends and consolidates the law relating to Kandyan marriages and divorces. Extracts from this Act are published in this *Yearbook*.

(3) Indian and Pakistani Residents (Citizenship) Amendment Act, No. 45 of 1952. A summary of this Act is published in this *Yearbook*.

[1]Texts and information received through the courtesy of the Permanent Secretary, Ministry of External Affairs.

II. JUDICIAL DECISIONS

(1) In *Sudali Andy Asary* v. *Vanden Dreesen*, decided on 22 February 1952 and reported in 54 *N.L.R.* (New Law Reports), p. 66, it was decided, *inter alia*, that in cases where the power is given to the Minister (of Defence and External Affairs) to make a deportation order under the Immigrants and Emigrants Act, No. 20 of 1949, if he "deems it to be conducive to the public interest", the term "conducive to the public interest" is subjective and not objective.

(2) In *Wirasinha* v. *Badurdeen*, 54 *N.L.R.* 127, it was decided by the Privy Council on 6 October 1952 that a married man permanently settled in Ceylon, applying for registration as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949,[2] can be registered as a citizen notwithstanding the fact that his wife, though ordinarily resident in Ceylon, has not been so resident for the seven years prior to 1 January 1946, nor at all times since their marriage; and his minor children have not been ordinarily resident in Ceylon during the whole period of their dependency upon the applicant.

III. INTERNATIONAL INSTRUMENTS

Ceylon did not sign or ratify in 1952 any international instruments embodying provisions on human rights.

[2]See a summary of this Act, as amended in 1952, p. 27.

KANDYAN MARRIAGE AND DIVORCE ACT[1]

No. 44 of 1952

(assented to 22 November 1952)

. . .

2. The provisions of this Act shall not, unless otherwise expressly provided therein, apply to marriages contracted before the appointed date.

3. (1) Subject to the provisions of this Act

(*a*) A marriage, between persons subject to Kandyan law, shall be solemnized and registered under this Act or under the Marriage Registration Ordinance; and

(*b*) Any such marriage which is not so solemnized and registered shall be invalid.

(2) The fact that a marriage between persons subject to Kandyan law is solemnized and registered under the Marriage Registration Ordinance shall not affect the rights of such persons, or of other persons claiming title from or through such persons, to succeed to property under and in accordance with the Kandyan law.

PART I

VALIDITY OF KANDYAN MARRIAGES AND LEGITIMIZATION OF ILLEGITIMATE CHILDREN

4. (1) No Kandyan marriage shall be valid if, at the time of marriage,

(*a*) The male party thereto is under the lawful age of marriage; or

(*b*) The female party thereto is under the lawful age of marriage; or

(*c*) The male and female parties thereto are both under the lawful age of marriage.[2]

(2) Notwithstanding anything in sub-section (1), a Kandyan marriage shall be deemed not to be or to have been invalid under that sub-section by reason of one party and one party only thereto being, at the time of marriage, under the lawful age of marriage,

(*a*) If both parties thereto cohabit as husband and wife, for a period of one year after the party aforesaid has attained the lawful age of marriage; or

(*b*) If a child is born of the marriage before the party aforesaid has attained the lawful age of marriage.

(3) Notwithstanding anything in sub-section (1), a Kandyan marriage shall be deemed not to be or to have been invalid under that sub-section by reason of both parties thereto being, at the time of marriage, under the lawful age of marriage,

(*a*) If both such parties cohabit as husband and wife for a period of one year after they both have attained the lawful age of marriage; or

(*b*) If a child is born of the marriage before both or either of them have attained the lawful age of marriage.

[Section 5 deals with prohibited degrees of relationship.]

6. No Kandyan marriage shall be valid

(*a*) If one party thereto has contracted a prior marriage; and

(*b*) If the other party to such prior marriage is still living, unless such prior marriage has been lawfully dissolved or declared void.

7. A valid Kandyan marriage shall render legitimate any children who may have been procreated (whether before or after the appointed date) by the parties thereto previous to such marriage, and children so legitimized shall be entitled to the same and the like rights as if they had been procreated by the parties thereto subsequent to such marriage.

PART II

CONSENT TO MARRIAGE

8. (1) The consent of a competent authority is hereby required to the marriage under this Act of a minor[3] subject to Kandyan law.

(2) For the purposes of this Act, the expression "competent authority", in relation to a minor, means

(*a*) The father of the minor; or

(*b*) If the father is dead, or is under any legal incapacity, or is unable to give or refuse his consent by reason of absence from Ceylon, the mother of the minor; or

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[1] English text in *Parliament of Ceylon, 1st session 1952*, Ceylon Government Press, Colombo. Section 67 declares the Kandyan Marriage Ordinance and the Kandyan Marriage (Removal of Doubt) Ordinance repealed (Kandy is a province of Ceylon).

[2] Sixteen years for males and twelve years for females (section 66).

[3] A male person under eighteen years of age and a female person under sixteen years of age (section 66).

(*c*) If both the father and mother of the minor are dead, or are under any legal incapacity, or are unable to give or refuse consent by reason of absence from Ceylon, the guardian or guardians of the minor appointed by the father or, if the father is dead or is under any legal incapacity, by the mother or, if the mother is dead, or is under any legal incapacity, by a competent court; or

(*d*) If both the father and the mother of the minor are dead, or are under any legal incapacity, or are unable to give or refuse consent by reason of absence from Ceylon, and if further

(i) No guardian or guardians of the minor has or have been appointed by the father, mother or a competent court;

(ii) The guardian or guardians so appointed is or are dead, or is or are under any legal incapacity, or is or are unable to give or refuse consent by reason of absence from Ceylon,

the District Registrar for the district in which the minor resides.

9. Any competent authority whose consent to the marriage of a minor is required under the last preceding section may give or refuse such consent as to such authority may seem fit.

[Section 10 deals with administrative procedure; sections 11–15 deal with appeals against the refusal of a competent authority to give consent to the marriage of a minor.]

[Part III deals with registration of Kandyan marriages.]

PART IV

DIVORCES

32. The dissolution of a Kandyan marriage shall be granted on any of the following grounds:

(*a*) Adultery by the wife after marriage;

(*b*) Adultery by the husband, coupled with incest or gross cruelty;

(*c*) Complete and continued desertion by the wife for two years;

(*d*) Complete and continued desertion by the husband for two years;

(*e*) Inability to live happily together, of which actual separation from bed and board for a period of one year shall be the test;

(*f*) Mutual consent.

. . .

[Parts V–IX deal with administrative arrangements, general provisions, miscellaneous, offences, penalties, interpretations and repeals, transitory provisions, etc.]

INDIAN AND PAKISTANI RESIDENTS (CITIZENSHIP) AMENDMENT ACT[1]

No. 45 of 1952

(assented to 28 November 1952)

NOTE

The Indian and Pakistani Residents (Citizenship) Act (Act No. 3 of 1949) provides that certain Indian and Pakistani residents who fulfil the strictly defined requirements and who apply for registration within two years of the entry into force of this Act, may obtain the status of a citizen of Ceylon. In addition to his own registration, a male resident has the right to procure the registration of his lawful wife or any legitimate minor child born to him of that or any previous marriage or any minor child borne by his wife prior to that marriage. A female resident has the right to procure the registration of any minor child of hers. The main requirements are (*a*) ten years (for unmarried persons) or seven years (for married persons) of uninterrupted residence immediately prior to 1 January 1946[2] and uninterrupted residence from this date to the date of the application for registration as a citizen of Ceylon; (*b*) assured income, non-existence of physical disabilities preventing stay in Ceylon, renunciation of rights inherent in the earlier civil and political status, etc. Residence is deemed to have been uninterrupted if absences did not on any occasion exceed twelve months in duration. Certain special rights and exemptions are recognized for the benefit of wives and minors. An appeal against an order refusing application for registration may be preferred to the Supreme Court.

The amending Act recognizes the following new rights and exemptions or extends those already guaranteed:

(1) Under the principal Act, minor orphans under fourteen years of age do not have to submit evidence of assured income, non-existence of physical disabilities, etc. Under the amending Act, this requirement is waived also in respect of "an applicant who is a student at any university or any government-assisted school, or at any other educational institution approved by the Minister".

(2) Wives and minor children had to be "ordinarily resident in Ceylon". Under the amending Act, a wife has to be "uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of her marriage and until the date of the application"; similarly, a minor child has to be "uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of the child's birth and until the date of the application".

(3) Under new provisions of the amending Act, wives and minor children are not required to have resided in Ceylon at any time prior to 1 January 1939. Residence in this case is also deemed to be uninterrupted if the applicant was not resident in Ceylon during the period commencing on 1 December 1941 and ending on 31 December 1945, or during any part of that period, owing to apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of a state of war. The attainment of majority by minors whose applications for citizenship are pending, or marriage by minors (if females during the pendency of the application) does not prevent their registration.

(4) In the event of the applicant's death, proceedings under way are to continue with respect to any other dependants of the deceased applicant, if such person or persons were included in the application of the deceased for registration. If the final determination is that the deceased applicant would have been entitled to registration, then each person for whom a request for registration had been duly made is to be registered as a citizen of Ceylon.

(5) The modifications made by the amending Act are deemed to have come into force on the date of the promulgation of the principal Act—i.e., 28 February 1949. Refusals of registration which would not have been made if the present modifications had actually been in force at the time may be revoked and steps taken to allow such applications. On the other hand, the amending Act provides that the modifications now introduced shall not prejudice the existing rights of applicants, and of the wives and children of such applicants, in certain specified circumstances as decided by the Judicial Committee of the Privy Council on 6 October 1952, nor the rights of any applicant, or of the wife or child of any applicant, who prior to 6 October 1952 had duly lodged an appeal to the Supreme Court.

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[1] English text in *Parliament of Ceylon, 1st session 1952*, published as *Supplement to Ceylon Government Gazette*, part II, of 5 December 1952, Colombo. The principal Act, assented to 28 February 1949, is published in *Ceylon Acts 1949*.

[2] Date on which Ceylon became an independent dominion within the Commonwealth.

CHILE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In 1952, legislation governing the legal status of married women and of children born out of wedlock was modified. Act No. 10271, of 29 February 1952, amending that part of the Civil Code dealing with family law, was published in *Diario Oficial* of 2 April 1952. Provisions on parental authority, guardianship, maintenance, the dowry system, inheritance and adoption were modified in favour of married women. Moreover, by the amending Act the age up to which children, regardless of sex, shall remain in the custody of a divorced mother was extended to fourteen years. The presumption that the mother divorced for adultery is guilty of depravity was set aside and the provision prohibiting her from exercising parental authority was revoked; similarly, those provisions allowing the father to appoint an adviser in his will to supervise the mother's exercise of parental authority and to compel the mother acting as guardian to consult the person appointed by him were also abrogated. The period of voluntary legitimation of children after marriage was extended and acknowledgement of a natural child made compulsory, and an inquiry into natural paternity or maternity may be made for this purpose. The Act also provides certain rights of inheritance for natural children.

Chilean social security legislation was supplemented by Act No. 10383, promulgated on 28 July 1952 and published in *Diario Oficial* of 8 August 1952. This Act supersedes Act No. 4054 of 1924, which was the first legislation in the American continent to introduce a system of compulsory workers' insurance covering sickness, maternity, invalidity and old age.

The preparatory work on Act No. 10383, which supplements the benefits established by the previous Act, was carried out with the technical assistance of the International Labour Office; its main provisions are based on modern ideas of social security. The Act establishes a complete and continuous system of workers' social insurance covering the risks of sickness, maternity, total or partial incapacity, old age and death. It does not cover industrial accidents, which are dealt with by special legislation in this country. The Act encourages the building of housing for contributors. In progressive stages, it more than doubles, the three contributions—those payable by the employer, the worker and the State; it provides for the adjustment of pensions in the case of currency devaluation. The policy of the capitalization of funds[2] is discontinued and a system is introduced instead under which a contributor has the right to his benefits and no longer to a specific sum. To some extent, the new Act provides for the decentralization of the administration of insurance, and it provides for the representation of both employers and insured persons on the social insurance boards (*Consejos del Servicio de Seguro social*), which thereby lose their political character to a large extent. Insurance ceases to be on a purely individual basis and is extended to the family group, health insurance being provided for the insured person's wife and for his children, whether legitimate or born out of wedlock, up to the age of fifteen. The family is insured by pension in the event of the insured person's death. The Act also establishes the National Health Service, an organization which will take over the functions of various relief, health and social welfare agencies, and which will also assume responsibility for the administration of sickness and maternity insurance.

The financial provisions of the Act are more generous than those of the previous one.

Other laws and court decisions issued in Chile in 1952 in connexion with human rights represent mere procedural innovations or minor extensions within the scope of existing rights. For example, Act No. 10621, of 27 January 1951, published in *Diario Oficial* No. 22422, of 12 December 1952, codifies all previous laws enacted between 17 December 1925 and 21 January 1951 relating to journalists, printing shops and photo-engravers.

[1] This note was prepared by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, Santiago de Chile. English translation from the Spanish text by the United Nations Secretariat.

[2] "Capitalization" means that an insurance fund, not unlike a savings bank, consists of the aggregate of the sums deposited by contributors, each of whom owns the amount he has paid in [*Translator's note*].

COLOMBIA

DECREE No. 2417 *BIS* ESTABLISHING A DEPARTMENT AND A SECTION IN THE MINISTRY OF LABOUR AND ASSIGNING CERTAIN FUNCTIONS TO THAT MINISTRY[1]

of 3 October 1952

Art. 1. A Department for Rural Affairs shall be established in the Ministry of Labour on 1 January 1953. The department shall be responsible for the investigation and settlement by conciliation of rural disputes between landlords, tenants, short-tenants, *colonos* or others, of a socio-economic character or arising out of relations under, or the terms, nature, effects and application of, contract of employment.

Art. 2. A Section for Home Work and Women and Young Workers shall be established in the Department of Labour on 1 January 1953. The section shall be primarily responsible for the investigation and settlement of the social and employment problems of women and young workers in the matter of contracts of employment, moral questions, health, payment of benefits, wages, etc.

The department and the section shall have such organs as the Government may determine by decree, the functions of each being specified.

The Government shall lay down the special procedures to be followed by labour officials to ensure the fair and proper application of the labour regulations in the matters referred to in the two preceding articles, and shall prescribe penalties for infringements.

Art. 3. The Ministry of Finance and Public Credit shall furnish the funds additional to the present budget of the Ministry of Labour required to give effect to the provisions of articles 1 and 2 of this decree.

Art. 4. The Government is hereby authorized to reorganize the various branches of the Ministry of Labour, classify posts and fix monthly salaries.

Art. 5. The Government is hereby empowered to effect the reorganization referred to in the preceding article within the existing budget estimates of the Ministry of Labour, for which purpose it may utilize any unexpended balances for the remainder of the financial year.

[1]Spanish text in *Diario Oficial* No. 28038, of 27 October 1952. Text and information received through the courtesy of Mr. Eduardo Carrizosa, Deputy Representative of Colombia to the United Nations. English translation from the Spanish text by the United Nations Secretariat. By decree No. 01212 implementing decree No. 2417 *bis*, the personnel of the new department and section was appointed and their functions were specified.

DECREE No. 2483 AUTHORIZING THE CONSTRUCTION OF RURAL WORKERS' CLUBS[1]

of 16 October 1952

Art. 1. The Institute of Territorial Credit is hereby authorized to build rural clubs for the benefit of rural workers in the administrative centres of municipalities, in accordance with regulations to be issued by the Government by decree.

Art. 2. The clubs shall be built in municipalities selected by the governing body of the Institute in accordance with a plan to ensure the proper distribution of clubs in the various regions of the country.

Art. 3. A rural club shall be built only if the municipality concerned makes the site available to the Institute free of charge.

Art. 4. The cost of each club to be built shall be in accordance with the size of the municipality

[1]Spanish text in *Diario Oficial* No. 28040 of 29 October 1952, received through the courtesy of Mr. Eduardo Carrizosa, Deputy Representative of Colombia to the United Nations. English translation from the Spanish text by the United Nations Secretariat.

concerned. Sixty per cent of the cost shall be repaid to the Institute over a period of twenty years by monthly instalments to be paid by the municipal treasury. The remaining 40 per cent shall be amortized by the Institute itself and charged to the budgetary appropriations received from the national Government.

Art. 5. A National Central Board for Rural Clubs shall be established to supervise the activities of rural clubs throughout the country. The Board shall consist of the Ministers of Agriculture and Stock-farming, Labour and National Education, or their representatives, and the director of the Institute of Territorial Credit. Departmental boards shall also be established, consisting of the governor, the senior ecclesiastical authority in the chief town of each Department and a representative of each of the abovementioned ministers.

Art. 6. In each municipality, the rural club shall be under the direction of a board consisting of the mayor of the municipality, the parish priest and a representative appointed directly by the governor of the department.

Art. 7. In building clubs, the Institute may give priority to municipalities in which, in addition to the site, voluntary contributions from institutions or individuals equivalent to more than 30 per cent of the cost of the proposed building are obtained.

COSTA RICA

JUDICIAL DECISIONS[1]

BUDGET OF SAN JOSÉ SOCIAL WELFARE BOARD—CHANGES OF ESTIMATES BY COMPTROLLER-GENERAL—SOCIAL RIGHTS OF EMPLOYEES OF THE BOARD—REMEDY AGAINST VIOLATIONS OF RIGHTS—CONSTITUTIONAL GUARANTEES LIMITED BY PROTECTION OF RIGHTS (REMEDIES) ACT (*LEY DE AMPARO*)

ALBERTO TRUJILLO ESTRADA *v.* THE OFFICE OF THE COMPTROLLER-GENERAL OF THE REPUBLIC

Second Chamber of the Penal Court[2]

7 May 1952

NOTE: The Office of the Comptroller-General of the Republic,[3] upon reviewing the budgets of autonomous State institutions, changed the budget estimates for the San José Social Welfare Board [Junta de Protección Social], the agency which administers the hospitals and asylums of the city of San José.

The facts: Alberto Trujillo Estrada and thirty-two other employees of the Social Welfare Board appealed against the decision of the Office of the Comptroller-General of the Republic, alleging that the social rights guaranteed to them by the Political Constitution of the Republic had been violated.[4]

Held: The application was dismissed. Although the Constitution establishes remedies for the protection of all the rights which it grants,[5] article 2 of the Protection of Rights (Remedies) Act[6] limits the remedy to violations of individual rights, which, in the court's view, do not include the right alleged by the plaintiffs to have been violated. Furthermore, the Office of the Comptroller acted in conformity with the statutory provisions which govern that agency and with the constitutional provisions by which it was established.

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[1] The summaries of the following decisions were prepared by, and received through the courtesy of, Dr. Fernando Fournier, Professor of International Law, San José.

[2] Text of the judgement in the *Boletín Judicial* of 30 May 1952.

[3] Article 183 of the Constitution reads: "The Office of the Comptroller-General of the Republic is an auxiliary body of the Legislative Assembly in the matter of the supervision of public finance; but it has complete functional and administrative independence in the discharge of its duties. . . ."

Article 184, *ibidem*, reads: "The duties and powers of the Office of the Comptroller are:

. . .

"(2) To examine, approve, or withhold approval of the budgets of the Municipalities and autonomous institutions, and to supervise their observance and the settlement of accounts."

[4] *Yearbook on Human Rights for 1949*, p. 42, articles 50 *et seq.*

[5] *Op. cit.*, p. 42, article 48, third paragraph.

[6] *Yearbook on Human Rights for 1950*, p. 53.

QUESTION OF CONSTITUTIONALITY OF PROTECTION OF RIGHTS (REMEDIES) ACT (*LEY DE AMPARO*), ARTICLE 2—LIMITATION OF REMEDY TO VIOLATION OF INDIVIDUAL RIGHTS UNCONSTITUTIONAL—CONSTITUTION OF COSTA RICA, ARTICLE 48

JUAN ARREA ESCALANTE *v.* THE PROCURADURÍA GENERAL OF THE REPUBLIC

Supreme Court of Justice[1]

12 May 1952

NOTE: The same employees of the San José Social Welfare Board [Junta de Protección Social] who had instituted proceedings against the Office of the Comptroller-General of the Republic (*vide supra*) then, in view of the decision given by the second chamber of the Penal Court on 7 May 1952, appealed to the Supreme Court of Justice, contesting the constitutionality[2] of the principal enactment relied upon by the lower court. The respondent to the appeal was the *Procuraduría General* of the Republic (the agency which legally represents the State, corresponding to the Attorney-General's office in other countries).

The facts: The second chamber of the Penal Court having decided that, even though article 48, paragraph 3, of the Constitution[3] granted the remedy of protection of rights against any violation of constitutional rights, it was impossible to allege the violation of any constitutional right not included in the chapter on individual rights,[4] inasmuch as article 2 of the Protection of Rights (Remedies) Act[5] limited applications for injunctions exclusively to violations of constitutional rights included in the said chapter, the appellants applied to the Supreme Court of Justice for a declaration that the said article 2 of the Protection of Rights (Remedies) Act is unconstitutional.

Held: The appeal was allowed. The Protection of Rights (Remedies) Act cannot, in disregard of article 48 of the Political Constitution, limit the cases in which the remedy may be invoked. Since the Act limits this remedy to cases of violation of individual rights, whereas the Constitution grants the right to apply against the violation of any constitutional right, article 2 of the said Act, which results in such limitation, is unconstitutional and the broader provision of the Constitution must prevail.

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[1] Text of the judgement in the *Boletín Judicial* of 18 June 1952.

[2] Article 10 of the Political Constitution reads: "Enactments of the legislative power or of the executive power which are contrary to the Constitution shall be null and void, as shall the acts of persons usurping public functions and any appointments made without compliance with the legal requirements. A decision by the Supreme Court of Justice declaring an enactment of the legislative power or a decree of the executive power unconstitutional, shall require the concurrence of not less than two-thirds of all its members."

[3] See the preceding text, note 5.

[4] *Yearbook on Human Rights for 1950*, p. 40, articles 20 *et seq.*

[5] See the preceding text, note 6.

CUBA

CONSTITUTIONAL LAW OF THE REPUBLIC OF CUBA[1]

of 4 April 1952

TITLE I

THE NATION, ITS TERRITORY AND FORM OF GOVERNMENT

Art. 1. Cuba is an independent and sovereign State organized as a unitary and democratic republic for the enjoyment of political liberty, social justice, individual and collective well-being and human brotherhood.

Art. 2. Sovereignty resides in, and all public powers emanate from, the people.

. . .

Art. 7. Cuba condemns wars of aggression; it desires to live in peace with other States and to maintain with them relations and ties of culture and commerce.

The Cuban State adopts the principles and practices of international law which promote human brotherhood, respect for the sovereignty of nations, reciprocity between States, and universal peace and civilization.

TITLE II

NATIONALITY

Art. 8. Citizenship implies duties and rights, the adequate exercise of which shall be regulated by statute.

Art. 9. Every Cuban is under the obligation

(*a*) To serve the country with arms, in the cases and in the manner established by statute;

(*b*) To contribute to the public expenses in the manner and amount directed by statute;

(*c*) To comply with this constitutional law and with the law of the republic; to behave as a good citizen; to inculcate this practice in his own children and those under his care and to instil in them the purest national consciousness.

Art. 10. Every citizen is entitled

(*a*) To reside in his country without being subjected to discrimination or extortion of any kind, regardless of his race, class, political opinions or religious belief;

(*b*) To vote as statute directs at all elections and referenda called in the republic;

(*c*) To receive the benefits of public co-operation and, after proof of poverty, those of social assistance;

(*d*) To perform public duties and hold public office;

(*e*) To enjoy the priority granted by this constitutional law and by statute with respect to employment.

Art. 11. Cuban citizenship is acquired by birth or by naturalization.

Art. 12. The following persons are Cuban nationals by birth:

(*a*) All persons born in the territory of the republic, except children born to aliens in the service of their governments;

(*b*) Persons born in foreign territory of a Cuban father or mother, by the mere fact of taking up residence in Cuba;

(*c*) Persons born outside the territory of the republic, of a native-born Cuban father or mother who has lost Cuban nationality, if they claim Cuban citizenship in the manner and subject to the conditions prescribed by statute;

(*d*) Aliens who have served for one year or more in the Army of Liberation and remained in it until the termination of the war for independence, provided that they evidenced such service and permanence by producing an authentic document issued by the national archives.

Art. 13. The following persons are Cuban nationals by naturalization:

(*a*) Aliens who, after five years of continuous residence in the territory of the republic, and not less than one year after having declared their intention to acquire Cuban nationality, obtain citizenship papers in accordance with statute, provided that they are familiar with the Spanish language.

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[1] Spanish text in Edición Extraordinaria de la *Gaceta Oficial*, of 4 April 1952. The Spanish text has also been published by *Editora Continental*, Havana, 1952. English translation from the Spanish text by the United Nations Secretariat.

(*b*) An alien who marries a Cuban woman, and an alien woman who marries a Cuban national, if children are born of that union or if the persons in question reside in the country continuously for two years after being married, provided that they first renounce their original nationality.

Art. 14. No fees shall be payable in respect of citizenship papers or certificates of Cuban nationality.

Art. 15. A person shall lose Cuban citizenship if

(*a*) He acquires a foreign citizenship;

(*b*) Without the permission of the Council of Ministers he enters the military service of another nation or accepts an office importing authority or jurisdiction;

(*c*) Being a Cuban national by naturalization, he resides for three consecutive years in the country of his birth, unless every three years he makes a declaration before the competent consular authority to the effect that he wishes to retain Cuban citizenship.

The offences or causes of disgrace for which citizenship acquired by naturalization shall be revoked by final judgement of a competent court may be prescribed by statute.

(*d*) Being a naturalized citizen, he accepts a double citizenship. Loss of citizenship for the reasons specified in paragraphs (*b*) and (*c*) of this article shall not become effective unless ordered by final judgement in a contested hearing, before a court of justice as provided by statute.

Art. 16. Neither marriage nor dissolution of marriage shall affect the nationality of the spouses or their children.

A Cuban woman married to an alien shall retain Cuban nationality.

An alien woman who marries a Cuban national and an alien who marries a Cuban woman shall retain their nationality of origin or shall acquire Cuban nationality by option in accordance with this Constitutional Law, a statute, or an international treaty.

Art. 17. Cuban citizenship may be recovered in the manner prescribed by statute.

Art. 18. A person who is a Cuban national by naturalization may not perform on behalf of Cuba official functions in his country of origin.

TITLE III

ALIENS

Art. 19. Aliens resident in the territory of the republic shall be equal with Cubans with respect to

(*a*) The protection of their person and property;

(*b*) The enjoyment of the rights recognized in this constitutional law, except those granted exclusively to nationals;

The Government may, however, compel an alien to leave the national territory in the cases and manner laid down by statute.

An alien with a Cuban family established in Cuba may be deported only by judgement of a court in accordance with statute.

The organization of associations of aliens shall be regulated by statute without prejudice to the rights of Cuban members of such associations.

(*c*) The obligation to respect the social and economic system of the republic;

(*d*) The obligation to observe this constitutional law and statute;

(*e*) The obligation to contribute towards public expenses in the manner and amount prescribed by law;

(*f*) Submission to the jurisdiction and orders of courts of justice and public authorities of the republic;

(*g*) The enjoyment of civic rights, subject to the conditions and limitations prescribed by statute.

TITLE IV

FUNDAMENTAL RIGHTS

First Section

RIGHTS OF INDIVIDUALS

Art. 20. All Cuban citizens are equal before the law. The republic does not recognize special jurisdictions [fueros] or privileges.

Any discrimination by reason of sex, race, colour or class and any other discrimination injurious to human dignity is hereby declared illegal and a penal offence.

Penalties for breach of this provision shall be prescribed by statute.

Art. 21. Penal statutes shall have retroactive effect in favour of the offender. Public officers and employees committing offences in the discharge of their duties, and persons committing electoral offences and offences against the individual rights guaranteed by this constitutional law, shall, if guilty of fraud, lose the benefit of this provision. Persons found guilty of such offences shall be subject to the penalties and classifications of the law in force at the time of the offence.

Art. 22. No other statute shall have retroactive effect unless it itself expressly so provides for reasons

of public order, social utility or national necessity by words enacted by a vote of two-thirds of the total number of members of the Council of Ministers. If the provision purporting to be retroactive is challenged as unconstitutional, the matter shall be decided by the Tribunal of Constitutional and Social Guarantees,[1] which may not refuse to act for a formal or any other reason.

In every case the statute itself shall prescribe the degree, manner and form of compensation to be given for its retroactive effect upon any right lawfully acquired by virtue of an earlier enactment.

A statute passed in virtue of this article shall not be valid if it produces effects contrary to the provisions of article 24 of this constitutional law.

Art. 23. Civil obligations arising from contracts, or from other acts either of commission or of omission, may not be set aside or varied either by the legislature or by the executive, and consequently no enactment shall retroactively affect their enforcement. Actions based on such obligations may be suspended during a grave national crisis for so long as is reasonably necessary by enactment subject to the same conditions and challenge as are referred to in the first paragraph of the preceding article.

Art. 24. Confiscation of goods is forbidden. No person may be deprived of his property except by a competent judicial authority for duly established reasons of public utility or social interest, and in every case after payment in cash of proper compensation, the amount of which shall be determined by the court. In case of failure to comply with these requirements, a person whose property has been expropriated shall be entitled to protection by a court of justice and, in a proper case, to restitution of his property. If the reasons of public utility or social interest, or the necessity of expropriation, are contested, the court shall decide the matter.

Art. 25. The penalty of death may not be awarded for a political offence, but the Council of Ministers may in its legislative capacity enact penalties, including death, for military offences, treason or espionage on behalf of the enemy when the country is at war with a foreign nation, and for flagrant intimidation and unlawful use of firearms.

Art. 26. The Criminal Procedure Act shall contain provisions to ensure that every charge shall require proof by evidence independent of that of the accused, of his spouse, and of his relatives within the fourth degree of consanguinity and the second of affinity. Every accused person shall be deemed innocent until found guilty.

In every case the authority shall draw up a warrant for detention stating the authority issuing it, the reasons for its issue, and the place to which the detained person is to be taken, and shall notify the prisoner of all these particulars, and the prisoner shall sign the warrant.

The registers of detained persons and prisoners shall be open to public inspection.

Any attack upon the physical integrity, safety or honour of a detained person shall, until the contrary is proved, be attributed to the officer arresting the person or holding him in custody. A subordinate may refuse to carry out an order conflicting with this guarantee. A guard employing arms against a detained person or a prisoner attempting to escape shall be charged and be called to account, according to law, for any offence he may have committed.

Persons detained or imprisoned for political or social offences shall be segregated from ordinary offenders, and shall not be required to do any work, nor be subjected to the penal regulations applying to ordinary prisoners.

No detained person or prisoner shall be held *incommunicado.*

Art. 27. Every detained person shall be released or delivered to the competent judicial authority within the twenty-four hours following his arrest.

Every detained person shall be released from custody, or committed to prison by a judicial order incorporating a statement of reasons, within seventy-two hours after being brought before the competent judge. Within the same period the detained person shall be notified of the order made.

Persons remanded in custody shall be kept in places distinct and completely separate from those used for persons serving sentences, and shall not be required to do any work or be subjected to the penal regulations applying to persons serving sentences.

Art. 28. No person shall be tried or sentenced except by a competent judge or court under laws enacted before the commission of the crime, and in compliance with the procedure and guarantees established by such laws. No sentence shall be pronounced against a defendant in his absence; nor shall any person be convicted in a criminal action without being heard. No person shall be obliged to testify against himself, or against his spouse or his relatives within the fourth degree of consanguinity or the second of affinity.

No violence or coercion of any kind shall be practised on any person in order to force him to make a statement. A statement obtained in violation of this provision shall be null and void, and those responsible shall incur the penalties prescribed by law.

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[1] See the Act of 31 May 1949 in *Yearbook on Human Rights for 1949*, pp. 48–52.

Art. 29. Any person detained or imprisoned otherwise than in accordance with this Constitutional Law or a statute, or in breach of the procedure or guarantees provided thereby, shall be released upon his own application or upon that of any other person, without need of a legal representative by summary *habeas corpus* proceedings before an ordinary court of justice.

In no case and for no reason may the court disclaim jurisdiction or allow its competence to be contested or defer its decision, which shall have priority over all other matters.

It is absolutely obligatory that any person detained or imprisoned by any authority, officer, person or body whatsoever shall be brought before the court issuing the writ of *habeas corpus*, and no plea of obedience to a superior authority may be admitted.

Any provision impeding or retarding the presentation of the person deprived of liberty, or delaying *habeas corpus* proceedings, shall be null and void, and the judicial authority shall be bound so to declare it.

A court seized of a writ of *habeas corpus* shall, if the detained person or prisoner is not brought before it, order the arrest of the person in default, who shall be tried in accordance with law.

A judge or magistrate who rejects an application for a writ of *habeas corpus* or who fails to comply with any other provision of this article shall be dismissed from office by the Chamber of Government of the Supreme Court.

Art. 30. Subject to the law governing immigration and to the powers of the authorities relating to crime, any person may enter and remain in the national territory, leave it, move from one place to another, and change residence without need of a letter of safe conduct, passport or other similar requirement.

No person shall be obliged to change his domicile or residence except by order of a judicial authority in the cases and subject to the requirements specified by statute.

No Cuban may be expatriated or prohibited from entering the territory of the republic.

Art. 31. The Republic of Cuba offers and extends the right of asylum to persons persecuted for political reasons, provided that persons thus sheltered respect its national sovereignty and laws.

The State shall not authorize the extradition of persons guilty of political offences, nor seek extradition of Cubans guilty of such offences who have taken refuge in foreign territory.

An alien political refugee expelled from the national territory in conformity with this constitutional law and with statute shall not be sent to the territory of the State claiming him.

Art. 32. The secrecy of correspondence and other private documents is inviolable, and neither may be seized or examined except by a public officer or agent in virtue of an order, incorporating a statement of reasons, issued by a competent judge. In all cases secrecy shall be maintained regarding particulars irrelevant to the reason for the seizure or examination. The privacy of telegraphic, telephonic and cable communication is similarly inviolable.

Art. 33. Every person shall be free, without previous censorship, to express his thoughts in speech or writing or by any other graphic or oral mode of expression, and may use for that purpose any available means of dissemination.

A book, pamphlet, gramophone record, film, periodical or publication of any nature may be withdrawn from circulation only if defamatory to a person or prejudicial to law and order, and then only in virtue of an order, incorporating a statement of reasons, issued by a competent judicial authority, and without prejudice to liability for the criminal offence.

In the cases referred to in this article, the premises, equipment and instruments used by the organ of publicity may not be seized, nor their use prevented, except in case of civil liability.

Art. 34. The domicile is inviolable, in consequence whereof no person may enter the domicile of another person at night without that person's consent except in order to aid victims of a crime or disaster, nor by day except in the cases and in the manner determined by law.

In case of suspension of this guarantee, the domicile of a person may on no account be entered except by the proper competent authority in virtue of a written warrant or order, a true copy of which shall be delivered to the occupant or his family or his nearest neighbour, as the case may require. The same shall apply where the authority acts through an agent.

Art. 35. The profession of any religion and the exercise of any kind of worship shall be free, subject only to respect for Christian morality and public order.

The Church shall be separate from the State, which shall not support with money any form of worship.

Art. 36. Every person has the right to address petitions to the authorities; to have them considered and determined within a period not exceeding forty-five days; and to be notified of the result.

On the expiry of the statutory time limit or, if there be none, of the period aforesaid, the petitioner may appeal in the manner authorized by law as though his petition had been rejected.

Art. 37. The inhabitants of the republic have the right to assemble peaceably without arms, and the right to hold processions and to associate together for all lawful purposes of life in conformity with the pertinent rules of law, subject only to such restriction as is absolutely necessary to ensure public order.

The formation and existence of organizations opposing the democratic system of government of the republic or seeking to diminish the national sovereignty are unlawful.

Art. 38. Any act prohibiting or restricting participation by a citizen in the political life of the nation is hereby declared a penal offence.

Art. 39. Public functions shall be discharged only by Cuban citizens possessing the required authority.

Art. 40. A legal, governmental or any other enactment regulating the exercise of the rights guaranteed by this constitutional law shall, if it diminishes, restricts or impairs any of those rights, be null and void.

Resistance adequate to protect the personal rights hereinbefore guaranteed is lawful.

Proceedings for breach of any provision of this title shall be public and shall require no security nor any kind of formality, but shall be instituted by simple information.

The enumeration of the rights guaranteed in this title does not exclude other rights established in this constitutional law or of like nature or derived from the principle of the sovereignty of the people or from the republican form of government.

Art. 41. The guarantees of the rights recognized in articles 26, 27, 28, 29, 30, 32, 33, 36, 37 and 71 may be suspended in all or in part of the national territory for such period as may be necessary for the security of the State, or in case of war or invasion of the national territory or of grave public disturbance or other events profoundly disturbing the public tranquillity; or for the purpose of preventing intimidation or the unlawful use of firearms. The Council of Ministers may proclaim the Security and Public Order Act to be in force, without prejudice to such special measures as may be deemed necessary by the President of the Republic, who shall report thereon to the Council of Ministers.

Art. 42. Where no offence against the person or property has been committed, a person detained for one of the reasons for which suspension has been proclaimed shall be kept in a special place set aside for persons prosecuted or sentenced for political or social offences.

TITLE V

THE FAMILY AND CULTURE

First Section

THE FAMILY

Art. 43. The family, motherhood and marriage are under the protection of the State.

A marriage ceremony shall be valid only if performed by an officer legally empowered to do so. A judicial marriage ceremony shall be performed without charge and shall be upheld by statute.

Marriage is the legal basis of the family and is founded on the absolute equality of the rights of husband and wife; the economic relationship between the spouses shall be governed by this principle.

A married woman shall enjoy full civic capacity. She shall not require her husband's permission or authority to manage her property, engage freely in trade or industry or practise a profession, art or craft or dispose of the proceeds of her work.

A marriage may be dissolved by consent of the spouses or on the petition of either spouse on the grounds and in the manner specified by statute.

The courts shall determine the cases in which a union between persons with legal capacity to contract marriage shall, because of its permanence and exclusiveness, be fairly deemed to be a civil marriage.

Allowances for the maintenance of the wife and children shall have priority over any obligation, and this priority may not be frustrated by the freedom from attachment of any property, salary, pension or income of any kind whatsoever.

Unless the wife is proved to have means of subsistence or is the guilty party, she shall be granted an allowance commensurate with the means of her husband, regard being had to her station in life. The allowance shall be paid and guaranteed by the divorced husband, and payment shall continue until she contracts a new marriage, without prejudice to the allowance established for each child, which shall also be guaranteed. Suitable penalties shall be provided by law for persons who, in the event of divorce, separation, or any other circumstance, attempt to evade this responsibility.

Art. 44. Parents shall be bound to support, assist, bring up and educate their children, and children shall be bound to respect and assist their parents. Fulfilment of these obligations shall be enforced by suitable statutory guarantees and penalties.

Children born out of wedlock to a person who at the time of conception had the legal capacity to contract marriage shall have the same rights and duties as those laid down in the preceding paragraph, subject

to the law governing inheritance. For this purpose, similar rights shall accrue to a child born out of wedlock to a married person when that person acknowledges or a judgement of affiliation declares that he is that person's child. The investigation of paternity shall be governed by statute.

All classification of parentage is hereby abolished. No registration of birth, or certificate of birth or of baptism, or certificate referring to parentage, shall contain any statement importing a difference between births or relating to the marital status of the parents.

Art. 45. Taxation, social security and social assistance shall be administered in accordance with the rules of this constitutional law governing protection of the family.

Children and young persons shall be protected against exploitation and moral and material desertion. The State, the provinces and the municipalities shall organize appropriate institutions for this purpose.

Art. 46. Subject to the limits laid down in this constitutional law, a Cuban citizen may bequeath one-half of his estate as he chooses.

Second Section

CULTURE

Art. 47. Culture in all its manifestations constitutes a primary interest of the State. Scientific investigation, artistic expression and the publication of their results, and education, are free, without prejudice to such inspection and regulation of education as the State may be empowered by statute to execute.

Art. 48. Primary education is compulsory for young persons of school age, and the State is bound to provide it, without prejudice to the co-operation required of local authorities.

Kindergarten, primary and vocational education and necessary teaching materials shall, when provided by the State, a province or a municipality, be free of charge.

Elementary secondary education and all higher education, except special intermediate and university courses, provided by the State or a municipality shall be free of charge.

Provision may be made by statute for the commencement or continuation in existing or future pre-university institutions of a small registration charge as a contribution towards the expenses of their upkeep.

As far as possible, the State shall award scholarships to enable young persons who show outstanding aptitude and ability, but are handicapped by insufficient means, to benefit by State education not provided free of charge.

Art. 49. The State shall maintain a system of schools for adults for the special purpose of eliminating and preventing illiteracy, and of rural schools intended mainly for practical instruction to serve the needs of small agricultural, maritime and other communities, and of schools of arts and crafts and of technical schools of agriculture, industry and commerce, planned to meet the requirements of the national economy. All tuition therein shall be provided free of charge, and provinces and municipalities shall contribute to the maintenance thereof in accordance with their means.

Art. 50. The State shall maintain the teachers' training schools required for the technical training of teachers in public elementary schools. No other institution except teachers' colleges at universities may issue elementary schoolteachers' certificates.

The preceding provision shall not preclude schools established under statute from issuing certificates to teachers of the special subjects taught therein.

Such certificates of ability to teach special subjects shall entitle their holders to priority of appointment to fill existing or future vacancies in those schools and professions.

Women teachers wishing to teach domestic economy, dressmaking and sewing, or women's industries shall be required to hold a teacher's certificate in economics, arts, domestic science or industrial science from the School of Domestic Economy [Escuela del Hogar].

Art. 51. Public education shall be so organized that all grades, including the higher, are duly co-ordinated and continuous with one another. The State system shall ensure the special encouragement and development of all occupations, with due regard to the cultural and practical needs of the nation.

All education, both public and private, shall be patterned on Cuban ideals and the spirit of human brotherhood and aimed at inculcating in pupils a love of their country, of its democratic institutions, and of all persons who have fought for either.

Art. 52. Provision for State education shall be made in the national, provincial and municipal budgets. The Ministry of Education shall exercise technical and administrative control over all education except those branches which by reason of their special nature are in the charge of other ministries.

The budget for the Ministry of Education shall not be less than the regular bedget for any other ministry, except in case of an emergency declared by statute.

The monthly salary of an elementary schoolteacher shall in no case be less than one millionth part of the total national budget.

Teachers in State schools have the same rights and duties as civil servants.

The appointment, promotion, transfer and dismissal of teachers, instructors, inspectors, technicians and other school officers shall be so administered as to exclude all but strictly technical considerations, without prejudice to maintenance of the moral standards required of those officers.

All administrative and supervisory posts in the public elementary schools shall be filled by persons holding university degrees in the subjects taught.

Art. 53. The University of Havana is autonomous and shall be governed in accordance with its statutes and with the law to which they are bound to conform.

The State shall contribute towards the capital and maintenance of the university, and shall for the latter purpose appropriate in the national budget the amount fixed by statute.

Art. 54. It shall be lawful to establish State and private universities and institutions and centres of higher learning of any other kind. Rues governing them shall be made by statute.

Art. 55. Public education shall be secular. Centres of private education shall be subject to regulation and inspection by the State, but shall in every case retain the right to provide, separately from technical education, such religious education as they desire.

Art. 56. Instruction in Cuban literature, history and geography and in civics and the constitutional law shall be given in all public and private centres of learning by Cuban-born teachers from the writings of Cuban-born authors.

Art. 57. A person may teach only if he has obtained the qualifications prescribed by statute.

The non-teaching professions, arts and crafts requiring the possession of a qualification for their practice, and the manner in which such qualification is to be obtained, shall be specified by statute. In filling public posts the State shall give priority to citizens who have undergone the appropriate official training.

Art. 58. The State shall regulate by statute the conservation of the cultural treasures and artistic and historic wealth of the nation and shall likewise give special protection to national monuments and to places notable for their natural beauty or for their recognized artistic or historic value.

Art. 59. A National Council of Education and Culture shall be set up with the Minister of Education as its chairman to encourage, direct technically and inspect the educational, scientific and artistic activities of the nation.

The Council of Ministers shall consult the Council on every bill relating to matters within its competence.

Membership of the National Council of Education and Culture shall be honorary and unpaid.

TITLE VI

LABOUR AND PROPERTY

First Section

LABOUR

Art. 60. Every person possesses an inalienable right to work. The State shall employ the resources at its disposal to furnish employment to every unemployed person, and shall assure to every manual or professional worker the economic conditions necessary to a decent way of life.

Art. 61. Every manual or professional worker employed in a public or private undertaking by the State or a province or a municipality shall be guaranteed a minimum wage or salary fixed according to the conditions prevailing in each region and to his reasonable material, moral and cultural needs, and considering whether he is the head of a family.

The method of periodical adjustment by joint committees, of minimum wages and salaries for each branch of work according to the standard of living and special conditions prevailing in each region and each branch of industry, commerce and agriculture shall be established by statute.

The minimum wage per working day for piecework, work for an agreed price or work done on contract shall be properly guaranteed.

The part of a wage or salary representing the minimum shall be exempt from attachment except to secure maintenance allowance in the manner prescribed by statute. Implements belonging to a worker shall likewise be exempt from attachment.

Art. 62. For equal work under identical conditions an equal wage shall always be paid, irrespective of persons.

Art. 63. No deductions not authorized by law may be made from the wages or salaries of manual or professional workers.

Moneys due to workers on account of payments and wages in respect of the preceding year shall have priority over all other liabilities.

Art. 64. Payment by vouchers, tokens, goods or any other symbols in substitution for legal tender is totally prohibited. Any breach of this provision shall be a penal offence.

Day labourers shall draw their wages within a period not to exceed one week.

Art. 65. Social insurance is established as an absolute right of the workers which cannot be

waived or lapse; it shall be maintained by the equitable participation of the State, the employers and the workers themselves for the effective protection of the workers against disability, in old age, against unemployment and other labour risks in a manner to be determined by statute. The right to a retirement pension and to survivors' pensions in the event of death is likewise established.

The branches of social insurance mentioned in the preceding paragraph shall be administered and managed by joint bodies elected by the employers and workers and including a representative of the State, in the manner laid down by statute, unless a social insurance bank is set up by the State.

Insurance against industrial accidents and occupational diseases is likewise declared to be compulsory, and its cost shall be borne solely by the employer, and its operation shall be supervised by the State.

Social insurance funds or reserves may not be transferred, nor used for purposes other than those for which they were established.

Art. 66. The maximum daily hours of work shall not exceed eight. This maximum may be reduced to six hours a day for persons over fourteen but under eighteen years of age.

The maximum weekly hours of work shall be forty-four, and for the purpose of calculating the wage or salary shall be deemed to be forty-eight; but industries which by their nature are obliged to operate without interruption at a particular season of the year shall be exempt from this rule until special provision is made for them by statute.

The employment and apprenticeship of persons under fourteen years of age are prohibited.

Art. 67. All manual and professional workers shall be entitled to one month's holiday with pay in respect of eleven months' work in each calendar year. Workers who, on account of the nature of their work or for some other reason, have not worked for eleven months shall be entitled to a holiday with pay proportionate to the period of work completed.

The employers of workers ceasing work on account of a national holiday or day of mourning shall pay them their wages for that day.

Industrial and commercial establishments and places of public entertainment shall be closed on four days only of national holiday or mourning. Other such days shall be days of official holiday or mourning and shall be celebrated without suspension of the business of the nation.

Art. 68. No difference may be established between married and single women in regard to employment.

The protection of working mothers, including office workers, shall be governed by statute.

A pregnant woman may not be dismissed, nor required to do work requiring considerable physical effort, within three months before confinement.

A mother shall be granted compulsory leave at her ordinary rate of pay during the six weeks immediately preceding and the six weeks immediately following confinement, and shall retain her employment and all the rights pertaining thereto and specified in her labour contract. During the nursing period she shall be allowed two special daily rest-periods of one half-hour each to feed her child.

Art. 69. The right of employers, salaried employees in private undertakings, and workers to form associations for the exclusive purposes of their economic and social activities is hereby acknowledged.

The competent authority shall decide within a period of thirty days on the grant or refusal of registration to an employers' or employees' association. Registration shall endow an employers' or employees' association with legal personality. The recognition of such associations by employers and employees shall be governed by statute.

Such associations may be dissolved only by final judgement of a court.

Every member of the governing body of such an association shall be a Cuban citizen by birth.

Art. 70. An official association shall be formed for every profession for the practise of which a university degree is required. The constitution and operation within each such association of a national governing body and of such local governing bodies as may be necessary shall be so regulated by statute that the association may be governed with full authority by a majority of its members.

The obligatory formation of associations for other professions officially recognized by the State shall likewise be governed by statute.

Art. 71. The right of workers to strike and of employers to lock out in accordance with statutory provision is hereby acknowledged.

Art. 72. A system of collective labour agreements binding on both employers and workers shall be established by statute.

A condition permitting waiver, diminution, impairment or relinquishment of any right granted to workers by this constitutional law or by statute shall, even if embodied in a labour contract or any other agreement, be null and void and shall not bind the parties.

Art. 73. Cuban citizens by birth shall, in a manner to be determined by statute, constitute the majority of the workers in each class of employment and receive the larger part of the aggregate of all wages and salaries.

Likewise, naturalized Cuban citizens with families born in the national territory shall be given protection in priority to other naturalized Cuban citizens and to aliens.

The provisions of the preceding paragraphs shall not apply to aliens for the purpose of filling indispensable technical posts, provided that the relevant statutory provisions are observed and that the admission of Cuban citizens by birth to apprenticeships in the technical work of those posts is facilitated.

Art. 74. The Ministry of Labour shall ensure, as one of the essential principles of its permanent social policy, that no discrimination of any kind is practised in allotting employment in industry and trade. Where staff is changed, new posts are established or new factories, industries or commercial undertakings are opened, employment shall, subject always to the engagement of suitable staff, be allotted without regard to race or colour. It shall be provided by statute that any other practice shall be a penal offence for which proceedings may be instituted by the State directly or at the instance of an aggrieved party.

Art. 75. The formation of commercial, agricultural, distributive and other co-operative undertakings shall be encouraged by statute, but their scope, constitution and operation shall be so regulated that they shall not provide means of evading or frustrating the provisions of this constitutional law governing labour.

Art. 76. Immigration shall be governed by statute with due regard for the national economic system and the requirements of the community. The importation of contract labourers and any form of immigration likely to worsen conditions of employment is prohibited.

Art. 77. No undertaking may discharge an employee without the preliminary proceedings and other requirements of statute, which shall determine the proper grounds for dismissal.

Art. 78. The employer shall be liable for compliance with the provisions of law governing social welfare even where he contracts with an intermediary for the actual performance of work.

Apprenticeship in the manner laid down by statute shall be compulsory in all industries and types of work in which technical knowledge is necessary.

Art. 79. The State shall promote the building of cheap housing for workers.

Those undertakings which, because they employ workers at a distance from centres of population, shall be bound to provide suitable housing acommodation, schools, hospitals and other services and facilities requisite for the physical and moral well-being of the worker and his family shall be specified by statute.

The conditions to be satisfied by workshops, factories and work-places of all kinds shall also be laid down by statute.

Art. 80. Social assistance shall be established under the Ministry of Health and Social Assistance and organized by statute, which shall also appropriate funds to provide the necessary reserves.

The hospital, health and legal posts required for the proper organization of those State services shall be established.

State, provincial and municipal welfare institutions shall give free service to poor persons only.

Art. 81. Mutual aid is recognized as a social principle and practice. Its operation shall be so governed by statute that it may benefit persons of small means while providing fair and proper protection for professional persons.

Art. 82. Professions requiring an official qualification may, save as provided in article 57 of this constitutional law, be practised only by Cuban citizens by birth or by Cuban citizens naturalized not less than five years before the date of the application for licence to practise. The Council of Ministers may, however, temporarily suspend this provision when the co-operation of alien skilled or technical workers is necessary or advisable in the public interest for the development of public or private undertakings of national importance. The enactment providing the suspension shall specify the extent and duration of the licence.

In giving effect to this provision, and where the practice of a new profession, art or craft is governed by a statute or order, the acquired right to work of existing practitioners of the profession, art or craft shall be respected and the principles of international reciprocity shall be observed.

Art. 83. The manner of moving factories and shops from place to place shall be regulated by statute in order to prevent the worsening of working conditions.

Art. 84. Problems arising out of the relations between capital and labour shall be referred to conciliation boards consisting of representatives of employers and employees in equal numbers. The judicial officers who shall be chairmen of these boards and the national court which shall hear appeals against their awards shall be specified by statute.

Art. 85. In order to ensure the enforcement of social legislation, the State shall provide for the supervision and inspection of undertakings.

Art. 86. The rights and benefits enumerated in this section shall not exclude others derived from the principle of social justice, which others shall

accrue equally to all persons taking part in the process of production.

Second Section

PROPERTY

Art. 87. The Cuban State recognizes the existence and lawfulness of private property conceived in the broadest sense as a social function and limited only by provisions of law enacted for reasons of public necessity or social interest.

Art. 88. The subsoil belongs to the State, which may grant concessions for its exploitation in accordance with statute. A mining concession not worked within the statutory period shall be declared void, and the property shall revert to the State.

Land, forests, and concessions for the use of subsoil, waters or means of transportation or for any other public service undertaking shall be so worked as to promote the welfare of society.

Art. 89. The State shall have the right of pre-emption in any public auction or forced sale of immoveable property or of instruments representing immoveable property.

Art. 90. The ownership of large estates [latifundio] is prohibited, and for the purpose of its abolition the area of land which an individual or corporation may possess shall be limited by statute for each class of use with due regard to the particular requirements thereof.

Statutory provisions shall be enacted to restrict the acquisition and possession of land by alien individuals and companies and to restore land to Cuban ownership.

Art. 91. The father of a family who lives upon, cultivates, and himself works a farm owned by him and not exceeding 2,000 pesos in value and indispensable for his housing and subsistence may settle it on the family in perpetuity, and it shall then be exempt from taxes and attachment and inalienable except for liabilities incurred before this constitutional law. Appreciation in excess of the aforesaid sum shall be subject to tax in accordance with statute. To enable him to use the property, the owner may charge or pledge sowings, plantings, fruits or products thereof.

Art. 92. Every author or inventor shall enjoy exclusive ownership of his work or invention, subject to statutory limitations of time and procedure.

Permission to use an industrial or commercial trademark, or any other means of business identification indicative of Cuban origin shall be void if used in any way to protect or cover articles manufactured outside the national territory.

Art. 93. No property may be subjected to encumbrance in perpetuity by irredeemable charges [censos] or the like, wherefore their establishment is hereby prohibited.

The provisions of the preceding paragraph shall not apply to existing or future irredeemable charges or encumbrances established for the benefit of the State, a province or a municipality, a public institution of any kind, or a private charitable institution.

Art. 94. The State shall take, at least every ten years, a census of population depicting all the economic and social activities of the country, and shall regularly publish a statistical yearbook.

Art. 95. The property of charitable institutions is hereby declared imprescriptible.

Art. 96. Land previously donated by members of the old Spanish nobility and actually used for the purpose of founding a village or town, and subsequently, after becoming communal land [ayuntamiento], occupied or registered by the heirs or assigns of the donor, is hereby declared to be land of public utility and hence liable to expropriation by the State, province or municipality.

An inhabitant of such a town or city who possesses a building or occupies a plot of land in the built-up area may, on payment of a proportionate part of the total value, require the expropriating body to convey to him title as owner in possession of the plot or parcel occupied by him.

TITLE VII

SUFFRAGE AND PUBLIC OFFICE

First Section

SUFFRAGE

Art. 97. Universal, equal and secret suffrage is hereby established as a right, duty and function of all Cuban citizens.

This function shall be obligatory, and any person who without lawful excuse fails to vote in an election or referendum shall be liable to the penalties provided by law and shall be disqualified from holding a judicial, administrative or any other public post for a period of two years from the date of the offence.

Art. 98. The opinion of the people concerning a question submitted to it shall be expressed through a referendum.

In every election or referendum a majority of the validly cast votes shall prevail, except in the cases laid down by this constitutional law. The result shall be made public officially as soon as it is known to the competent authority.

In elections based on proportional representation, votes cast in favour of a candidate shall be counted in order to determine the party quotient.

Art. 99. All Cubans of either sex who have attained the age of twenty years are entitled to vote, except

(*a*) Persons in institutions;

(*b*) Persons declared by a court to be mentally incapacitated;

(*c*) Persons deprived of civic rights by a court on account of an offence;

(*d*) Members of the armed forces or police, on active service.

Art. 100. The Electoral Code shall provide for an identity book containing the photograph, signature and fingerprints of the voter and any other matter necessary for complete identification.

Art. 101. Any form of coercion to compel a citizen to join a party, vote, or display his choice in any electoral proceeding is a penal offence.

This offence shall be punished and, where the coercion is committed by a public authority or his agent, subordinate or employee, personally or through an intermediary, the penalty shall be doubled and the offender shall be disqualified permanently for public office.

Art. 102. Political parties or associations may be organized freely in accordance with statute, but no political group may be formed of persons of any particular race, sex or class.

Statutory rules and procedures shall be enacted to ensure the participation of minorities in drawing up the electoral rolls and in organizing and reorganizing political associations and parties and in other electoral acts, and their representation in the elective bodies of the State, provinces and municipalities.

Art. 103. Any provision amending the law governing elections shall be void if enacted after an election or referendum has been called, or before the persons elected take office or the final result of a referendum is known.

This prohibition shall not apply to amendments expressly proposed by the Superior Electoral Tribunal and approved by two-thirds of the Council of Ministers.

From the calling of an election until the elected persons take office, the Superior Electoral Tribunal shall have jurisdiction over the armed forces and the police for the sole purpose of ensuring the proper conduct of the election.

TITLE XI

THE JUDICIARY

First Section

GENERAL PROVISIONS

Art. 145. Justice is administered on behalf of the people and shall be dispensed free of charge throughout the national territory.

The jurisdiction of the judiciary derives from this constitutional law; and judicial officers and officers of the Law Officers' Department [Ministerio Fiscal], their assistants, counsel appointed by the courts, and officers of electoral tribunals holding permanent appointments or performing their duties when this constitutional law is promulgated are hereby confirmed in office and shall have the security of tenure guaranteed by this title.

Judges and law officers in the performance of their duties are independent and owe obedience to the law only.

Justice may be administered only by permanent members of the judiciary. No member of the judiciary may practise any other profession.

. . .

TITLE XV

Chapter One

ELECTIONS AND POLITICAL PARTIES

. . .

Art. 255. Except for its provisions relating to electoral bodies, the Electoral Code is hereby repealed and the rights of the political organizations established pursuant thereto are abolished.

This constitutional law shall, within sixty days after its promulgation, be supplemented by an order of the Council of Ministers determining the offices to be filled in the forthcoming elections and the duration thereof and the manner of filling vacancies therein. The Council of Ministers shall also request the Superior Electoral Tribunal to study and draft an electoral code to govern the next general elections. Upon receipt of that draft, the Council of Ministers shall proceed to study, discuss and approve the same.

Art. 256. The Council of Ministers shall draft a revision of the Constitution of 1940 to be submitted to a referendum in the forthcoming general elections. If the draft revision is rejected, the Constitution of 1940 shall re-enter into force on the date on which the Chief Magistrate elected in the next general elections takes office as the President of the Republic.

. . .

CZECHOSLOVAKIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CIVIL AND POLITICAL RIGHTS

1. Act No. 64, of 30 October 1952, relating to courts and the procurator's office, is published in *Sbírka Zákonů* No. 35, of 18 November 1952. The Act provides that justice shall be administered by ordinary and special courts. Subject to special statutory provisions, people's judges shall take part in proceedings before the courts. Judges shall adjudicate independently and shall be bound only by the law. The Procurator-General, who is to be appointed and dismissed by the President of the Republic, upon motion by the Government, shall be the highest authority supervising the execution and observance of statutes, and other legal enactments by ministries, other executive authorities, courts, people's committees, bodies, institutions, public officers, and private citizens.

2. Act No. 65, of 30 October 1952, relating to the procurator's department, is published in *Sbírka Zákonů* No. 35, of 18 November 1952. The Act defines the duties of the Procurator-General. He shall draw the attention of authorities, people's committees, organs and institutions to faults coming to his notice, and instigate review of judgements and measures contrary to law; ensure that offences are ascertained and offenders justly punished, and supervise the execution of the penalties awarded to them; ensure that national security organs act in accordance with law and exercise this jurisdiction in accordance with a special code to be issued by him in agreement with the Minister of National Security; participate in proceedings before the courts in accordance with the rules of court; ensure that the courts apply the law correctly and uniformly; and safeguard the interests of the State and of the working people in proceedings and matters of civil law.

He may also lodge an objection with any authority, people's committee, body or institution against any judgement or measure of theirs which is legally assailable. If a Ministry or other central department considers that an objection lodged against one of its decisions or other measures is unfounded, it shall submit the matter to the Government for review. The Act also defines the co-operation of the Procurator-General with other authorities, bodies and institutions, which shall report to him without delay any illegality coming to their notice and give him the necessary information.

3. Act No. 66 of 30 October 1952, relating to the organization of the courts. Extracts from this Act are published in this *Yearbook*.

4. Order No. 95 of 19 December 1952, of the Ministry of Justice, establishing rules of court. Extracts from this order are published in this *Yearbook*.

5. Act No 59 of 29 October 1952 concerning marriages between citizens and foreigners is published in *Sbírka Zákonů* No. 34, of 17 November 1952. The Act provides that a citizen desiring to marry a person not possessing Czechoslovak citizenship requires the consent of the Ministry of the Interior or an organ delegated by it. Without this consent, there is no marrige.

II. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

6. Act No. 69 of 30 October 1952 concerning the social and legal protection of young persons. This Act is published in *Sbírka Zákonů* No. 35, of 18 November 1952. The Act shall provide social and legal protection for young persons, consisting principally of the exercise of collective guardianship and tutelage, of special protection for children not under parental care, of advice and assistance and of contributions made as necessary by the State so as to provide for the personal requirements of children. A Young Persons' Protection Board shall ascertain whether children are receiving every provision necessary for their proper physical and spiritual development. Order No. 70 of the Ministry of Justice, of 18 November 1952, gives effect to this Act by determining the functions of Young Persons' Protection Boards and provides that children's allowances shall be granted to children not otherwise cared for, whose personal needs cannot be met from their own income or property, or by payment in full of maintenance allowances payable under a statutory provision or a contract.

7. Act No. 3 of 26 March 1952 concerning the Budget is published in *Sbírka Zákonů* No. 3, of 5 April 1952. Section 1 of the Act, dealing with the purposes

[1] This note is based on texts and information received through the courtesy of the Permanent Delegation of Czechoslovakia to the United Nations.

of the State budget, states that all financial means shall be used for the promotion and maintenance of peace and for securing and improving the material and cultural standards of the working people.

8. Act No. 4 of 28 March 1952 concerning measures of hygiene and prevention of epidemics is published in *Sbírka Zákonů* No. 3, of 5 April 1952. According to section 1 of this Act, the State shall implement the constitutional right to protection of public health, particularly by ensuring that citizens live and work in favourable health environments. Measures taken to improve hygiene and to prevent epidemics shall contribute to the development of the health of the people and to the raising of the productivity of labour.

Favourable and healthy working conditions shall be created for all workers, who shall be protected from working in unfavourable conditions. Favourable conditions shall also be created in the schools for the development of the health of young people, and protective measures shall be taken against the rise and spread of infectious diseases.

The officials of the administrative services in charge of hygiene and the prevention of epidemics are authorized and required to enter plants, offices, institutions and establishments to obtain documents and data necessary to their work; to issue binding instructions to the leading officials of such plants, etc., as well as to individuals, so as to ensure the implementation of such measures as are contemplated in this Act. These officials may also order the exclusion from certain spheres of activity of persons whose state of health might threaten the health of others; they may prohibit the stocking, storage, distribution and consumption of foodstuffs and other products which may endanger public health and may order such foodstuffs and products to be destroyed or to be used for other purposes. Should the measures taken by these services not prove successful, the Ministry of Health is entitled to order the discontinuation of production or to prohibit operation or production in a plant until the necessary measures have been taken. The officials of the administrative services are bound to observe secrecy about facts irrelevant to their official duties which may have come to their knowledge in the course of their activities, and to comply with the regulations concerning the keeping of State, economic and official secrets.

9. Government Ordinance No. 21, of 3 June 1952, concerning loyalty bonuses to miners. Employees in mining enterprises and in central offices of these enterprises and the pupils of professional mining schools and enterprise training centres shall be entitled to a loyalty bonus, the amount of which shall be determined on the basis of wages and of hours of work. The bonus increases in accordance with the number of years of work in underground mines, stone pits, quarries and other mineral workings.

10. Act No. 60 of 30 October 1952 concerning the Czechoslovak Red Cross and the utilization of the ensign, emblem and name of the Red Cross is published in *Sbírka Zákonů* No. 34, of 17 November 1952. The Czechoslovak Red Cross shall mobilize the working people for participation in the fulfilment of tasks in the field of health, international solidarity of the working people in the spirit of socialist humanitarianism, and the fight against the danger of war, and shall thereby contribute to the strengthening of peace. It is the only recognized national auxiliary organization of the military sanitary service, in accordance with the Geneva Conventions of 1949.

ACT No. 66 RELATING TO THE ORGANIZATION OF THE COURTS[1]

of 30 October 1952

DUTIES OF THE COURTS

Art. 3. (1) The courts shall protect

(*b*) Personal, labour and property rights and legally protected interests of citizens . . .

(2) The courts shall ensure that statutes and other legal enactments are observed duly and consistently and applied in conformity with the interests of the working people.

Art. 4. (2) A court shall, in awarding a penalty, have regard not only to the punishment of the offender, but also to his reform and re-education.

Art. 6. (1) All citizens shall be equal before the law.

(2) Every citizen shall, when in court, be given an opportunity to use his native language.

Art. 8. The Procurator-General or the President of the Supreme Court may lodge, against a final judgement given by any court in breach of law, a complaint that the judgement is bad in law.

[1] Czech text in *Sbírka Zákonů* (Collection of Laws) No. 35, of 18 November 1952. English text based on the translation received through the courtesy of the Permanent Delegation of Czechoslovakia to the United Nations.

ORDER No. 95 OF THE MINISTER OF JUSTICE ESTABLISHING RULES OF COURT[1]

of 19 December 1952

[Part I regulates the organization of the work of the people's and district courts.]

PART II

PROCEDURE IN CRIMINAL AND CIVIL CASES

Section 1

GENERAL PROVISIONS

Acceleration and Simplification of Procedure

Art. 24. (1) All criminal and civil cases shall be conducted with the utmost despatch in order that they may be determined as speedily as possible.

(2) Judges and all officers of courts shall comply as far as possible with all requests by working people for advice and help, and shall in particular take every possible precaution to ensure that no person's rights shall be prejudiced by his lack of general or legal education, and shall, wherever requisite, instruct persons in the performance of the necessary acts and advise them of the legal consequences of performance or non-performance of such acts.

(3) The times when appearance in court without a summons is permissible shall be so fixed as to make the contact of workers with the courts as convenient as possible.

Examinations

Art. 46. (1) Before commencing an examination, the examiner shall verify the identity of the witness and acquaint him with his rights and duties. The record shall state expressly that this has been done and shall also contain a note of any observation made by the witness.

Art. 48. (1) Persons unable to express themselves in Czech or Slovak shall be examined through an interpreter. If the examiner or the recording clerk is familiar with the language in which the examination is to be held, an interpreter need not be called, but the circumstances shall be noted in the record.

Art. 49. (3) Physical examination, unless carried out by a medical practitioner, and personal search may be carried out only by a person of the same sex as the person examined or searched. If the person to be physically examined or personally searched is a woman, then a female member of the national security staff, trained nurse, midwife, social worker or the like person may be called upon to assist.

The Record

Art. 50. (1) The record shall contain all the material facts and shall show clearly whether the relevant provisions of law were observed in the conduct of the proceedings (e.g., whether the witness was warned that he was bound to tell the truth, and any statement made by him when advised that he need not answer).

(2) The record shall ordinarily contain a summary only of the witness's deposition. Where necessary for a proper assessment of the matter, a witness's exact words shall be recorded. In all such cases, the passage shall be read out to the witness, and the fact that this was done and any objection made shall be recorded. If the precise and literal wording of the answer is important, or the witness is answering evasively, the examination shall take the form of separate questions which, together with the witness's answers thereto, shall be recorded verbatim.

(5) The record shall be dictated aloud, so that those present may hear the dictation of the deposition. The chairman may permit a witness, especially an expert, to dictate his own deposition to the recording clerk, and the record shall contain a note that this has been done.

Art. 51. (1) In a criminal case, the record shall be signed by the person conducting the proceedings, the recording clerk, the interpreter, and any person called under the Code of Criminal Procedure, article 127(2) or 133(2). A record made elsewhere than at the trial or on appeal or at a public hearing shall be signed by the witness also. If the deposition of the witness is written on a number of sheets or leaves, the witness shall sign each sheet or leaf separately. Before a witness signs, the record shall be read to him or handed to him to read. If the examination was conducted with the help of an interpreter, the record shall be translated to the witness into the language in which he deposed. The record shall contain a note that this was done and that the record was approved by the witness. A witness's refusal to sign the record, with the reasons therefore, shall be noted in the record.

Art. 65. In cases concerning national insurance or labour disputes, at least one people's judge shall be a member of the federation of trade unions. In domestic matters, one of the people's judges shall be a woman.

[1] Czech text in *Sbírka Zákonů* (Collection of Laws) No. 42, of 28 December 1952. English text based on the translation received through the courtesy of the Permanent Delegation of Czechoslovakia to the United Nations.

DENMARK

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

RIGHT TO EDUCATION: NATIONAL MINORITIES

By Act No. 214, of 7 June 1952, regarding private schools in Southern Jutland (North Slesvig) using German as the language of teaching,[2] a previous Act of 12 July 1946 on the same subject was modified in various respects. The general purpose and tendency of the new Act was to bring the rules on this subject into better harmony with the rules pertaining to private schools using Danish as the language of teaching.

According to the Act of 1946, no school using the German language was allowed to operate unless the county school direction had approved the teachers engaged, the textbooks and reading materials employed, and the curriculum. If parents declared that they would themselves provide instruction for their children at home, books and other instruments of teaching likewise required previous approval by the county school direction, before such a declaration could take effect, where the language of teaching was declared to be German.

According to the revised Act, no prior authorization is required in any of these respects. Like other private schools using Danish as the language of teaching, schools using the German language may begin their activities without obtaining prior recognition by public authorities. They will, however, exactly like other private schools, be subject to inspection with a view to ascertaining that they fulfil the ordinary minimum requirements of a pedagogical nature. In the case of other private schools, such inspection is carried out by the municipal (parochial) school commission. In order to assure greater uniformity and to eliminate local sources of friction, it is provided that inspection of private schools using the German language shall be exercised through the county school direction by the county school counsellor or a specially appointed inspector.

Regarding state support of such schools, the Act of 1946 laid down the principle that support should be granted according to the rules applicable to other private schools, provided circumstances so indicated. This latter proviso, which for all practical purposes left the question of subvention to the discretion of the Ministry of Education, has now been abolished. Consequently, these schools are entitled to receive subvention according to the same rules which apply to private schools in general. Such subvention will, of course, be withheld if schools do not submit to inspection as mentioned above.

It is furthermore provided, now as before, that schools using the German language must give satisfactory teaching of the Danish language, orally and in writing, as well as Danish civics, history and geography.

The 1952 Act maintains the rule laid down by the 1946 Act, according to which these schools are not entitled to hold state-controlled examinations.

As far as municipal schools are concerned, teaching will always be in Danish. It is provided by the Act, however, that if parents of at least ten children in the older forms so request, teaching of German may be arranged.

RIGHTS OF ALIENS: PERSONAL LIBERTY

By Act No. 224, of 7 June 1952, regarding the admittance of foreigners to the country, new rules have been made, superseding the provisions of Act No. 52, of 15 May 1875, regarding supervision of foreigners and travellers.

The new Act maintains the principle previously in force that it may be laid down by royal decree in what cases foreigners are required to present a passport when entering into or leaving the country. Furthermore, the Minister of Justice may decide in what cases visas are required.

Paragraph 2 of the Act enumerates certain cases in which police authorities should refuse admission to a foreigner about to enter the country. If, however, a foreigner alleges that he has been forced to seek asylum in Denmark as a political refugee and is able to adduce circumstances in support of the veracity of this allegation, the police authorities are not entitled to refuse him admission, but must submit the matter to the Ministry of Justice for decision.

The Minister of Justice is entitled to resolve that a foreigner should be refused admission for reasons of the security of the State or the maintenance of public order, or if the foreigner is taking part in

[1] This note was prepared by Professor Max Sørensen, University of Aarhus.

[2] Danish text of the Act of 1952 in *Lovtidende* A, 1952, No. 22, of 16 June 1952. Danish text of the Act of 1946 in *Danmarks Love* (1665-1949), Copenhagen 1950, p. 2083.

activities against the Danish State or its institutions, or if his conduct should otherwise so require.

As will be seen, a certain measure of discretion is hereby allotted to the Minister of Justice to order the deportation of an alien after his entry into the country.

In certain clear cases dealt with in paragraph 6—for instance, when a foreigner has entered the country illegally—the police authorities may deport him without submitting the matter to the Minister of Justice. Here again, however, an exception is made with respect to political refugees; in such cases the matter must always be submitted to the Minister for decision.

Paragraph 8 maintains the principle recognized by the old Act, that the police may take a foreigner into custody until a decision about his expulsion or deportation has been taken or can be carried out, provided that less severe measures are deemed inadequate. The paragraph then embodies an important new principle, in so far as it provides that if a foreigner is taken into custody and not released within ten days, and the decision about his deportation belongs to the competence of the police, the question of his further retention in custody shall be submitted, upon his request, to the local court for decision. The court shall take into consideration, in particular, whether the identity of the person in question has been satisfactorily established and whether there are such circumstances that his detention is necessary with a view to assuring his eventual deportation. If detention is deemed necessary, it shall, whenever possible, be ordered for a limited duration only.

The person in question shall be informed of his right to request the decision of the court, and during the proceedings he is entitled to appear in person and to be heard. A counsel shall be assigned to him for his defence.

In cases where the Minister of Justice has decided to refuse admission to or to deport a foreigner, the Minister also decides whether he should be taken into custody pending the execution of the decision. If detention has been ordered and is extended beyond ten days, the police shall immediately report to the Minister what circumstances have prevented the prompt execution of the order of deportation.

It will be noticed that no judicial review is provided for in this latter category of cases. It has been deemed inappropriate to submit such cases, which are likely to involve important political considerations, to the decision of a judge. It is understood, however, that the Minister of Justice, in deciding these cases, is subject to the general parliamentary responsibility which is an important feature of the Danish system of government.

II. INTERNATIONAL INSTRUMENTS

A convention between Denmark and France on social security, signed in Paris on 30 June 1951, came into force on 1 October 1952, after exchange of instruments of ratification on 30 September 1952.

The convention covers insurance in the following fields: sickness, maternity and death, disablement, old age, and unemployment; further workmen's compensation and insurance against professional diseases; and assistance to orphans and children of widowers and widows.

The general principle on which the convention is based, and which is implemented by a number of detailed provisions, is that citizens of either country shall benefit from legislative provisions of the other country, when residing there, on terms of equality with citizens of that country.

Certain provisions of the convention envisage the case of transfer of residence from one country to the other and lay down rules intended to exclude any loss of rights ensuing from such transfer. In so far as benefits, in certain cases, are conditioned by a certain period of insurance, any such period under the schemes of insurance in one country shall be equivalent to a corresponding period of insurance in the other country.

DOMINICAN REPUBLIC

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONSTITUTION AND LEGISLATION

1. During the year 1952, no changes were made in the Constitution, the organic law of the Dominican Republic, which was promulgated in 1947.

Personal Rights

2. The principles governing personal rights remained unchanged in the Dominican Republic during the year 1952. All personal rights guaranteed under the Constitution of the Dominican Republic and the existing laws continued in force.

Nationality and Citizenship

3. As regards nationality, Act No. 3354, promulgated on 3 August 1952 and published in *Gaceta Oficial* No. 7454, of 9 August 1952, amending article 12 of the Civil Code, provides that "a foreign woman who marries a Dominican shall acquire her husband's status unless the law of her country authorizes her to retain her nationality, in which case she shall have the option of stating in the marriage record that she declines Dominican nationality."

Act No. 3355, promulgated and published on the same dates as Act No. 3354, supplements article 1 of the Naturalization Act No. 1683, of 16 April 1948 (published in *Gaceta Oficial* No. 6782, of 22 April 1948), by the addition of a third paragraph authorizing the executive power "to grant Dominican nationality without any condition of residence or payment of taxes or fees to a foreign woman who, when marrying a Dominican, has retained her foreign nationality in conformity with article 12 of the Civil Code as amended".

Economic and Social Rights

4. A considerable advance was made in the social sphere through the application of principles and laws put into force by the Dominican Government after approval by Congress.

(*a*) In pursuance of Act No. 3105, of 9 October 1952, governing the implementation of the construction workers' housing projects, workers' housing estates, agricultural and farming centres and housing on vacant sites in towns, the Dominican Government gave vigorous and increasing support to the communities concerned.

(*b*) Executive Decree No. 8066, of 16 February 1952, is designed to give preference to workers applying for accommodation on workers housing projects.

(*c*) The Application of Social Security Act No. 1896 and of the "Trujillo Labour Code" (Act No. 2920 of 11 June 1951)[2] brought wide benefits to a large section of the Dominican population.

Educational Rights

5. The new standards of the educational programmes introduced in 1951 to provide for the teaching of human rights and the United Nations Charter[3] were successfully applied in all Dominican schools.

II. INTERNATIONAL TREATIES AND AGREEMENTS

6. A treaty of friendship between the Dominican Republic and the Republic of Turkey was signed in Washington on 28 November 1951. This treaty was approved by the National Congress of the Dominican Republic, by resolution No. 3198, published in *Gaceta Oficial* No. 7389, of 16 February 1952.

7. An Agreement between the Dominican Republic and the Republic of Haiti concerning workers of Haitian nationality, temporarily employed in the Dominican Republic, was signed at Port-au-Prince on 5 January 1952, approved by the National Congress of the Dominican Republic on 31 January (Senate) and 5 February (Chamber of Deputies). Resolution No. 3200, approving this agreement, was promulgated by the President of the Dominican Republic on 11 February 1952 and published in the *Gaceta Oficial* No. 7391, of 23 February 1952.[4]

8. By resolution No. 2803, the National Congress approved the Inter-American Radio Agreement adopted on 9 July 1949 by the Fourth Inter-American Radio Conference[5] held in Washington. This resolution was promulgated by the President of the Dominican Republic on 9 April 1952 and published in *Gaceta Oficial* No. 7416, of 21 April 1952.

[1] This note was prepared by Dr. Enrique de Marchena, Minister Plenipotentiary and Alternate Representative of the Dominican Republic to the United Nations. English translation from the Spanish text by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1951*, p. 70. "Trujillo Labour Code" (Codigo Trujillo de Trabajo) is the official title of this Code.

[3] Full particulars regarding these reforms are supplied *ibid.*, p. 69.

[4] See also p. 105 of this *Yearbook*.

[5] See *Yearbook on Human Rights for 1950*, p. 429, footnote 1.

ECUADOR

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. On 25 October 1952, the Congress adopted a decree granting an amnesty and general pardon to all persons sentenced or prosecuted for political offences, whether or not they were detained. The decree is published in *Registro Oficial*, No. 50, of 29 October 1952.

2. On 4 November 1952, the Congress adopted a decree extending the law on insurance against separation from service which previously applied only to members of the teaching profession,[2] to all persons employed in State, municipal, public and private autonomous establishments serving the public interest. The law of 1951 was modified accordingly. The decree is published in *Registro Oficial* No. 68, of 20 November 1952.

3. On 7 November 1952, the Congress adopted a decree designed to strengthen the application of the legislative decree of 4 October 1951. The decree of 1951 declared that civilians and members of the armed forces benefiting from an annual retirement pension of under $1,000 may hold public office without prejudice to the receipt of their pension. Under the decree of 1952 the pension payment offices may not deny the application of the legislative decree because of previous statutory provisions or their by-laws, since the latter are to be considered as repealed. The decree of 1952 is published in *Registro Oficial* No. 80, of 4 December 1952.

4. On 27 February 1952, the President of the Republic promulgated resolution 55*a* rejecting the request for extradition of a citizen of Colombia. The text of this resolution is published in this *Yearbook*.

[1] Texts and information received through the courtesy of Dr. José Vicente Trujillo, Permanent Representative of Ecuador to the United Nations.

[2] See *Yearbook on Human Rights for 1951*, p. 72.

DECISION OF THE PRESIDENT OF THE REPUBLIC CONCERNING THE EXTRADITION OF THE COLOMBIAN CITIZEN DR. ALFONSO GALLARDO LOZANO[1]

of 27 February 1952

The Constitutional President of the Republic,

. . .

Considering:

That the said Alfonso Gallardo Lozano has been charged by the judge of the Fifteenth Criminal Court of Bogotá with committing the offence of bribery, as described in article 164 of the Colombian Penal Code;

That the said judge considers that the requirements prescribed by article 379 of the Colombian Code of Criminal Procedure for the issue of a detention order have been fulfilled in the case of the accused;

That the acts attributed to Gallardo Lozano and described as bribery do not correspond to any of the forms of bribery provided for in chapter VII, title III, book II of the Ecuadorian Penal Code;

That the acts attributed to Gallardo Lozano are not expressly punishable under the Ecuadorian Penal Code;

That, as is stated in folio 12 of the extradition papers received from the Republic of Colombia, "Chavariaga Mayer, in his capacity as Secretary of the Price Control Department of Cundinamarca, abusing his office and functions, constrained and induced Gallardo Lozano to give him money", which fact constitutes not the offence of bribery, but that of extortion by a public official;

That, in the matter of extortion by a public official, the law of Ecuador provides that criminal liability is

[1] Copy of statement (No. 55*a*) received through the courtesy of Dr. José Vicente Trujillo, Permanent Representative of Ecuador to the United Nations. See the judicial decisions relating to the case of Dr. Gallardo Lozano in *Yearbook on Human Rights for 1951*, pp. 73-75. The Bolivarian Extradition Agreement of 18 July 1911, referred to in the statement, is discussed in these judicial decisions.

not incurred by the person who gives money to a public official in order to obtain a favourable administrative decision, but rests entirely with the official who sought the unlawful payment;

That Ecuadorian law establishes the principle that no one may be punished for an act not expressly declared by the penal law to be an offence, nor be given a penalty not provided for therein;

That article VIII, final paragraph, of the Extradition Agreement of 18 July 1911 prohibits a State from granting extradition if acts similar to those ascribed to the accused are not punishable in that State;

That the justification for the request for extradition, as regards both the offence prompting it and the legal formalities, is subject to the discretion of the Ecuadorian authorities; and

By virtue of the authority conferred upon him by article 26, sixth paragraph, of the Extradition Regulations, and in view of the opinion given by the legal department of the Chancellery on 26 July 1951;

Hereby decides:

TO REFUSE the request for the extradition of the prisoner, Dr. Alfonso Gallardo Lozano, who shall be set at liberty forthwith.

EGYPT

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONSTITUTION

Constitutional Proclamation by the Commander-in-Chief of the Armed Forces to abolish the Constitution. This Proclamation appeared in the *Official Journal* (Extraordinary) No. 158, of 10 December 1952 and is reproduced in the present *Yearbook*.

II. LEGISLATION

A. Civil and Political Rights

Proclamation No. 1, on censorship by the state-of-siege authority, dated 26 January 1952. This proclamation is reproduced in the present *Yearbook*.

Proclamation No. 4 of 26 January 1952 imposing a curfew in Cairo and its outskirts or at Bandar Giza. This proclamation was amended by subsequent proclamations which gradually reduced the length of curfew. It was suspended by proclamation No. 32, of 18 May, for a determined period and by proclamation No. 33, of 21 June, until further notice.

Proclamation No. 5, concerning assemblies, dated 27 January 1952. This proclamation is reproduced in the present *Yearbook*.

Proclamation No. 10, dated 31 January 1952, transferring certain offences punishable under ordinary law to courts martial. This proclamation is reproduced in the present *Yearbook*.

Act No. 16, dated 24 February 1952, amending article 178 of the Penal Code. This Act is reproduced in the present *Yearbook*.

Act No. 232, dated 31 December 1951, repealing article 193 of the Penal Code. This Act was published in the *Journal officiel du Gouvernement égyptien* (French edition) No. 16, of 24 January 1952.

Under article 193 of the Penal Code any person who by speech or by shouts uttered in public or by any public act or sign, or by any writing, drawing, picture, photograph or figure or any other means of representation displayed in public, or by any other method of publicity, published any report of a criminal examination ordered by the examining magistrate to be held *in camera* or the publication of which had been prohibited by the law officers in the interests of justice or decency or the ascertainment of the truth, was liable to imprisonment for a term not exceeding six months, or to a fine not exceeding 50 Egyptian pounds, or to both.

Legislative decree No. 74 concerning the passports and residence of aliens, dated 24 May 1952 as amended by decree No. 133, of 4 August 1952. Both decrees appeared in the *Journal officiel* (French edition) No. 164, of 29 December 1952.

Article 10 of the decree provides that aliens residing in the country are classified into three categories: resident aliens under special status, whose residence permit is valid for ten years; resident aliens under ordinary status, whose residence permit is valid for five years; and temporary resident aliens, whose residence permit is valid for one year. These residence permits are renewable. An alien may be deported by order of the Minister of the Interior. In the case of a resident alien under special or ordinary status, a commission set up to consider deportation questions must first be consulted; the deportation of an alien belonging to one of the above categories can be carried out only if the alien is a burden to the State or a threat to security, economy, health, public morality or public order. The Minister of the Interior may order the temporary detention of an alien who is to be deported. Should it prove impossible to carry out a deportation order, the alien in question may be directed to reside in a specified locality (articles 15–17).

Article 19 lists the categories of persons to whom the enactment does not apply, and articles 22–24 specify the penalties applicable for offences against its provisions.

Legislative decree No. 47, dated 4 August 1952, concerning illicit profits. Extracts from this legislative decree are reproduced in this *Yearbook*.

Legislative decree No. 122, dated 2 August 1952, granting an amnesty in respect of certain offences. This legislative decree appeared in the *Journal officiel* No. 117, of 2 August 1952. It grants a full amnesty in respect of offences under articles 179 and 80 of the Penal Code, which were committed prior to the entry into force of the legislative decree. Article 179 provides for the punishment by imprisonment or detention of any offence, committed by speech or by shouts uttered in public or by any public act or sign, or by any writing, drawing,

[1] Note based on documents and information received through the courtesy of Mr. Mahmud Abou Afia, President of the Political Section of the *Conseil d'Etat* and Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo.

picture, photograph or figure or any other means of representation displayed in public, or by any other method of publicity, against the person of the King, the Queen, the Heir Apparent or one of the Regents. Article 180 provides for the punishment by detention or by a fine, or by both, of any person who by any of these menans imputes to the King blame or responsibility for an act of his Government.

B. Economic and Social Rights

Legislative decree No. 317, dated 8 December 1952, concerning individual contracts of employment. This legislative decree appeared in the *Journal officiel* No. 157 *bis*, of 8 December 1952.

The explanatory note introducing the draft decree states that legislation had become necessary owing to the trend of the country's industrial development. As Act No. 41 of 1944, concerning individual contracts of employment, which is superseded by the new decree, no longer regulated adequately the relationship between workers and employers, it was considered advisable to prepare legislation which would put an end to disputes that might shake the country's economic foundation. Legislative decree No. 317 defines the term "worker" and specifies the categories of workers to which it does not apply. Its provisions relate to the contents of the contract of employment, wages and the employer's obligations in respect of illness and in the matter of medical assistance, the protection of workers against sickness and safeguards against dangerous machinery.

Workers are entitled to fourteen days' annual holiday with pay after one year's work, and to twenty-one days a year after ten years' continuous employment with the same employer. In establishments employing 100 workers or more, the workers are entitled to certain statutory public holidays with pay. The legislative decree also refers to the disciplinary penalties to which workers are liable, the expiration or termination of contracts, the breaking of contracts of employment, the right to compensation on the expiration of contracts, notice and cases where notice and compensation are not compulsory.

Legislative decree No. 318, dated 8 December 1952, concerning conciliation and arbitration in labour disputes. This legislative decree appeared in the *Journal officiel* (French edition) No. 157 *bis*, of 8 December 1952.

The explanatory note introducing the draft decree notes that the procedure provided for under Act No. 105 of 1948[1] was both complex and slow and that it was therefore necessary to amend the Act so that the defects which had appeared in the course of its application could be remedied. The new legislative decree provides that a labour dispute which the competent labour office fails to settle is to be referred to the conciliation board. This legislative decree broadens the competence and alters the composition of these conciliation boards; it provides that a board must complete its examination of a dispute not later than one month after receiving the relevant documents and that it must refer directly to arbitration any dispute within three days after conciliation has failed. Under the legislative decree the arbitration board, whose composition was very complex under the earlier Act, now consists of one of the chambers of the Court of Appeal, the director of the Labour Department and the director of the Department of Industry or his deputy. The arbitration board must meet within fifteen days after the date on which it receives the relevant documents, and the arbitration award must be made within one month of that date; the earlier Act had not stipulated any such time limit. The legislative decree fills a gap by providing that the dismissal of representatives of the workers, or of the trade union, cannot prevent them from fulfilling their tasks in the labour office or on the conciliation or arbitration board. A strike or lockout is forbidden from the moment an application for conciliation is filed by one of the parties and at all stages of the proceedings before the Labour Office, the conciliation board and the arbitration board.

Legislative decree No. 319, dated 8 December 1952, concerning workers' trade unions. This legislative decree appears in the *Journal officiel* (French edition) No. 157 *bis*, of 8 December 1952.

The explanatory note introducing the draft decree states that the purpose of the latter is to promote the formation of workers' trade unions which would undertake to assist their members particularly by providing them with social services, a purpose not fulfilled by Act No. 85 of 1942, concerning workers' trade unions.

The most important innovations introduced by this legislative decree are described below.

In addition to the workers covered by Act No. 85 of 1942, the present legislative decree applies to agricultural workers, male nurses and hospital employees, and persons in equivalent occupations. These workers may therefore form trade unions.

In a locality where there is no trade union for an occupation similar to that of the workers in the undertaking a union may be formed by less than fifty (but not less than thirty) workers.

If the members of the union of an undertaking constitute three-fifths of the total number of workers, all the workers are deemed to be members of the union. The object of this provision is to increase the number of members of the union so that it can provide efficient service for the workers who pay their contributions.

[1] See *Yearbook on Human Rights for 1948*, pp. 61–63.

A trade union is entitled to ask the employer to withhold the amount of members' contributions from their earnings; the employer is required to remit the sums so withheld to the union's treasurer in the first two weeks of each month.

Under this legislative decree the inspectors of the Labour Department have the right at any time to examine the account books at the union's offices. The union's executive committee must give its members, at least once every six months, a detailed statement of its financial position, receipts and expenditure. The union must submit to the Labour Office a copy of its balance sheet approved by a certified accountant, so that this office can supervise the union's operations and satisfy itself that the union's funds are used for the benefit of the members.

The trade unions may constitute federations to supervise these unions, administer them in a uniform manner and protect their common interests.

Legislative decree No. 81, dated 5 June 1952, amending certain provisions of Act No. 226 of 1951 which made it unlawful to employ persons between the ages of eighteen and thirty years except upon production of a recruitment certificate and which guaranteed the employment of the persons recruited. This legislative decree appeared in the *Journal officiel* (French edition) No. 106, of 21 July 1952.

The legislative decree provides that no person between the ages of twenty-one and thirty years (according to the Gregorian calendar) may be recruited as civil servant, salaried employee or manual worker, by any Ministry, state agency, provincial public body or other public body corporate, company, association, undertaking or private person, except upon production of a certificate issued by the Recruitment Department to the effect that the applicant has completed his military service, or has not been called up, or has been exempted from military service.

Legislative decree No. 118, dated 30 July 1952, concerning deprivation of parental authority in certain cases. This legislative decree appeared in the *Journal officiel* (French edition) No. 156, of 4 December 1952. It provides for the deprivation of parental authority in the case of conviction for certain offences; these cases are additional to those in which a person may be deprived of his parental authority, or in which this authority may be restricted or suspended, by virtue of the legislation relating to personal status. A person may be deprived of parental authority if in exercising it he has endangered the health, security, moral conduct or education of one of the children by ill-treatment, by notorious and pernicious misconduct, drunkenness or habitual drug addiction, by neglect or by failing to give proper guidance. The legislative decree also contains provisions relating to persons or institutions to which the court entrusts the child or to which it delegates the parental authority in cases involving the deprivation, restriction or suspension of this authority.

III. JUDICIAL DECISIONS

Decision of 30 June 1952 of the Administrative Appeal Court, case involving freedom of movement and residence. A summary of this decision appears in this *Tearbook*.

CONSTITUTIONAL PROCLAMATION

CONSTITUTIONAL PROCLAMATION BY THE COMMANDER-IN-CHIEF OF THE ARMED FORCES IN HIS CAPACITY AS LEADER OF THE ARMY MOVEMENT[1]

of 10 December 1952

When the army carried out its revolt on 23 July 1952, the country had reached a state of decay and disintegration, brought about by the arbitrary rule of a frivolous king, the corruption of political life and an unsound parliamentary regime. Far from the executive authority's being responsible to Parliament, Parliament was at various times subject to that authority, which was in turn subservient to an irresponsible king. This king exploited the Constitution for his own purposes, finding loopholes in it which enabled him to do so with the assistance of those who held power in the country and managed its affairs. That is why the revolution took place. Its purpose was not only to get rid of this king; it sought to guide the country to achieve its highest purpose; to reach its farthest goal; and to resist most firmly the passage of time by providing ample possibilities for a vigorous and noble life founded on freedom, justice and order, so that the people might devote themselves to productive work for the good of the country and its sons. Now that the constructive movement has begun and has embraced all sectors of our national life, political, economic and social, it has become necessary to change the conditions which

[1] Arabic text in the *Official Journal of the Government of Egypt* (Extraordinary) No. 158, of 10 December 1952. English translation from the Arabic text by the United Nations Secretariat.

almost destroyed the country and which resulted from flaws in the Constitution. In order to fulfil the trust which God has placed in us, we have no alternative but to replace this Constitution with another, a new Constitution which will enable the nation to achieve its aims so that it may rightly become the source of all authority.

In the name of the people, I hereby proclaim the abolition of this Constitution, the Constitution of 1923.[1]

At the same time I am happy to announce to my countrymen that the Government is about to set up a committee to draw up a new draft constitution, which will be approved by the people, will be free from the defects of the old Constitution, and will realize the people's hopes for a clean, sound parliamentary regime. Until the preparation of this constitution is completed, the authority will be assumed during the inevitable interim period by a Government which has sworn to God and the nation to foster the interests of all citizens, without discrimination or differentiation, and with respect for important constitutional principles.

We have pledged ourselves before God, who shall be our witness, to devote ourselves to the task of promoting our country's prosperity and raising high its flag in the world. It is your part to be unmindful of self and to give as much of yourselves, your wealth and your efforts as may be needed to ensure the strength, prosperity and glory of your country. You must be united and of one purpose and personal interests and partisan tendencies must be banished from this day. The country is one, the purpose is one, and God is the giver of success.

[1]See the provisions on human rights of royal rescript No. 42, of 19 April 1923, establishing the constitutional regime of the Egyptian State, in *Yearbook on Human Rights for 1946*, pp. 97–98.

LEGISLATION

PROCLAMATION No. 1 ON CENSORSHIP BY THE STATE OF SIEGE AUTHORITY[1]

of 26 January 1952

1. In the interests of national security, a general censorship is hereby established and shall continue to operate until further notice throughout the territory and territorial waters of Egypt. The censorship shall be applied to all written or printed matter, photographs, packets and parcels entering or leaving or circulating in Egypt; all messages sent by telegraphy or telephony, whether wireless or otherwise; all news, information or other broadcast matter; theatrical performances, cinematograph films, phonograph records or any other means of aural or visual reproduction, provided that all matter and all messages originated by or addressed to the Royal Egyptian Government shall be exempt from censorship control.

2. A Special Censorship Department is hereby established for the purpose of applying and supervising all forms of censorship. The head of this department shall be known as the Chief Censor and shall be responsible for recruiting and appointing the necessary censorship staff.

3. In the interests of national defence and public security, the Chief Censor and the subordinate staff duly authorized by him shall be empowered to examine and inspect all matter, messages and news subject to censorship as defined above; to delay, suspend, erase, confiscate, destroy or otherwise dispose of any matter, messages or news likely to prejudice Egyptian security; to suspend the publication of newspapers and periodicals temporarily or permanently, to seize the printing equipment or premises used for the production of matter prohibited by the censorship, and to confiscate any equipment capable of transmitting or receiving messages, by radio telegraphy, by radio telephony, by any form of visual signalling or by any other means whatever.

4. The Ministries and Departments of the Egyptian State, in particular the Egyptian Post Office, the State Telegraph and Telephone service, the Customs service and the Ports and Lighthouses service are required to furnish the Chief Censor

[1]French text in the *Journal officiel du Gouvernement égyptien* (French edition), No. 18 of 26 January 1952, received through the courtesy of Mr. Mahmud Abou Afia, President of the Political Section of the *Conseil d'Etat* and Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat. The state of siege was proclaimed by the Decree concerning the Proclamation of a State of Siege, of 26 January 1952, published in the *Journal officiel* No. 17, of 26 January 1952. Censorship was abrogated by proclamation No. 39, of 12 August 1952. However, proclamation No. 52, of 21 October 1952, amended proclamation No. 39 by adding the following paragraph:

"However, the Chief Censor may for reasons connected with national security and public order apply censorship to a specific newspaper as well as to the messages sent by telegraph, wireless or otherwise, or telephone, destined for this newspaper."

with any facilities and assistance he may request them to provide.

5. The Marconi Radio Telegraph Company of Egypt, the Egyptian State Broadcasting Service, the managements of all newspapers or other publishing firms, the commanders of all ships (other than warships) in Egyptian waters, the pilots of all commercial or private aircraft flying over Egyptian territory or Egyptian waters, and any other association or firm which may be affected by or concerned with the operation of the censorship, are hereby required to comply fully and immediately with the instructions of the Chief Censor.

6. All persons, whatever their nationality, residing within Egyptian territory are required to comply unhesitatingly with the censorship provisions and to observe strictly any regulations which the Chief Censor may issue with regard to the operation of the various censorship services.

7. Parcels, postal deliveries and telecommunications from units of the Egyptian forces shall not be subject to the present censorship. Similarly, correspondence and parcels arriving from abroad and addressed to members of the said forces shall be exempt from the said censorship provided that they have passed through the services established by the competent military authorities.

8. The Chief Censor shall issue detailed regulations for the operation of the various branches of the censorship, and such regulations shall have legal force for the duration of the state of siege.

9. No responsibility shall be incurred by, and no legal proceeding may be instituted against, the Egyptian Government, any government department or official, the Chief Censor, any duly authorized member of his staff, or any individual or body corporate, in respect of any act, of whatever nature, arising from the exercise of the censorship powers defined in this proclamation.

PROCLAMATION No. 5 CONCERNING ASSEMBLIES[1]

of 27 January 1952

Art. 1. Any assembly of five or more persons shall be considered a threat to peace and public order and shall be prohibited.

Any person taking part in such an assembly shall be liable to imprisonment for not more than two years.

Art. 2. When an assembly of the kind referred to in article 1 is for the purpose of committing an offence, preventing or impeding the enforcement of laws or regulations, or influencing the actions of the authorities by force or threat of force, any person taking part in such an assembly with knowledge of its joint purpose shall be liable to imprisonment and a fine of not more than 50 Egyptian pounds.

Any person carrying weapons or objects capable of causing death if used as weapons shall be liable to imprisonment for not more than five years.

Art. 3. If an assembly to which the preceding article applies or any person taking part in such assembly resorts to the use of force or violence, the penalty shall be imprisonment.

Every person taking part in an assembly when an offence is committed in pursuit of its joint purpose shall be considered legally responsible as an accessory, provided that he knew the joint purpose of the assembly; in such case the penalty for the offence shall be heavier than the penalties for which provision is made in this proclamation.

Art. 4. The organizers of any assembly to which articles 2 and 3 of this proclamation apply shall be liable to the same penalties as the persons taking part in the assembly and shall be legally responsible for any act committed by any such person in pursuit of the joint purpose of the assembly even if they were not present at the assembly.

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[1]French text in the *Journal officiel du Gouvernement égyptien* (French edition), No. 19, of 27 January 1952, received through the courtesy of Mr. Mahmud Abou Afia, President of the Political Section of the *Conseil d'Etat*, and Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat. The proclamation is based on the decree of 26 January 1952 proclaiming a state of siege (see the footnote to proclamation No. 1). The present proclamation came into force on the date of publication in the *Journal officiel*.

PROCLAMATION No. 10 TRANSFERRING CERTAIN OFFENCES PUNISHABLE UNDER ORDINARY LAW TO COURTS MARTIAL[1]

of 31 January 1952, amended by proclamations Nos. 47, 50 and 54, of 8 August, 7 September and 8 December respectively

Art. 1. The public prosecutor may refer the following offences to courts martial:

1. The offences to which titles I, II and II *bis* of book II and articles 172, 174, 175, 176, 177 and 179 of the Penal Code[2] apply;

2. The offences to which articles 163 to 170 of the Penal Code, concerning obstruction of public communications apply;

3. The offences to which Act No. 14 of 1923 concerning public meetings and demonstrations, legislative decree No. 101 of 1945 concerning the maintenance of order in educational establishments, articles 124, 124(*a*), 124(*b*) and 124(*c*) of the Penal Code and articles 374 *bis* and 375 of the Penal Code apply;

4. The offences to which Act No. 58 of 1949 concerning weapons and ammunition apply;

5. The assassination or attempted assassination of public officials or police officers in the exercise or on the occasion of the exercise of their duty;

6. The offences to which legislative decree No. 178 on the agrarian reform applies;

7. The offences to which legislative decrees No. 95 of 1945 concerning supplies and No. 163 of 1950 concerning compulsory tariffs and maximum profits as well as the regulations issued for the execution of these legislative decrees apply.

The offences to which article 374 of the Penal Code[3] applies are added to those which may be transferred to courts martial by the public prosecutor.

Art. 2. When one act constitutes more than one offence, or when several related offences have been committed for the same purpose and one of the said offences is within the jurisdiction of the courts martial, the public prosecutor may refer the whole case to the courts martial, which shall act in accordance with article 32 of the Penal Code.

Art. 3. Any offence to which articles 1 and 2 of this proclamation or articles 44 *bis* (receiving and concealing of articles obtained by means of an offence), 48 (criminal agreements), 90 (destruction of government buildings), 252–257 (arson), 311–320 (theft), 361 (destruction of property) and 366 (looting and damage) of the Penal Code apply, or any attempt to commit any one of the said offences punishable by law committed in Cairo and its suburbs or in the Moudiriat of Giza on 26 January 1952 may similarly be transferred to the courts martial even if it has already been brought before the examining magistrate, as may any other offence connected with one of the offences mentioned in this article, even if it was committed before 26 January 1952 or in a place other than the places aforesaid.

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[1] French text in the *Journal officiel du Gouvernement égyptien* (French edition) No. 26, of 31 January 1952. Text received through the courtesy of Mr. Mahmud Abou Afia, President of the Political Section of the *Conseil d'Etat*, and Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat.

[2] Offences against the external and internal security of the State, as well as certain offences committed by means of the press or word of mouth.

[3] Article 374 concerns the offence of abandoning a public service.

ACT No. 16 AMENDING ARTICLE 178 OF THE PENAL CODE[1]

of 24 February 1952

1. Article 178 of the Penal Code[2] shall be replaced by the following two articles:

"*Art. 178.* Any person who manufactures or possesses for purposes of trade, distribution, hire, public display or exhibition any printed or written matter, drawing, poster, engraving, painting, photograph, symbol or any other object or figure offensive to public decency, shall be liable to imprisonment for a term not exceeding two years or by a fine of not less than 20 nor more than 100 Egyptian pounds or to both these penalties.

"The same penalties shall apply to any person who intentionally and for a like purpose imports or causes to be imported, exports or causes to be exported, transports or causes to be transported, any of the objects aforesaid, or advertises or displays the same to the public view, or sells, hires, offers for sale or hire, whether publicly or otherwise, or publicly offers the same, directly or by devious means, for reward or otherwise, in any form whatsoever, or distributes or delivers the same for distribution by any means whatsoever, or privately offers the same, for reward or otherwise, for the purpose of inciting others to immorality, or publicly causes to be heard chants, cries or speeches offensive to public decency, or publicly invites immorality or publishes any advertisement or correspondence to that effect, irrespective of the wording employed.

"Where any such offence is repeated the penalty shall be both the imprisonment and the fine, without prejudice to the provisions of article 50 of this Code.

"*Art. 178bis.* If any of the offences referred to in the preceding article is committed by publication in the press, the publishers and editors shall be liable as principal offenders by the mere reason of such publication.

"If the identity of the principal offender is not determined, every printer, advertiser and distributor shall be prosecuted as a principal offender.

"Any importer, exporter or intermediary who knowingly becomes a party to the commission of any of the offences referred to in the preceding article may be prosecuted as a principal offender in any case where the offence was committed by publication in the press."

[1] French text in the *Journal officiel du Gouvernement égyptien* (French edition) No. 55, of 20 March 1952. Text received through the courtesy of Mr. Mahmud Abou Afia, President of the Political Section of the *Conseil d'Etat*, and Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat. The Act came into force one month after its publication in the *Journal officiel* (article 2 of the Act).

[2] The former text of article 178 was as follows: "Any person offending by any of the means aforesaid against decency or morals shall be punished by imprisonment for a term not exceeding one year or by a fine of not less than 20 nor more than 100 Egyptian pounds or both." As regards the words "by any of the means aforesaid", see the list of such means in the summary of the Act repealing article 193 of the Penal Code in the Note on the development of human rights p. 52.

LEGISLATIVE DECREE No. 131 ON ILLICIT GAIN[1]

of 4 August 1952

Art. 1. Every public official, member of Parliament, member of a municipal, village or provincial council, and generally any public servant or person holding public office, whether permanently or temporarily, paid or unpaid, shall, within two months after his appointment or election, submit a declaration giving details of his assets and of those of his wife and children if the latter are under age at that date, listing his real and personal estate—in particular, any shares, bonds, partnership shares, insurance policies, cash, jewels, precious stones and metals, beneficiary interests in a Waqf, and any debts which he may have incurred.

This obligation shall be incumbent on persons holding office when this decree enters into force or who left the service after 1 September 1939 and before the date of the entry into force of this decree. The said declaration must state the value of the assets on the date of the entry into force of this decree or on the date of leaving the service, as appropriate, and shall list, in the manner prescribed above, the assets on 1 September 1939 or on the date of entry into service if that date is later than 1 September 1939.

[1] French text in the *Journal officiel du Gouvernement égyptien* No. 156, of 4 December 1952, received through the courtesy of Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat. The decree came into force on 9 August 1952, the date of the publication of the Arabic text in the *Journal officiel*, No. 121 *bis* "A". The decree repeals decree No. 193 of 25 October 1951 on illicit gain (*Journal officiel*, French edition, of 7 January 1952) as amended by legislative decree Nos. 35 and 47 of 1952 (*Journal officiel*, Nos. 71 and 85, of 22 April and 22 May 1952, respectively).

Where service has not been continuous, a separate declaration shall be submitted for each period of service.

The declaration must in all cases indicate the source of the property or of any additions thereto, as appropriate.

Art. 2. The wife of a person referred to in the preceding article shall also be required to submit a declaration if she does not furnish her husband with the necessary information.

Art. 4. Every person referred to in articles 1 and 2 shall submit a declaration reporting any important change in his assets, claims or debts, in the month of January following such change.

If the change consists in an addition to his assets, the declarant shall state the source of such addition. Any addition of which the declarant is unable to prove the source shall be deemed to be an illicit gain.

Art. 5. Any property acquired by one of the persons referred to in article 1 in consequence or by reason of exploitation of the prerogatives, influence or circumstances of his official duties or appointment shall be deemed to be an illicit gain.

Art. 6. Any property fraudulently acquired by an individual or body corporate with the connivance of one of the persons referred to in article 1 who has exploited his official duties or appointment shall be deemed to be an illicit gain.

Art. 7. Restitution shall be ordered by the Court of Appeal.

Proceedings shall be instituted and cases shall be tried in accordance with the rules of criminal procedure applicable in assize courts, in so far as they are not inconsistent with the rules of procedure established by this decree . . .

Art. 8. The declarations and lists referred to in articles 1 and 2 and any information received regarding illicit gain shall be examined by one or more commissions, established by decision of the Council of Ministers, under the chairman of a member of the Council of State, a judge of the Court of Appeal or an advocate general and composed of two deputy judges, two alternate members of the Council of State or two chief prosecutors, assisted by a sufficient number of technical officials of the Council of State, judges or public prosecutors.

Art. 10. If the commission considers that there is evidence of illicit gain, it shall institute proceedings before the Court of Appeal in whose jurisdiction the person concerned holds office, and shall transmit the dossier to the department of the public prosecutor so that the person concerned may be summoned to appear at the next session of the court with a view to further proceedings.

If the commission considers that there is evidence of administrative irregularity, it shall order the accused person to be brought before the competent disciplinary board for trial as soon as possible. If it considers that there is evidence of an offence, it shall so inform the department of the public prosecutor.

Art. 11. If the court considers that any other person has derived substantial benefit from an illicit gain, it may summon the person concerned so that an order for restitution may be made against him and enforced against his property.

The court may also summon and convict jointly with the person proceeded against any individual or body corporate having shared the illicit gain with the person proceeded against or having, in connivance with him, concealed anything derived from an illicit gain.

Art. 12. A restitution order shall entail the dismissal of the official or employee concerned.

The court, in ordering restitution, may order the convicted person to be deprived, wholly or partially, of his rights to compensation or to a retirement pension. In such case, if there are any persons who would be entitled to a pension or compensation upon the death of the official or employee concerned, the pension or compensation payable upon the death of the said official or employee shall be granted to them.

Art. 14. Dismissal, resignation, the loss of office or death shall not be a bar to prosecution for illicit gain.

Art. 19. Any person referred to in article 1 who has made an illicit gain shall be liable to imprisonment and to a fine not exceeding 1,000 Egyptian pounds.

Art. 20. Any official participating in the enforcement of this decree who reveals any secret information brought to his notice during the exercise of his duties shall be liable to the penalties prescribed in the Penal Code for the divulgation of secret information.

Art. 21. One-fifth of the illicit gain whose restitution to the Public Treasury has been ordered shall be granted to any person who lays information regarding such gain and whose information results in conviction and an order for restitution.

Art. 22. Any person who maliciously lays false information regarding an act entailing the application of the provisions of this decree shall be liable to the penalties prescribed by the Penal Code for false accusation.

Art. 24. Appeal may be made from decisions given in application of this decree in accordance with the rules and in the manner laid down in the Code of Criminal Procedure.

Art. 25. The penalties established by this decree shall be applied without prejudice to any heavier penalty that may be established by other legislation for the act committed.

JUDICIAL DECISION

FREEDOM OF MOVEMENT AND RESIDENCE—LIMITATION OF THE DISCRETIONARY POWERS OF THE MILITARY GOVERNOR—POWERS OF THE ADMINISTRATIVE APPEALS COURT—REVIEW BY THE COURT OF THE MILITARY GOVERNOR'S ORDERS—CONSTITUTION—EGYPTIAN LAW

X. *v.* MILITARY GOVERNOR OF THE CANAL ZONE

Administrative Appeals Court[1]

Decision of 30 June 1952

The facts: The appellant was prosecuted by the Government on the charge that he had, on several occasions at short intervals and with the complicity of persons in his pay who were hostile to the Government, organized demonstrations of students and the general public against the security of the State; incited others to riot and caused a disturbance in the country; and conspired with others to cause serious incidents in the Canal Zone and, *inter alia*, to blow up a British vessel moored in the Canal; all these acts being calculated to compromise relations between the Government and the British. The Military Governor accordingly issued an order against the appellant to restrict his residence to a certain locality. The appellant denied all the charges brought by the Government.

Held: That, at least *prima facie*, the said charges had not been substantiated. The execution of the order in question is to be stayed, the court dealing with the substance of the case to inquire more thoroughly into any evidence produced in support of the contentions of either party.

Principles of the decision. The present case gives rise to the following principles of law adopted by the Administrative Appeals Court.

(1) The Administrative Appeals Court is undoubtedly competent to inquire into the reasons relied on by the Government in making an order containing restrictions which affect the appellant's place of residence, since the Military Governor, even in the exercise of his discretionary power, is bound by the terms of the Constitution and legislative provisions.

(2) If the orders issued by the Military Governor within the limits of the Constitution and legislative provisions are based on cogent reasons, they are unchallengeable; if, on the other hand, the court finds that the orders are not based on cogent reasons, it is under a duty to rescind the order which is challenged.

For the purpose of ordering a stay of execution of the order, it is sufficient for the court to find that the reasons relied on in making the order lack, or even seem to lack, proper corroboration, this being true even if the Military Governor had acted in good faith in issuing his order and if the measures which he took had constituted merely a bona fide error of judgement.

The Court emphasizes in particular that in any case where personal freedom is involved very good reasons must be produced.

[1]Case No. 1026—A.J./6. Summary received through the courtesy of Mr. Ahmed Moussa, *Premier Substitut au Conseil d'Etat*, Cairo. English translation from the French text by the United Nations Secretariat.

ETHIOPIA

NOTE ON CONSTITUTIONAL DEVELOPMENTS

With the ratification of the Federal Act[1] by Ethiopia on 11 September 1951, the Eritrean Constitution and the Federal Act came into effect. Paragraph 5 of this Act provides, *inter alia*, for the meeting of the Imperial Federal Council, composed of equal numbers of Ethiopian and Eritrean representatives; for the participation of the Eritrean citizens in the executive and judicial branches; and for their representation in the legislative branch of the Federal Government, in accordance with law and in the proportion that the population of Eritrea bears to the population of the Federation. The Ethiopian Government has taken several measures in conformity with these provisions, including:

1. Order No. 6 of 11 September 1952[2] dealing with the incorporation and inclusion of the territory of Eritrea within the Empire and declaring all inhabitants of the territory of Eritrea, excepting foreign nationals, to be Ethiopian nationals. This order also prohibits the denial of the equal protection of the laws or the abridgement of the privileges and immunities, and provides that all Eritrean citizens throughout the Empire shall enjoy all rights, privileges and immunities enjoyed by other subjects and citizens of any other part of the Empire.

2. Order No. 8, of 11 September 1952,[3] providing *inter alia*, for the establishment of the Imperial Federal Council to consist of ten members. Five of these members shall, in accordance with Article 7 of the Constitution of Eritrea, be selected by the Chief Executive of Eritrea, while the other five shall be designated by Special Decree.

3. Order No. 9 of 11 September 1952,[4] providing for the appointment of three Eritrean citizens as members of the Senate from amongst the dignitaries of Eritrea. Proclamation No. 125, of 11 September 1952[5] provides for the election of five Eritrean citizens to be invested as Members of the Chamber of Deputies. Such members shall be elected by the Eritrean Assembly sitting in special session.

4. Proclamation No. 130, of 30 September 1952,[6] concerning the definition of the federal judicial power and the establishment of the Federal Supreme Court and the Federal High Court. The federal judicial power is to be exercised in addition to the judicial power exercised by those courts which were established under the Administration of Justice Proclamation No. 2 of 1942. Provision is also made in proclamation No. 130 for the appointment of an Eritrean citizen to act as justice when the Supreme Imperial Court exercises the functions of and sits as the Federal Supreme Court. The latter court consists of the President and two justices.

Extracts from the Constitution of Eritrea as adopted by the Eritrean Assembly, approved by the United Nations Commissioner and ratified by the Emperor of Ethiopia, are reproduced in this *Yearbook*.

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[1] Text in *Official Records of the General Assembly*, Seventh Session, Supplement No. 15. Final Report of the United Nations Commissioner in Eritrea (A/2188), pp. 45–46.

[2] English text in *Negarit Gazeta* No. 1, of 11 September 1952, pp. 2–3.

[3] *Ibid.*, p. 5.

[4] *Ibid.*, pp. 5–6.

[5] *Ibid.*, p. 6.

[6] *Ibid.*, pp. 26–32.

ERITREA

CONSTITUTION OF ERITREA[1]

adopted by the Eritrean Assembly on 10 July 1952

PREAMBLE

In the name of Almighty God,

Trusting that He may grant Eritrea peace, concord and prosperity,

And that the Federation of Eritrea and Ethiopia may be harmonious and fruitful,

WE, THE ERITREAN ASSEMBLY, acting on behalf of the Eritrean people,

Grateful to the United Nations for recommending that Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown and that its Constitution be based on the principles of democratic government,

Desirous of satisfying the wishes and ensuring the welfare of the inhabitants of Eritrea by close and economic association with Ethiopia and by respecting the rights and safeguarding the institutions, traditions, religions and languages of all the elements of the population,

Resolved to prevent any discrimination and to ensure, under a regime of freedom and equality, the brotherly collaboration of the various races and religions in Eritrea, and to promote economic and social progress,

Trusting fully in God, the Master of the Universe,

DO HEREBY ADOPT this Constitution as the Constitution of Eritrea.

PART I.—GENERAL

Article 1

Adoption and Ratification of the Federal Act[2]

1. The Eritrean people, through their representatives, hereby adopt and ratify the Federal Act approved on 2 December 1950 by the General Assembly of the United Nations.

2. They undertake to observe faithfully the provisions of the said Act.

CHAPTER I.—STATUS OF ERITREA

Article 2

Territory of Eritrea

The territory of Eritrea, including the islands, is that of the former Italian colony of Eritrea.

Article 3

Autonomy and Federation

Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.

Article 4

Legislative, Executive and Judicial Powers

The Government of Eritrea shall exercise legislative, executive and judicial powers with respect to matters within its jurisdiction.

Article 5

Matters coming within the Jurisdiction of Eritrea

1. The jurisdiction of the Government of Eritrea shall extend to all matters not vested in the Federal Government by the Federal Act.

2. This jurisdiction shall include:

(*a*) The various branches of law (criminal law, civil law, commercial law, etc.);
(*b*) The organization of the public services;
(*c*) Internal police;
(*d*) Health;
(*e*) Education;
(*f*) Public assistance and social security;
(*g*) Protection of labour;
(*h*) Exploitation of natural resources and regulation of industry, internal commerce, trades and professions;
(*i*) Agriculture;
(*j*) Internal communications;
(*k*) The public utility services which are peculiar to Eritrea;

[1] English text of the Constitution in *Negarit Gazeta* No. 1, of 11 September 1952. The English text may also be found in the following document: *Official Records of the General Assembly, Seventh Session*, Supplement No. 15, Final Report of the United Nations Commissioner in Eritrea (A/2188). This document also contains background material on the preparation of the draft Constitution, the work of the United Nations Commissioner for Eritrea, and the consideration of the draft Constitution by the Eritrean Assembly. See also *Yearbook on Human Rights for 1949*, p. 402; *idem for 1950*, p. 536 (concerning the inclusion of certain human rights and fundamental freedoms in the future Constitution of Eritrea). The United Nations Commissioner signed the Instrument of Approval on 6 August 1952, and the Constitution entered into force upon its ratification by the Emperor of Ethiopia on 11 September 1952.

[2] See the preceding text, note 1.

(*l*) The Eritrean budget and the establishment and collection of taxes designed to meet the expenses of Eritrean public functions and services.

Article 8

Eritrean Citizenship

Persons who have acquired federal nationality in Eritrea under the Federal Act [section A, paragraph 6, of General Assembly resolution 390 A (V)] and have been granted Eritrean citizenship in accordance with the laws of Eritrea shall be citizens of Eritrea.

Article 9

Rights of Federal Nationals who are not Eritrean Citizens

1. On the basis of reciprocity, federal nationals who are not Eritrean citizens shall enjoy the same rights as Eritreans.

2. Federal nationals shall enjoy political rights in accordance with the Eritrean Constitution and laws on the basis of reciprocity.

CHAPTER III.—DEMOCRATIC GOVERNMENT IN ERITREA

Article 16

The Principles of Democratic Government

The Constitution of Eritrea is based on the principles of democratic government.

Article 17

Respect for Human Rights

The Constitution guarantees to all persons the enjoyment of human rights and fundamental freedoms.

Article 18

Organs of Government are provided for by the People and shall act in the Interests of the People

1. All organs of government are provided for by the people. They are chosen by means of periodic, free and fair elections, directly and indirectly.

2. The organs of government shall act in the interests of the people.

Article 19

Rule of Law

1. The organs of government and public officials shall have no further powers than those conferred on them by the Constitution and by the laws and regulations which give effect thereto.

2. Neither a group of the people nor an individual shall arbitrarily assume the exercise of any political power or of administrative functions.

3. Public officials shall perform their duties in strict conformity with the law and solely in the public interest.

4. Public officials shall be personally answerable for any unlawful acts or abuses they may commit.

Article 20

Franchise

The electorate shall consist of those persons possessing Eritrean citizenship who:

(*a*) Are of male sex;

(*b*) Have attained the age of twenty-one years;

(*c*) Are under no legal disability as defined by the law; and

(*d*) Have been resident for one year preceding the election in the constituency where they shall vote.

CHAPTER IV.—HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

SECTION I

Article 22

Provisions reproduced from the Federal Act

The following provisions of paragraph 7 of the Federal Act shall be an integral part of the Constitution of Eritrea:

"The Federal Government, as well as Eritrea, shall ensure to residents in Eritrea, without distinction of nationality, race, sex, language or religion, the enjoyment of human rights and fundamental liberties, including the following:

"(*a*) The right to equality before the law. No discrimination shall be made against foreign enterprises in existence in Eritrea engaged in industrial, commercial, agricultural, artisan, educational or charitable activities nor against banking institutions and insurance companies operating in Eritrea;

"(*b*) The right to life, liberty and security of person;

"(*c*) The right to own and dispose of property. No one shall be deprived of property, including contractual rights, without due process of law and without payment of just and effective compensation;

"(*d*) The right to freedom of opinion and expression and the right of adopting and practising any creed or religion;

"(*e*) The right to education;

"(*f*) The right to freedom of peaceful assembly and association;

"(*g*) The right to inviolability of correspondence and domicile subject to the requirements of the law;

"(*h*) The right to exercise any profession subject to the requirements of the law;

"(*i*) No one shall be subject to arrest or detention without an order of a competent authority, except in case of flagrant and serious violation of the law in force. No one shall be deported except in accordance with the law;

"(*j*) The right to a fair and equitable trial, the right of petition to the Emperor and the right of appeal to the Emperor for commutation of death sentences;

"(*k*) Retroactivity of penal law shall be excluded."

Section II.—Other Provisions

Article 23

Freedom and Equality before the Law. Everyone is a Person before the Law

All persons are born free and are equal before the law without distinction of nationality, race, sex or religion, and as such shall enjoy civil rights and shall be subject to duties and obligations.

Article 24

Prohibition of Torture and Certain Punishments

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Article 25

Right to Freedom of Movement

Everyone resident in Eritrea has the right to freedom of movement and to the choice of place of residence in Eritrea subject to the provisions of article 34.

Article 26

Freedom of Conscience and Religion

The right to freedom of conscience and religion shall include the right of everyone, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 27

No Discrimination to the Detriment of any Religion

No economic, financial or political measure of a discriminatory nature shall be taken to the detriment of any religion practised in Eritrea.

Article 28

Recognition of Religious Bodies as Persons before the Law

Religious bodies of all kinds and religious orders shall be recognized as possessing juristic personality.

Consequently, any religious denomination or any group of citizens belonging to such denomination shall be entitled:

(*a*) To establish and maintain institutions for religious, educational and charitable purposes;

(*b*) To conduct its own affairs in matters of religion;

(*c*) To possess and acquire movable and immovable property;

(*d*) To administer its property and to enter into contracts.

Article 29

Religious Instruction and Worship in Public Schools

No pupil attending a public school shall be required to take part in any religious instruction at such school or attend any religious services at such school.

Article 30

Freedom to express Opinions

Everyone resident in Eritrea shall have the right to express his opinion through any medium whatever (press, speech, etc.), and to learn the opinions expressed by others.

Article 31

Right to Education and Freedom to teach

1. Everyone resident in Eritrea shall have the right to education. The Government shall make every effort to establish schools and to train teachers.

2. The Government shall encourage private persons and private associations and institutions, regardless of race, nationality, religion, sex or language, to open schools, provided that they give proof of the required standards of morality and competence.

3. The instruction in the schools shall conform to the spirit of the Constitution.

Article 32

Associations and Companies

1. Everyone resident in Eritrea shall have the right to form associations or companies for lawful purposes.

2. Companies or associations shall enjoy fundamental freedoms in so far as their nature permits.

3. Such companies or associations shall be regarded as persons before the law.

Article 33

Protection of Working Conditions

1. Everyone resident in Eritrea, regardless of nationality, race, sex, or religion, shall have the right to opportunity of work, to equal pay for equal work, to regular holidays with pay, to payment of dependency allowances, to compensation for illness and accidents incurred through work and to a decent and healthy standard of life.

Trade Unions

2. Everyone resident in Eritrea shall have the right to form and to join trade unions for the protection of his interests.

Article 34

Control by Law of the Enjoyment of Human Rights and Fundamental Freedoms

1. The provisions in the last sub-paragraph of paragraph 7 of the Federal Act apply to the whole of chapter IV of part I of the Constitution. This sub-paragraph reads as follows:

"The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights."

2. In applying the aforementioned provisions, the enjoyment of human rights and fundamental freedoms may be regulated by law provided that such regulation does not impede their normal enjoyment.

Article 35

Duties of Individuals

Everyone shall have the duty to respect the Constitution and the laws, and to serve the community.

CHAPTER V.—SPECIAL RIGHTS OF THE VARIOUS POPULATION GROUPS IN ERITREA

Article 36

Personal Status

Nationals of the Federation, including those covered by sub-paragraphs (*b*) and (*d*) of paragraph 6 of the Federal Act, as well as foreign nationals, shall have the right to respect for their customs and their own legislation governing personal status and legal capacity, the law of the family and the law of succession.

Article 37

Property Rights

Property rights and rights of real nature, including those on State lands, established by custom or law and exercised in Eritrea by the tribes, the various population groups and by natural or legal persons, shall not be impaired by any law of a discriminatory nature.

Article 38

Languages

1. Tigrinya and Arabic shall be the official languages of Eritrea.

2. In accordance with established practice in Eritrea, the languages spoken and written by the various population groups shall be permitted to be used in dealing with the public authorities, as well as for religious or educational purposes and for all forms of expression of ideas.

PART II.—THE ASSEMBLY

CHAPTER I.—COMPOSITION AND ELECTION OF THE ASSEMBLY

Article 39

Creation of an Assembly representing the Eritrean People

1. Legislative power shall be exercised by an Assembly representing the Eritrean people.

2. Members of the Assembly shall represent the Eritrean people as a whole, and not only the constituency in which they are elected.

Article 42

Eligibility

All members of the electorate shall be eligible for election to the Assembly provided that:

(*a*) They have reached the age of thirty;

(*b*) They have been resident in Eritrea for three years and have resided in the constituency for two years during the last ten years;

(*c*) They are not disqualified for any reason laid down by law; and

(*d*) They are not officials of the Eritrean or Federal Governments, unless they have resigned at the time of presenting their candidature.

Article 43

The Two Voting Systems

1. The members of the Assembly shall be elected either by direct or by indirect ballot.

2. The system of voting to be used in any given constituency shall be laid down by law.

3. Voting by direct ballot shall be personal, equal and secret.

For this purpose, a roll of qualified voters shall be drawn up, and revised from time to time.

The system for establishing electoral rolls shall be fixed by law.

4. The first stage of voting by indirect ballot shall be conducted in accordance with local custom. At the second stage, voting shall be personal, equal and secret.

Article 44

Election by Direct Ballot and Election at Second Stage in the Case of Indirect Ballot

1. If a candidate for the Assembly obtains an absolute majority of the votes cast, he shall be declared elected.

2. If no candidate obtains an absolute majority, as defined in paragraph 1, a second ballot shall be held, and the candidate who then obtains the greatest number of votes shall be declared elected.

Article 45

Electoral High Commission

1. An Electoral High Commission consisting of three persons appointed by the Supreme Court established under article 85 shall be responsible for supervising all electoral proceedings (including the compiling of electoral rolls), and for preventing or putting a stop to irregularities.

2. The High Commission shall appoint, in each constituency, from among the electors of that constituency, a representative to act under its authority.

3. The said representative shall be assisted by an advisory election committee, consisting of members chosen by him from among the electors of that constituency.

As soon as an election period has been declared open in accordance with the law every candidate shall be entitled to be represented on the committee.

4. The implementation of the present article shall be prescribed by law.

Article 46

Disputed Elections to the Assembly

1. At the opening of the session following an election, the Assembly shall confirm its members. All members whose elections are unchallenged shall be confirmed simultaneously.

2. In any case where an election is challenged, the Assembly shall decide, by a two-thirds majority of the members present, whether the challenged election is valid, provided that such two-thirds majority shall be not less than one half of the members of the Assembly in office.

3. In the event of a member's election not being confirmed, he may, within three days following the adoption of the decision by the Assembly, appeal to the Supreme Court established under article 85, but shall not take his seat until the Supreme Court has given its decision.

. . .

PART III.—THE EXECUTIVE

CHAPTER II.—POWER OF THE EXECUTIVE

. . .

Article 78

Limitation in Time of Emergency of Certain Constitutional Provisions

1. In the event of a serious emergency which endangers public order and security, the Assembly may, on the proposal of the chief executive, adopt a law authorizing him to impose, under the conditions provided for in article 34, temporary limitations on the rights set forth in chapter IV of part I of this Constitution.

2. The authorization thus given by law shall be valid for a maximum period of two months. If necessary, it may be renewed under the same conditions.

3. During the interval between sessions, the chief executive may, if it is urgently necessary, issue an order prescribing the measures referred to in paragraph 1.

In such cases, a special session of the Assembly shall be convened, as soon as possible and, at the latest, within twenty days following the promulgation of the order, to adopt a law approving, amending or repealing the said order.

Article 79

Suppression of Brigandage

1. If public order and the security of persons and property in Eritrea are threatened by organized brigandage, the chief executive shall, after making a proclamation to the people, adopt the exceptional measures necessary to suppress such brigandage.

2. The chief executive shall inform the Assembly of the measures he has taken.

CHAPTER III.—THE ADMINISTRATION

Article 80

Conditions of Appointment of Officials

Officials shall be chosen for their ability and character; considerations of race, sex, religion or political opinion shall not influence the choice either to their advantage or to their disadvantage.

. . .

PART VI.—AMENDMENT OF THE CONSTITUTION

SOLE CHAPTER

Article 91

Compliance with the Federal Act and the Principles of Democratic Government

1. The Assembly may not, by means of an amendment, introduce into the Constitution any provision which would not be in conformity with the Federal Act.

2. Article 16 of the Constitution, by the terms of which the Constitution of Eritrea is based on the principles of democratic government, shall not be amended.

FINLAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

The following laws promulgated during 1952 concern human rights:

1. Act No. 32, of 18 January 1952, concerning auxiliary schools.

This Act deals with elementary school education for children who are incapable of following teaching in general elementary schools.

An auxiliary school consists of eight grades. Children who have attended a general elementary school for at least one year without success and whom the supervisor of the elementary schools has relieved from obtaining their compulsory education in a general elementary school may enter the first grade of an auxiliary school. Those who have attended a general elementary school for a longer time may enter a higher grade of an auxiliary school.

If a pupil of an auxiliary school makes sufficient progress, he may be transferred back to a general elementary school.

The same subjects are taught in auxiliary schools as in general elementary schools; however, the instruction in auxiliary schools is geared rather to preparing the pupils for practical life.

For the social welfare of the pupils who have completed their education in auxiliary schools, a curator may be appointed in every municipality by the communal authorities.

2. Act No. 52, of 25 January 1952, concerning venereal diseases. This Act was brought into force by Act No. 96 of 20 February 1952.

A person suffering from a venereal disease must submit to a medical inspection and treatment in order to prevent the spreading of the infection. If the diseased person is dangerous to others, or if he has interrupted the treatment or failed to comply with orders given to him in order to cure the disease or make him non-infectious, the Board of Public Health may order him hospitalized or committed to an asylum for treatment.

When it is necessary to control the infection, the State Medical Office may order that in certain establishments or on ships in a certain area a general inspection be held in order to detect venereal diseases.

The State maintains hospitals and asylums for treatment of persons suffering from venereal diseases.

Municipalities shall provide gratuitous medical treatment, medicines, and means of treatment for everyone who suffers from a venereal disease.

3. Act No. 88, of 15 February 1952, concerning assistance to aged persons. This Act was brought into force by Act No. 107, of 29 February 1952.

According to this Act, a person residing in Finland and born during or before 1883 is entitled to old age assistance. The purpose of this Act is to provide persons who are not beneficiaries of compulsory old age and disability insurance with support from public funds on the same grounds as a supplementary pension is awarded to the beneficiaries of compulsory insurance.

The scheme is operated by the People's Pension Institute [Kansaneläkelaitos], the administrators of which are appointed by the Government. Commissioners elected by the Diet supervise the work of the Institute.

4. Act No. 115, of 14 March 1952, brought into force the convention between Finland, Iceland, Norway and Sweden, concerning reciprocal payment of children's allowances.[2] The instruments of ratification of this convention had been deposited by the contracting parties on 26 October 1951.

5. Act No. 168, of 15 April 1952, amending the fifteenth chapter of the Inheritance Law.

According to this Act, a foreigner has an equal right with Finnish citizens to obtain an inheritance in Finland. This provision may be restricted by law in the case of citizens of a state in which a Finnish citizen has no, or only a limited, right to inherit.

6. Act No. 187, of 2 May 1952, concerning insanity. This Act was brought into force by Act No. 448, of 23 December 1952.

The State Medical Office is the highest supervisory authority for medical treatment of insanity. For the arrangement of medical care in these cases, the country is divided into districts, the borders of which are fixed by the Government. A central mental hospital and a welfare office approved by the Government and maintained by the municipality or federation of municipalities shall function in each of these districts.

[1] Note prepared by the Finnish Branch of the International Law Association.

[2] See the text of the Convention in *Yearbook on Human Rights for 1951*, pp. 507–508.

In addition, there are mental hospitals and asylums for insane persons maintained by the State, municipalities or private persons.

The welfare office shall organize and direct the fight against mental diseases, provide consultation for polyclinical treatment and care, and supervise the communal and private asylums for insane persons. If the welfare office, the chairman of the Board of Public Health or of the Social Board, or any police authority is informed that a person shows symptoms of a mental disease, and if the next of kin of that person do not take care of his treatment, the agency in question shall take the necessary steps in order to place the person under treatment.

An application to be taken into a mental hospital may be made by the person himself, if he is over fifteen years old, his spouse, the next of kin, his guardian, the chairman of the Board of Public Health or of the Social Board, or a police authority.

7. Cabinet resolution No. 269, of 19 June 1952, concerning assistance to war widows with a family in case of sickness.

According to this resolution, a war widow with at least two children under sixteen years of age, who is without means, may be granted assistance from State funds in case of sickness. The Ministry for Social Affairs is responsible for the supervision of the application of this Act.

8. Act No. 362, of 31 October 1952, concerning medical care in elementary schools.

Municipalities are responsible for supervision of the sanitary conditions in elementary schools located in their territories and for organization of medical care for the pupils.

A duly appointed city physician, or the physician of a rural district, is at the same time a school physician if the city or rural district does not establish a particular office of school physician either alone or in conjunction with another city or rural district. Every pupil, teacher, or other member of the personnel of an elementary school shall submit to medical inspection by the school physician.

II. JUDICIAL DECISIONS

Public Prosecutor *v.* Lahja B.

Supreme Court[1]

14 January 1952

Lahja B. had committed a larceny on the day she reached the age of eighteen years. According to Finnish law, young offenders over fifteen but under eighteen years of age shall be sentenced to a reduced penalty which may be not more than three-fourths of the maximum penalty provided by law for the offence. The issue in this case was whether Lahja B. was still in this category when she committed the offence.

The Supreme Court decided affirmatively on this question.

Juho R. *v.* Zachariassen & Co.

Supreme Court[2]

11 March 1952

Juho R. was employed by Zachariassen & Co. from 1 May 1949. On 18 August 1949 his employment was terminated because of a strike. Since R., according to the law, was entitled to three days of summer holiday according to his contract of employment, he claimed a pecuniary compensation for the unused holidays.

The company rejected the claim because R. had left work without notice and the company had therefore terminated his employment.

The circuit court decided against the plaintiff, who appealed to the Court of Appeals of Eastern Finland.

The Court of Appeals held that R. had not lost his right to summer holidays by quitting because of the strike and decided in favour of the plaintiff. This judgement was sustained by the Supreme Court.

Sulo Rikhard H. *v.* State

Supreme Court[3]

3 April 1952

This action was brought by Sulo Rikhard H., a major in the Finnish Army, claiming indemnity for being detained from 23 October 1945 to 18 April 1946 by investigating authorities of the Ministry of the Interior because he was suspected to be involved in an unlawful preparation of armed action.

Having been informed by the proper prosecuting authority that no criminal action would be brought against him, H. filed a petition with the Military High Court alleging that his detention had been unjustified and that he was entitled to an indemnity from the State according to the law of 18 May 1927 concerning the responsibility of the State for injury caused by a Government official.

The Military High Court rejected the petition because the above-mentioned law dealt with unjustified arrest, but not detention. The claimant appealed to the Supreme Court against this decision.

The Supreme Court sustained the appeal. The court held that the detention of the petitioner had to be considered equal to arrest at least to the extent to which it exceeded fourteen days, which could be deemed the longest reasonable time for detention. Moreover, it had become evident that H. had not committed the offence for which he had been detained.

[1] Source: *Defensor Legis* No. 9–10/1952.

[2] Source: *Defensor Legis* No. 1–2/1953.

[3] Source: *Lakimies* No. 5/1952.

FRANCE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In times of stress, when it is particularly difficult to preserve the people's faith in the rights of the human being, it is none the less imperative to do so.

In this respect, the high regard of the French nation as a whole for individual rights and freedoms is reassuring. The year 1952 also witnessed a number of instances reflecting the slowly but steadily increasing importance attached to the development of the rights known as economic and social rights. Unquestionably, however, France's most outstanding effort was concerned with the rights of its overseas peoples.

I. CIVIL AND POLITICAL RIGHTS

Even in a State having the most deep-rooted liberal traditions, the protection of freedoms requires the unremitting vigilance of the courts, the legislature and the executive authority. It is a natural tendency for any individual, institution or community to act in ignorance or disregard of the rights and freedoms of others.

A. Traditional Individual Freedoms

(*a*) *Freedom of Movement*

One of the fundamental freedoms which, being one of the permanent features of the French way of life, is for that reason seldom mentioned, became an issue in a curious way as a result of a decision, made by a local authority, which was recently set aside by the *Conseil d'Etat*. In order to protect what it regarded as its tourist attractions, the authority in question had barred from its territory persons suffering from tuberculosis and required all persons wishing to stay at the local hotel for longer than a fortnight to apply for a medical permit.[2]

(*b*) *Individual Security*

The freedom of the individual implies freedom without risk, that is to say without fear of arbitrary arrest, detention or prosecution. It is one of the most evident and fundamental of all rights, for without it even the semblance of liberty is lost. It is also the right subject to the greatest threat and the right which involves an unceasing fight, since it typifies the contrast between the individual and the power to coerce, the spread and growth of which characterize the modern State.

Concern for the respect of the individual as a physical and moral person is particularly evident in the exercise of the right to a fair trial. The conduct of the investigation must in no way derogate from the principle, proclaimed in the Declaration of the Rights of Man and of the Citizen, 1789, that "a man is deemed innocent until proved guilty". The Minister of Justice has drawn the attention of all judicial authorities to the basic rules which have to be observed in the investigation of criminal cases in France, both in the taking of depositions and in all consultations of experts, without distinction.[3] The Minister points out that confessions obtained under irregular circumstances and inquiries[4] or expert reports carried out without the precautions which guarantee the value of a scientific investigation, are devoid of any legal effect and are morally inadmissible.

In its own sphere, the *Conseil d'Etat* ensures respect of the right to a fair trial by requiring the Administration to apply the rules mentioned above. Every administrative decision—and not only those relating to public officials—which has the effect of a penalty must be preceded by proceedings that safeguard the rights of the defendant. In one of its decisions, for example, it has held that a certificate declaring an association to be operating in the public interest cannot be cancelled, as a penalty, until the association concerned has had an opportunity to enter a defence.[5] A penalty is something subjective, and in considering the nature of a penalty the *Conseil d'Etat* interprets the intention of the administrative authority concerned.

In view of presumption that an accused person and, *a fortiori*, a mere suspect, is innocent, restraint

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[1] This note was prepared by Mr. Jacques Megret, *Auditeur au Conseil d'Etat*, Paris. English translation from the French text by the United Nations Secretariat.

[2] *Recueil des arrêts du Conseil d'Etat*, 1952, p. 445, Syndicat climatique de Briançon, Mr. Dominique *et al.*

[3] Circular of 2 April 1952 by the Minister of Justice addressed to public prosecutors. *Semaine juridique* 1952, III, 16903.

[4] The duty to maintain professional secrecy is general and absolute, save as otherwise provided by statute. A medical practitioner who, in a medical certificate issued to the *gendarmerie*, describes wounds that he observed in examining a person who consulted him, thereby violates the rules of professional secrecy (*Semaine juridique* 1952. II. 7030, Nancy, Ch. cor. 14 February 1952. Min. Public c. D...).

[5] *Recueil des arrêts du Conseil d'Etat* 1952, p. 480, *Ligue pour la protection des mères abandonnées*, 31 October 1952.

must also be exercised in the application of pre-trial detention. The rule was stated in unequivocal terms by the Minister of Justice in the above-mentioned circular of 2 April 1952: ". . . conditional release is the rule in any proceedings for a 'crime' or a 'délit'.[1] Pre-trial detention must remain the exception, which is admitted in the frequent cases where the public interest or the search for truth requires it." Addressing the public prosecutors, the Minister continues: "Your agents must not hesitate, if they do not consider an order of detention to be justified by urgent reasons, to apply for the accused's release, even where he does not himself apply for release, and to enter objections against orders that do not conform with their applications."

In addition, the legislature itself has been at pains to surround pre-trial detention with safeguards. Under Act No. 52-1351, of 19 December 1952,[2] the examining magistrate is required to rule within five days on any application for conditional release.

The term "security" in its broadest sense also implies respect for the individual while serving his sentence; in particular, he must not be deprived of his liberty for a longer period than his re-education requires. Both the legislator and the administration are anxious that the French regulations should be brought into line with recent developments in penology. Decree No. 52-356, of 1 April 1952,[3] is designed to bring the system of conditional freedom into conformity with recent advances in this science and to organize the social readaptation of prisoners and the protection of persons on conditional release. Similarly, it is the object of Act No. 52-403, of 12 April 1952,[4] to organize the treatment of juvenile delinquents in the way best calculated to ensure their re-education and readaptation.

(c) *Freedom of the Press*

Freedom of the press is one of the essential elements of a democracy. Through its very power, however, the periodical press is not without danger to the individual. Freedom of the press cannot, therefore, be conceived in irresponsibility. For this reason in recent years, and especially since 1944, French law has been evolved with a view to securing this responsibility in the most efficacious manner possible. To this end, an Act of 25 March 1952[5] supplements the provisions of the basic Act concerning the Press of 29 July 1881. If a director of a publication is simultaneously a member of Parliament and therefore enjoys parliamentary immunity, the new Act provides for the appointment of a co-director who is to be chosen from those persons not enjoying such immunity and who is to be held responsible; all legal obligations of the director of the publication devolve upon the co-director.

B. Protection of the Individual against Groups

Important as it is to protect the individual from interference by the State in his private life, there would appear to be an even greater need to protect him from the tendency of groups, entities and associations to exceed the powers conferred upon them and to impose their collective will on their members. The extent of these powers is not easily fixed by laws or regulations, and judicial practice and precedent are not yet clearly established, with the result that it is often difficult to prove a violation of the rights and freedoms of the members of such groups.

To counter this danger, the *Conseil d'Etat* has not only affirmed its competence to supervise the activity of such groups, to the extent that the powers vested in them represent a delegation of public authority, but has also endeavoured, in all cases referred to it, through whatever channel, to inquire both into the legal grounds of decisions and into the facts themselves. Two characteristic examples will suffice to show how far the *Conseil* will go in its inquiries. In the case of an appeal by a medical practitioner against a disciplinary penalty imposed by the governing body of his professional association, the *Conseil d'Etat* weighed the terms used and the statements made by this practitioner in the course of a lecture tour in the United States of America.[6] In another case, the *Conseil d'Etat* had to consider whether an "organized" profession was being properly exercised in order to determine whether the measures taken in respect of one of its members were in order.[7]

C. Assimilation into the French Community and Protection of Refugees

The movements of population and the persecutions during the war and the years immediately following raised one of the most painful problems in the world of today. Except in the darkest hours of her history, France, which has always been a country of asylum, has undertaken to formulate and to organize the aid granted to refugees and stateless persons and to provide guarantees protecting such persons from

[1] *Translator's note:* A *délit correctionnel* is punishable by imprisonment for more than eleven days but less than five years; a *crime* is punishable by death, forced labour [travaux forcés], solitary imprisonment, deportation or imprisonment of more than five years.

[2] *Journal officiel* of 20 December 1952.

[3] *Ibid.*, 2 April 1952.

[4] *Ibid.*, 15 April 1952.

[5] Extracts from this Act are reproduced in this *Yearbook*.

[6] *Recueil des arrêts du Conseil d'Etat* 1952, p. 13. Case of Dr. Simon, 4 January 1952. Extracts from the decision are reproduced in this *Yearbook*.

[7] *Ibid.* p. 470, *Caisse primaire de sécurité sociale de Grenoble*, 24 October 1952.

erroneous or arbitrary treatment. The Act of 25 July 1952[1] established a French office for the protection of refugees and stateless persons which provides for their protection by juridical and administrative means and guarantees the execution of international conventions, agreements and arrangements concerning the protection of refugees in France as these instruments affect them. The office co-operates with the United Nations High Commissioner for Refugees and is subject to his supervision. The office is authorized by this Act to recognize persons falling into the categories defined in the relevant international agreements as being "refugees"; this is, of course, the prime function of the office. It is, however, noteworthy that the Act allows an appeal from decisions of the office to a jurisdictional commission which would, before rendering its decisions, hear the applicant or his counsel.

The legislator, in keeping with France's hospitality towards aliens wishing to become members of the national community, has adopted rather simple naturalization rules. Because of this simplicity, however, undesirable aliens try, sometimes successfully, to intrude through loopholes in the legislation. Hence, the ordinance of 19 October 1945 to enact the French Nationality Code provides in article 111 that in any case where it is discovered, after a decree of naturalization has been granted, that the person concerned did not satisfy the statutory conditions for naturalization, the naturalization may be withdrawn within one year from the date of its publication. The *Conseil d'Etat*, however, has taken the view that naturalized aliens become French nationals on the promulgation of the decree and should be treated as such as from that time. Consequently, it has ruled that the only facts that can properly warrant withdrawal of naturalization are those which, though brought to the competent authority's notice after the grant of the decree, antedate the decree. In this way the *Conseil* checked the tendency on the part of the authorities to resort to the expedient of withdrawing naturalization, thereby impugning decrees of naturalization that had been properly obtained, rather than the more cumbersome process of deprivation of nationality.[2]

In another case also involving naturalized persons, the *Conseil d'Etat* strongly condemned the administrative practice, irreconcilable with the rule of the individual application of penalties, of withdrawing the naturalization of both spouses where the facts complained of concerned only one.[3]

In yet another case, the *Conseil d'Etat* held that it is competent to determine whether the facts complained of can constitute legal grounds for the withdrawal of naturalization.[4]

II. ECONOMIC AND SOCIAL RIGHTS

An accurate description of the status and development of economic and social rights would require a discussion of each of the principal aspects of the right to work: the conditions governing hiring and wages, sanitary conditions in places of employment, social security, and so forth. Many regulations relating to these matters have been enacted the object of which is to promote both the material security of workers and their free intellectual and moral development. What follows is therefore only a general description of the way in which the legislature and the courts have dealt with these questions, in so far as they affect human rights.

(a) *Freedom of Labour*

"Freedom of work" means essentially the freedom of wage earners to take up and leave employment. In its most important aspect it implies recognition of the right to strike. Since the Act of 11 February 1950 it has been an unchallengeable principle that a strike does not necessarily represent a breach of contract, unless the wage earner is seriously at fault. But the freedom of labour also implies, in the case of a strike, the right of wage earners who do not wish to join the collective stoppage of work to continue to carry on their occupation unhampered. The use of fraud or violence to induce a non-striker to stop work would in most cases be regarded as a serious act warranting the termination of the contract. The courts have frequently had occasion to rule on this aspect of the freedom of labour and to determine how far strikers may go in their efforts to persuade their non-striking colleagues to stop work. As a general rule, only violence, assault, certain serious threats and fraud are held to constitute interference with the freedom of labour.[5]

(b) *Right to a Decent Standard of Living*

In 1952, the so-called escalator clause was introduced into French labour legislation. In order, if not to improve (a model budget established by the Superior Collective Agreements Board set up by the Act of 11 February 1950 is intended to answer this purpose), at least to forestall a decline in the standard of living of wage earners, Act No. 52-834 of 18 July 1952[6] provides that whenever the monthly cost-of-living index based on household consumer prices in Paris, as measured by a sub-committee of the Superior Collective Agreements Board, rises by five per cent

[1] Extracts from this Act are reproduced in this *Yearbook*.

[2] *Recueil des arrêts du Conseil d'Etat*. 1952, p. 79, case of Mr. and Mrs. Gromb, 1 February 1952.

[3] *Ibid.*, p. 226, case of Mr. and Mrs. Wajnryle, 7 May 1952.

[4] *Ibid.*, p. 256, *in re* Lewkovicz, 16 May 1952.

[5] *Semaine juridique* 1952. II. 6890 Dijon, 18 March 1952. Case of Agostin Alheritier *et al.*

[6] *Journal officiel*, 19 July 1952.

or more, the minimum wage guaranteed by law will be modified proportionately. The Act stipulates, however, that, save in exceptional circumstances, two successive modifications may not occur during a period of four months.

(c) *Right to Security*

With a view to making the social security system generally applicable, Act No. 52-799 of 10 July 1952[1] established an autonomous system of old-age allowances for persons in agricultural occupations, modelled on the existing systems covering persons in commercial and artisan occupations and members of the liberal professions. The Act also makes provision for a special allowance, to replace the temporary allowance established by the Act of 13 September 1946, for persons not in gainful employment who are not affiliated to any organization paying old age allowances to such persons and who have insufficient means of their own. By means of this new Act, all persons in gainful employment, whether wage earners or not, are covered by a system of old age allowances which should enable its beneficiaries to satisfy decently their essential needs.

In addition, the administration took action to extend the French system of social security to the largest possible number of aliens working in national territory. During 1952, agreements and supplementary agreements were concluded with many foreign countries, particularly Belgium, Great Britain, Denmark, Italy, Netherlands and the Federal Republic of Germany.

III. RIGHTS AND FREEDOMS OF OVERSEAS PEOPLES

The Act of 15 December 1952[2] to enact a Labour Code for the Overseas Territories and associated territories coming within the competence of the Ministry of Overseas France is a significant step in the history of the relations between France and the Non-Self-Governing Territories under French administration.

The regulation of labour in the colonies was for long left to the discretion of the Governors, who laid down rules in orders issued by virtue of the broad powers vested in them. Before very long, the law-making methods began to improve. Decrees were issued by the President of the Republic to deal with a number of problems relating to labour law, but these enactments were adopted for each colony and formed a double set of rules—one for European workers, based on the metropolitan code, and the other for indigenous workers, based on their customs. In 1936 and 1937 a large number of decrees were adopted which, though enacted separately for the various colonies, applied uniformly to all workers. It was also at this time that France recognized the international convention on forced labour and the conventions concerning night work by women and young persons, the application of which was extended to the overseas territories.

However, it was the Brazzaville Conference, held from 30 January to 8 February 1944, which gave a new impetus to the development of the rights of the indigenous peoples of the territories under French administration. Freedom of association was recognized and regulated, and a consolidated labour code was drafted to apply to the indigenous inhabitants of the African colonies.

The new French Constitution of 27 October 1946 having proclaimed equal rights for the overseas peoples and the French nation and equality in the matter of individual and collective rights, measures were required to give effect to those provisions. That is the object of the Act of 15 December 1952, in so far as the economic and social rights of the peoples of overseas territories are concerned.

The Labour Code for Overseas France applies to all territories coming within the competence of the Ministry of Overseas France—that is to say, to overseas territories in the strict sense of the word (formerly known as colonies) and Trust Territories (Togoland and Cameroons). It covers all wage-earners, regardless of sex, nationality, race or legal status, whether of French or indigenous origin or aliens.

All relations between employers and wage-earning employees, irrespective of their legal status, are governed by this code; as it applies to all commercial occupations, skilled trades and agriculture, it represents an advance over the metropolitan legislation, which does not yet apply in full to agriculture and domestic service. It should, however, be pointed out that the generality of the Code is in fact subject to a qualification, accounted for by the nature of the conditions which prevail in these territories and which affect the law. The Code governs only wage-earners and does not apply to persons who work within the family or village according to the traditional system, under the authority of a customary chief. In view of the large number of such workers, this is a delicate problem and one of concern to the public authorities, who are endeavouring, without violating local traditions, gradually to put an end to the occasional abuse of power by the indigenous chiefs.

The Labour Code for Overseas Territories, which is based largely on the metropolitan code, is intended to place the parties on an equal footing in the conclusion and termination of contracts of employment and to ensure to overseas workers a minimum wage and decent working conditions equivalent, to the fullest extent possible, to those prevailing in metro-

[1] *Journal officiel*, 11 July 1952.

[2] See also the note on this Act in this *Yearbook*, p. 352.

politan France—in short, to guarantee man's free development in the Non-Self-Governing Territories.

1. Freedom of Labour

The Act of 15 December 1952 formally reaffirms the principle of freedom of labour proclaimed earlier by the Act of 11 April 1946: "Forced or compulsory labour shall be absolutely prohibited . . ." In order to remove all uncertainty, the Code defines the term "forced or compulsory labour" as meaning any work or service that is demanded of an individual under threat of a penalty or that the said individual does not undertake of his own free will. In order to ensure the observance of this principle and to bar "contractual" forms of forced labour, the Act places a time limit on long-term contracts of employment and stipulates that such contracts are subject to official approval (they may not be concluded for a period exceeding three years; any contract for a period exceeding three months must be entered into in writing in the presence of an official and require his approval).

2. Limited Hours of Work

The limitation of hours of work is essential for the physical and intellectual development of the human being. Hence, the legislator could not ignore this matter, in which it is a particularly delicate undertaking to prescribe regulations for the overseas territories. After lengthy deliberation it was decided to limit the working week to 40 hours in principle except in agriculture, where the limit was increased to 2,400 hours *per annum*. Workers in the overseas territories were granted the right to an annual paid holiday under a system absolutely identical to that in force in metropolitan France. The size of the migrant population in these territories was taken into consideration in the provisions fixing the length of the holiday.

3. Equal Guaranteed Minimum Wage for Equal Skill

The Code proclaims the principle of equal wages for all workers, irrespective of their origin, sex or status, subject to equality of skill and output. In order to ensure a subsistence wage for the low-income groups, the Code extends to the overseas territories the principle of the guaranteed minimum wage which under the Act of 11 February 1950 is applicable in metropolitan France to all occupations; the Code does not, however, make provision for an escalator clause. This minimum wage is fixed by the Chief Territorial Officer in the light of prevailing living conditions.

4. Freedom of Association and the Right to Strike

The Code also proclaims as one of the workers' essential freedoms the right to associate for the defence of their occupational interests; moreover, it recognizes and regulates the right to strike.

Any worker, irrespective of his legal status or nationality, may join a trade union. Any citizen of the French Union may be an officer of a trade union. Very broad powers are vested in the trade unions, comparable in every respect with those vested in trade unions in metropolitan France, and they play a very important part in the organization of trades and in relations with the public authorities.

A strike does not operate to terminate a contract of employment if it occurs after the failure of conciliation procedure prescribed by the Act.

The soundness and effectiveness of this undeniably liberal system is ensured by a number of trade union and administrative organizations, the keystone of which is a powerful labour inspection service which is independent of the local authorities.

France has repeatedly affirmed that it did not intend to base the economic prosperity of its overseas territories on the poverty of the workers. The liberal features of the Code described above are evidence that this profession of faith has not remained a dead letter; and even if, as some consider, this code represents only a step forward, it still proves beyond question that the general development of law in France is governed by the ideals proclaimed in the Universal Declaration of Human Rights.

LEGISLATION

ACT No. 52-336 OF 25 MARCH 1952 TO AMEND CERTAIN PROVISIONS OF THE ACT OF 29 JULY 1881 CONCERNING FREEDOM OF THE PRESS[1]

Art. 1. Article 6 of the Act of 29 July 1881, as amended by article 15 of the Ordinance of 26 August 1944, is hereby amended to read:

"*Art. 6.* Every newspaper or periodical shall have a director of the publication.

"If the director of the publication enjoys parliamentary immunity pursuant to articles 22 and 70 of the Constitution,[2] he shall designate a co-director of the publication chosen from among persons not enjoying parliamentary immunity and, in the case of newspapers or periodicals published by a company or association, from among the members of the board of directors or the managers, as the case may be.

"The co-director of the publication shall be designated within one month from the date on which the director of the publication becomes eligible for the immunity referred to in the preceding paragraph.

"The director and the co-director (if any) of the publication must be of full age, in full exercise of their civil rights and must not have been deprived of their civic rights by any judicial sentence.

"All the statutory obligations which the director of the publication owes under this Act are also owed by the co-director of the publication."

[*Former text:*
"*Art. 6.* Every newspaper or periodical shall have a director of the publication.
"The manager must be French, of full age, in full exercise of his civil rights, and must not have been deprived of his civic rights by any judicial sentence."]

[Articles 2 and 3 amend articles 7 and 9 of the Act of 1881, the provisions of which are to apply to co-directors in the cases referred to in the second paragraph of article 6 as amended.]

Art. 4. Article 42 of the Act of 29 July 1881 as amended by article 15 of the Ordinance of 26 August 1944 is hereby amended to read:

"*Art. 42.* The following, in the order named, shall be liable as principals to the penalties enacted for the repression of offences [crimes et délits] committed through the Press:

1. The directors of publications or publishers, whatever their profession or description, *and, in the cases provided for in the second paragraph of article 6, the co-directors of the publications*;[3]

2. Failing these, the authors;

3. Failing the authors, the printers;

4. Failing the printers, the sellers, distributors and billposters.

"(*added in 1952*). In the cases provided for in the second paragraph of article 6, the persons referred to in sub-paragraphs 2, 3 and 4 of the present article will incur subsidiary liability as if there had been no director of the publication if, in violation of the provisions of this Act, no co-director of the publication was designated."

Art. 5. Article 43 of the Act of 29 July 1881 as amended by article 15 of the Ordinance of 26 August 1944 is hereby amended to read:

"*Art. 43.* Where proceedings are taken against the directors or co-directors of publications or publishers, the authors shall be prosecuted as accessories.

"Proceedings may also be instituted on the same grounds and in all cases against persons to whom article 60 of the Penal Code may apply.[4] The said article shall not be deemed to apply to printers in respect of offending printed matter save in the cases and in the circumstances specified in article 6 of the Act of 7 June 1848 concerning unlawful assemblies, *or, in the cases provided for in the second paragraph of article 6, if no co-director of the publication was designated.*[5]

"(*added in 1952*). Nevertheless, the printers may be prosecuted as accessories if the courts hold the director or co-director of the publication not to be criminally liable. In such cases, prosecution proceedings shall be instituted (if at all) within three months after the offence or in any case not later than three months after the courts have held the director or co-director of the publication not to be criminally liable."

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[1] French text in *Journal officiel de la République française* No. 75, of 26 March 1952. The present Act is applicable to Algeria, the Overseas Territories and the Trust Territories of the Cameroons and Togoland. The text of the Act of 28 July 1881 concerning freedom of the press is reproduced in *Freedom of Information* (published by the United Nations, Department of Social Affairs, 1950, Vol. II, pp. 30-37). The text of the Ordinance of 26 August 1944 is reproduced *ibid.*, pp. 42-43.

[2] Article 22 of the Constitution provides that, except in the case of an overt offence (*flagrant délit*), no member of parliament may, during his term of office, be prosecuted or arrested in a criminal or police court case except with the authorization of the Chamber of Parliament to which he belongs. Article 70 makes this rule applicable to the Assembly of the French Union.

[3] Words in italics added in 1952.

[4] This article deals with persons punishable as accessories to a crime or offence.

[5] Words in italics added in 1952.

Art. 6. The following paragraph is hereby added to article 44 of the Act of 29 July 1881:

"In the cases provided for in the second paragraph of article 6, fines and damages may be recovered from the assets of the undertaking."

Art. 8. In the cases provided for in the second paragraph of article 6 of the Act of 29 July 1881, the provisions of the ordinance of 26 August 1944 which concern the director of the publication shall, with the exception of those contained in article 7 of the said ordinance, be applicable to the co-director of the publication.

Fines and damages to which the co-director of the publication may be sentenced pursuant to the preceding paragraph may be recovered from the assets of the undertaking.

Art. 9. In the case of any newspaper or periodical the director of publication of which enjoys the immunity referred to in article 22 of the Constitution on the date of promulgation of this Act, the co-director of the publication shall be designated within one month after the said promulgation. Within the same time limit, a declaration shall be lodged with the Public Prosecutor's Office, stating the name and address of the co-director of the publication, to supplement the declaration prescribed by article 7 of the Act of 29 July 1881.

ACT No. 52-893 OF 25 JULY 1952 TO ESTABLISH A FRENCH OFFICE FOR THE PROTECTION OF REFUGEES AND STATELESS PERSONS[1]

Art. 1. An office, to be known as the French Office for the Protection of Refugees and Stateless Persons, a public institution endowed with legal personality and with financial and administrative autonomy, is hereby established within the Ministry of Foreign Affairs.

Art. 2. The Office shall be responsible for the legal and administrative protection of refugees and stateless persons and, in co-operation with the various Government departments concerned, for giving effect to the international conventions, agreements or arrangements which relate to the protection of refugees in France, and especially the Convention of Geneva dated 28 July 1951.[2]

The Office shall recognize as a "refugee" any person who comes within the mandate of the United Nations High Commissioner for Refugees or within the terms of the definition contained in article 1 of the Convention of Geneva dated 28 July 1951, relating to the status of refugees.

It shall co-operate with the United Nations High Commissioner for Refugees and shall be subject to his supervision as provided in the relevant international agreements.

Art. 3. The Office shall be administered by a director, appointed by the Minister of Foreign Affairs for a period of three years.

The director shall be assisted by a board, the chairman of which shall be a representative of the Minister of Foreign Affairs and the members of which shall be the persons enumerated below: a representative of the Minister of Justice; a representative of the Minister of the Interior; a representative of the Minister of Finance; a representative of the Minister of Labour and Social Security; a representative of the Minister of Health and Population; and a representative, appointed by decree, of the organizations officially recognized as competent to deal with refugees.

The delegate of the United Nations High Commissioner for Refugees attends the meetings of the Board and may submit his observations and proposals.

All members of the staff employed by the office are required to observe professional secrecy in respect of any information acquired by them in the performance of their duties.

The premises of the Office and its archives and, generally, all documents belonging to it or in its possession are inviolable.

Art. 4. The Office shall be empowered to issue (if necessary, after inquiry) to the refugees and stateless persons referred to in article 2 whatever documents they may require for the purpose of executing instruments or performing acts in the course of their civil life or for the purpose of securing the application of the provisions of domestic legislation or of international agreements which relate to their protection, in particular documents issued in lieu of certificates of birth, marriage, death and similar certificates.

The director of the Office shall authenticate all certificates and documents submitted to him. The certificates and documents authenticated by him shall be deemed to be authentic.

[1] French text in *Journal officiel de la République française* No. 180, of 27 July 1952.

[2] See *Yearbook on Human Rights for 1951*, pp. 581-588.

Such documents shall be accepted in lieu of certificates and documents issued in the country of origin.

Art. 5. An Appeals Commission, consisting of a member of the *Conseil d'Etat*, to act as chairman, designated by the Vice-President of the said *Conseil*, a representative of the United Nations High Commissioner for Refugees, and a representative of the Board of the Office, is hereby established. This Commission shall have the following functions:

(*a*) To give rulings in appeals lodged by aliens and stateless persons whom the Office declines to recognize as refugees;

(*b*) To consider applications addressed to it by refugees affected by any of the measures specified in articles 31, 32 and 33 of the Convention of 28 July 1951, and to recommend whether the measures in question should be continued or discontinued. In such cases, the appeal shall operate as a stay of execution.

Appeals must be lodged (if lodged at all) within one month in the cases referred to in paragraph (*a*), and within one week in the cases referred to in paragraph (*b*).

The persons concerned may submit explanatory observations to the Appeals Commission and employ the services of counsel in proceedings before the Commission.

JUDICIAL DECISION

DISCIPLINARY ACTION—MEDICAL PROFESSION—POWERS OF PROFESSIONAL ORGANIZATIONS—PUBLIC CRITICISM BY A DOCTOR OF HIS COLLEAGUES—UNJUSTIFIED PENALTY—DISTORTION OF THE FACTS

IN RE: DR. SIMON

Decision of the Conseil d'Etat[1]

4 January 1952

Appeal by Dr. Simon (Victor), medical practitioner, who requests that: (1) The *Conseil d'Etat* should set aside a decision dated 4 June 1950 by which the disciplinary section of the National Medical Council ordered that he be suspended temporarily, as a penalty, from the exercise of the profession of medicine for a period of one month with effect from 15 July 1950; (2) The *Conseil d'Etat* order a stay of execution of the decision against which the appeal is lodged;

Cited: Ordinance of 24 September 1945; Ordinance of 1 July 1945;

The *Conseil* did not see fit to inquire into the other grounds of the appeal:

Whereas the disciplinary penalty imposed on Dr. Simon by the decision against which he is appealing is based solely on the fact that in a broadcast talk, delivered in New York on 4 March 1947, in criticizing certain methods of treatment, "he used terms offensive to French medical practitioners who employ such methods, and in particular accused them of failure to take proper care and of mercenary motives, such an attitude on the part of a French medical practitioner speaking to a very large audience from a foreign broadcasting station being a breach of professional etiquette and of the duty he owes to his colleagues in the medical profession";

And whereas it appears from a study of the documents that the criticisms voiced by Dr. Simon were directed against certain methods of treating pulmonary tuberculosis and did not refer specifically to their employment by the French medical profession; and whereas he did not accuse French medical practitioners of "mercenary motives" and did not use offensive terms to describe them; and whereas the words of his broadcast talk, which were distorted in the decision appealed against, were not of such a nature as to justify in law the penalty imposed on him; . . . (Decision set aside and appellant referred to the disciplinary section of the National Medical Council for a fresh hearing of his appeal from the decision of the Paris Regional Council dated 27 November 1949; National Medical Council to repay stamp duties).

[1] From the *Recueil des Arrêts du Conseil d'Etat*, year 1952, beginning of January to 4 April 1952, p. 13. See Note on development of human rights, p. 70 of this *Yearbook*.

DEMOCRATIC REPUBLIC OF GERMANY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In addition to the Constitution, the following enactments are fundamental to the legislation of the Democratic Republic of Germany:[2]

(*a*) The Defence of Peace Act, of 15 December 1950;[3]

(*b*) Labour Code to build and maintain the labour force, to increase productivity and further to improve the material and cultural conditions of manual and office workers, of 19 April 1950;[4]

(*c*) Act concerning the protection of mothers and children and the rights of women, of 27 September 1950;[5]

(*d*) Act, of 8 February 1950, concerning the participation of young persons in the construction of the Democratic Republic of Germany and the encouragement of young persons in schools, professions, sport and recreation;[6]

(*e*) Act concerning the encouragement of crafts, of 9 August 1950.[7] This Act provides the basis for a sound development of crafts and for an assured livelihood for craftsmen in the Democratic Republic of Germany.

(*f*) Decree of 16 March 1950 concerning the development of a progressive democratic culture of the German people and for the further improvement of the working and living conditions of cultural workers.[8] This decree lays the foundations for a general development of cultural life in the Democratic Republic of Germany. It embodies a large number of specific measures for the progressive raising of the cultural level of the people and generous incentives for scientists, technicians, artists and teachers.

In 1952, the important Acts and decrees enacted pursuant to this fundamental legislation included:

I. In connexion with the administration of justice:

1. Act concerning the procedure in criminal cases in the Democratic Republic of Germany (Code of Criminal Procedure), of 2 October 1952;
2. Act concerning the constitution of courts of the Democratic Republic of Germany (Court Constitution Act), of 2 October 1952.[9] Article 7 of this Act provides that all citizens shall be equal before the law; that extraordinary courts shall be unlawful; and that courts dealing with matters in specific fields may be established only if they are to have jurisdiction over groups of persons or contentious matters specified in advance in general terms.
3. Juvenile Courts Act of 23 May 1952.

Extracts from Acts 1 and 3 are reproduced in this *Yearbook.*

II. In connexion with labour legislation:

1. Decree to protect the rights of gainfully occupied persons and to regulate the remuneration of wage-earning and salaried employees, of 20 May 1952.

Extracts from this decree are reproduced in this *Yearbook.*

2. Decree concerning wage increases for skilled workers in essential industries, of 28 June 1952.
3. Decree concerning the rights and duties of, and of wage increases for, foremen in national and similar undertakings, of 28 June 1952.
4. Decree concerning salary increases for scientists, engineers and technicians in the Democratic Republic of Germany, of 28 June 1952.[10]

In addition, a large number of regulations for the protection and safety of workers in factories were issued.

III. The following decrees and orders are the more important provisions relating to the right to education:

1. Decree concerning technical correspondence courses for gainfully occupied persons, of 20 December 1951.[11]

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[1] This note is based on texts and information received through the courtesy of the Government of the Democratic Republic of Germany.

[2] For the provisions relating to human rights contained in the Constitution, see *Yearbook on Human Rights for 1949*, pp. 73–78.

[3] See *Yearbook on Human Rights for 1950*, pp. 91 and 92.

[4] *Ibid.*, pp. 93–95.

[5] *Ibid.*, pp. 95–96.

[6] Published in *Gesetzblatt* (Official Gazette) of the Democratic Republic of Germany, No. 15 of 1950, p. 95.

[7] *Ibid.*, No. 91 of 1950, p. 827.

[8] *Ibid.*, No. 28 of 1950, p. 185.

[9] *Ibid.*, No. 141 of 1952, p. 983.

[10] The decrees mentioned under 2, 3 and 4 are published in *Official Gazette* No. 84 of 1952, pp. 501–510.

[11] *Ibid.*, No. 1 of 1951, p. 1.

This decree enables persons actively engaged in production to obtain further qualifications up to high school standard.

2. Decree concerning extra-curricular activities, of 23 October 1952.[1]

This decree gives children of school age an opportunity to carry on educational and cultural activities outside school hours.

[1] *Official Gazette*, No. 150 of 1952, p. 1087.

3. Order concerning the establishment of halls or houses of culture in the communes [Gemeinden] of the Democratic Republic of Germany, of 17 March 1952.[2]

This order makes provision for enabling persons living in villages to study advanced agrarian sciences and modern methods of work in agriculture and especially to take a greater part in the people's cultural life than they have done in the past.

[2] *Ibid.*, No. 37 of 1952, p. 222.

JUVENILE COURTS ACT[1]

of 23 May 1952

Article 1

GENERAL PROVISIONS

. . .

(2) Children until the age of fourteen years are not liable under criminal law.

Article 4

PRINCIPLES GOVERNING THE LIABILITY OF YOUNG PERSONS

(1) A young person may not be held answerable under criminal law unless, at the time of committing the act, he was sufficiently mature, by reason of his moral and intellectual development, to realize the social dangerousness of his act and to behave accordingly.

Article 22

ADDITIONAL PENALTIES AND CONSEQUENCES

(1) The penalties of loss of civic rights, disqualification for public office and police surveillance may not be imposed.

Article 24

APPLICATION OF ORDINARY CRIMINAL LAW

(1) . . . The application of the death penalty to young persons shall be prohibited.

[1] German text in *Official Gazette* of the Democratic Republic of Germany, No. 66 of 1952, p. 411. English translation from the German text by the United Nations Secretariat.

ACT CONCERNING THE PROCEDURE IN CRIMINAL CASES IN THE DEMOCRATIC REPUBLIC OF GERMANY[1]

of 2 October 1952

Article 1

CONTENTS AND PURPOSES OF THE ACT

(2) It is the purpose of this Act to ensure that all the facts in a case are established conscientiously and promptly and that the offence and the criminal liability are determined. This Act ensures the just application of the criminal law and the expeditious and just punishment of guilty persons.

Article 5

PROTECTION OF THE FUNDAMENTAL CONSTITUTIONAL RIGHTS OF CITIZENS

(1) No restriction of the right to personal freedom, the right to inviolability of the home or the right to secrecy of correspondence shall be imposed in criminal proceedings except as provided by this Act.

[1] German text in *Official Gazette* of the Democratic Republic of Germany, No. 142 of 1952, p. 996. English translation from the German text by the United Nations Secretariat.

(2) Every judge and public prosecutor is under a duty in each case to inquire whether the statutory conditions governing the imposition of these restrictions are present and if the restrictions are necessary to the conduct of the criminal proceedings.

Article 6

PROHIBITION OF DOUBLE JEOPARDY

(1) No criminal proceedings may be instituted against any person in respect of any act concerning which a legally valid decision has been given by a court of the Democratic Republic of Germany.

Article 74

CHOICE OF COUNSEL FOR THE DEFENCE

(1) A defendant may, at any stage of the proceedings against him, apply for the services of counsel.

(2) If the defendant is represented by a statutory agent, the latter may likewise choose counsel on his own initiative.

Article 75

Any lawyer practising in the Democratic Republic of Germany may be chosen to act as counsel for the defence.

Article 76

APPOINTMENT OF COUNSEL FOR THE DEFENCE

(1) Counsel shall be appointed for the defendant in all criminal proceedings in first or second instance instituted before the Supreme Court, and in criminal proceedings of first instance before the district courts [Bezirksgerichten].

(2) At the request of the defendant or of the public prosecutor, in criminal proceedings before a local court [Kreisgericht] or in criminal proceedings of second instance before a district court, the court may appoint counsel for the defence if the circumstances so require.

(3) A defendant may decline the services of counsel.

Article 77

RESCISSION OF APPOINTMENT

The appointment shall be rescinded if the defendant chooses his own counsel and if said counsel agrees to defend him.

Article 78

FAILURE OF COUNSEL TO APPEAR

(1) If counsel appointed under article 76, paragraph (1) or paragraph (2), fails to appear at the trial, or withdraws from the case before the completion of the proceedings, or declines to conduct the defence, the court shall forthwith appoint another counsel. The court may, however, also set a fresh date for the trial or suspend the proceedings.

(2) The provisions of paragraph (1) of this article shall apply likewise to counsel chosen under article 74 (1).

Article 140

CONFIRMATION BY THE COURT

The seizure of goods, the search of premises and orders for the arrest of persons shall be subject to confirmation by the court. This confirmation shall be applied for within forty-eight hours. The local court or the trial court [Prozessgericht] shall be competent to confirm these measures. If the court by a final decision withholds confirmation, any measures taken shall be rescinded within twenty-four hours.

Article 141

ARREST AND DETENTION PENDING INQUIRY

(1) An accused person may not be placed under detention pending inquiry unless there is seriously incriminating evidence against him, and unless either he is suspected of trying to escape or the inquiry would be hampered if he were not detained.

Article 142

ORDER OF ARREST

(1) Every arrest shall be carried out by virtue of an order of arrest issued in writing by a judge.

(2) The order shall correctly state the name of the accused and the reason for the arrest.

(3) The order of arrest shall be served on the accused. The accused shall acknowledge in writing that the order has been served on him and state the date and time when it was served, and this acknowledgement shall constitute one of the documents in the case.

Article 143

NOTIFICATION OF RELATIVES

At the request of the person arrested, relatives and, in so far as he has a material interest in so requesting, other persons shall be notified of the arrest by the public prosecutor within twenty-four hours after the first judicial examination of the accused.

Article 144

JUDICIAL EXAMINATION

(1) Any person arrested under an order of arrest shall be brought before the competent court not later than on the day after his arrest.

(2) At his examination the accused shall be informed of the reason for his arrest. At this examination he

shall be given an opportunity to remove the suspicion and to produce exonerating evidence.

Article 145

INSTRUCTION CONCERNING REMEDIES

When the order of arrest is served on the accused, he shall be instructed that he may enter a formal protest against the said order.

Article 153

JUDICIAL EXAMINATION

(1) Any person placed under arrest shall, unless he is released immediately, be brought by the public prosecutor before the local court competent for the locality in which he was arrested or in which the inquiry is being conducted. He shall be examined not later than on the day following that on which he was first brought before the court.

(2) If the court rules that a person has been wrongfully arrested or that the grounds for his arrest have ceased to exist, it shall order his release. In all other cases, it shall issue an order of arrest or a judicial order of internment.

Article 212

QUESTIONING OF THE DEFENDANT

After all the witnesses, experts or co-defendants have been examined, and after all written evidence has been read out, the defendant shall be asked if he wishes to make a statement.

Article 213

CONCLUDING STATEMENTS

(1) After the taking of evidence has been completed, the public prosecutor and the defendant or his counsel shall be given an opportunity to present their arguments and submissions.

(2) Every defendant, whether represented by counsel or not, shall be asked if he wishes to make a further statement in his own defence.

Article 221

The court shall discharge the defendant if either:

1. It has been determined that the facts as determined constitute neither a serious nor a petty offence; or

2. It has been proved that the serious or petty offence was not committed by the defendant; or

3. It has not been proved that the defendant committed the serious or petty offence; or

4. The statutory conditions required for a prosecution are not present.

Article 240

DEFENCE

Counsel shall be appointed to defend any person tried *in absentia.*

Article 277

PROHIBITION OF INCREASE OF PENALTY

(1) If an appeal has been lodged against a judgement only by the defendant or his legal representative or by the public prosecutor on the defendant's behalf, a heavier sentence may not be passed unless it is mandatory by statute to impose an additional penalty.

Article 339

(1) The execution of the penalty may be postponed upon the application of the person convicted if the immediate execution of the penalty would expose that person or his family to grave prejudice not intended by the sentence.

DECREE TO PROTECT THE RIGHTS OF GAINFULLY OCCUPIED PERSONS AND TO REGULATE THE REMUNERATION OF WAGE-EARNING AND SALARIED EMPLOYEES[1]

of 20 May 1952

PAYMENT OF OVERTIME

Art. 3. (1) All work performed in excess of the eight-hour day, or in excess of the daily period of work agreed upon in a particular undertaking, shall be regarded as overtime, and a supplement of 25 per cent of the time rate, basic output rate or basic piece rate shall be payable in respect of such overtime, except in so far as a different supplementary percentage is payable for overtime by virtue of existing provisions.

[1]German text in *Official Gazette* of the Democratic Republic of Germany, No. 64 of 1952, p. 377. English translation from the German text by the United Nations Secretariat.

Remuneration on Legal Holidays

Art. 5. (1) If a legal holiday falls on a weekday, the working time lost shall be paid for at time or basic salary rates.

(2) [Paragraph 2 specifies what days are to be considered legal holidays.]

(5) For work performed on legal holidays, a supplement of 100 per cent of the time or basic salary rate, or of the basic output or piece rate, shall be payable.

Supplementary Pay for Night Work

Art. 7. (2) A supplement of 10 per cent shall be payable for regular night work (scheduled or shift work), except in so far as a different supplementary percentage has been agreed upon in the collective or wage-rate agreements relating to the branch of industry concerned.

Supplementary Pay for Heavy, Dangerous or Unhealthy Work

Art. 10. (1) A special supplement shall be payable to wage-earning and salaried employees in undertakings where heavy, dangerous or unhealthy work is carried on regularly or occasionally. This special supplement shall be payable only to those directly employed on such work and only for so long as the particular conditions prevail.

(2) The supplement may be expressed as a percentage, varying according to the nature of the special conditions, and usually amounting to not more than 15 per cent, of the time rate, basic output rate or basic piece rate.

Duties and Remuneration in the Case of Interruption of Work in an Undertaking

Art. 12. (1) In the case of interruption of work in an undertaking, the wage-earning and salaried employees are under a duty to perform whatever other work they may reasonably be asked to perform.

(2) If no work can be assigned to workers during the interruption, they shall receive 90 per cent of the time rate applicable to their wage group for the duration of the interruption.

Remuneration for Work in Different Wage or Salary Groups

Art. 13. (1) Workers who temporarily perform work in a higher wage group shall receive, for the duration of such work, the remuneration applicable to the higher wage group.

Art. 19. (1) If a pregnant woman should be unable to continue to perform her usual work (and her inability is evidenced by an official medical certificate), and if no work of equivalent skill and pay is available, she shall be employed on light duties in the same undertaking or administration at her average rate of pay for the preceding three months.

(2) If a nursing mother should be unable to continue to perform her usual work (and her inability is evidenced by an official medical certificate), and no work of equivalent skill and pay is available, she shall, for so long as she is nursing her child, be employed on lighter duties in the same undertaking or administration at her average rate of pay for the preceding three months.

Remuneration in the Case of Industrial Accidents

Art. 26. (1) Incapacity for work caused by an industrial accident within the meaning of the social insurance regulations or by a recognized occupational disease must, pursuant to the social insurance regulations, be evidenced by a medical certificate. A wage-earning or salaried employee who is incapacitated shall be entitled to receive, as from the first day of his incapacity, the difference between the social insurance sickness benefits and 90 per cent of his net earnings.

(5) The difference between the sickness benefits and the net earnings shall be payable until the employee is able to resume work or until the commencement of invalidity.

Remuneration during Illness

Art. 27. (1) Incapacity for work caused by illness must, pursuant to the social insurance regulations, be evidenced by a medical certificate. A wage-earning or salaried employee who is incapacitated shall be entitled to receive, as from the first day of his incapacity, sickness benefits from the social insurance funds and the difference between the social insurance sickness benefits and 90 per cent of his net earnings from the undertaking.

Art. 29. An apprentice who is incapacitated for work by reason of illness shall receive from the undertaking for a period not exceeding twelve weeks per calendar year compensation amounting to the difference between the sickness benefits paid by the social insurance funds and 100 per cent of his net earnings. In the case of incapacity due to an industrial accident or to an occupational disease which is caused by productive activity, the undertaking shall pay the difference until the apprentice is able to resume work or until the commencement of invalidity.

REMUNERATION IN CASES WHERE A PERSON PERFORMS POLITICAL FUNCTIONS OR THE DUTIES ATTACHING TO A PUBLIC OFFICE DURING WORKING HOURS

Art. 32. Every wage-earning and salaried employee shall be allowed the free time necessary for the performance of important political functions (e.g., as a member of the People's Chamber or a *Land* chamber, of a *Land* diet or county council [Kreistag] or of a communal representative body). Such free time shall be paid for at a rate which shall be the average of his earnings during the last preceding wage or salary period.

FREE TIME FOR ATTENDING TO PERSONAL AFFAIRS

Art. 33. (1) Free time payable at time or basic salary rates shall be allowed as follows to every wage-earning and salaried employee for the purpose of attending to his personal or family affairs:

1. On the occasion of his own marriage, one working day;

2. On the occasion of his wife's confinement, one working day;

3. On the occasion of the death and burial of the spouse, or of a parent, child or member of the family forming part of the household, two working days;

4. On the occasion of a change of residence involving the employee's own household, provided that reason for the change is a permanent transfer of the employee or a long-term assignment or that the change is in the interests of the undertaking,

(*a*) If the change is from one residence to another in the same locality, one working day;

(*b*) If the change involves a removal to a different locality, two working days.

DAY FOR DOMESTIC DUTIES GRANTABLE TO FEMALE WAGE-EARNING AND SALARIED EMPLOYEES

Art. 34. (1) Female wage-earning and salaried employees who run their own homes shall be granted one free day a month, payable at the time or basic salary rates, provided that one or more of the following conditions are fulfilled—that is to say if:

1. The husband is fully employed, ill or permanently incapacitated;

2. Any members of the family living in the home require nursing, the need for nursing to be evidenced by a medical certificate;

3. The household includes children;

4. The household includes young persons under the age of sixteen years living with their mother and either continuing their education or working under a contract of employment.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1952[1]

A SURVEY OF INTERNATIONAL AGREEMENTS, FEDERAL AND *LAND* LEGISLATION AND JUDICIAL DECISIONS

CONTENTS

I. INTERNATIONAL AGREEMENTS

A. MAJOR AGREEMENTS

Four major agreements to which the Federal Republic of Germany is a party, contain provisions relating to the protection of human rights:

1. *Convention on Relations between the Three Powers and the Federal Republic of Germany*

The Convention was signed at Bonn on 26 May 1952 by the Federal Republic of Germany on the one hand and the United States, the United Kingdom and France on the other. Under the Convention, the Federal Republic regains full authority over its internal affairs except as otherwise provided; the Occupation Statute hitherto in force in Germany ceases to have effect, the most important consequence being that the protection of personal freedom in relations with the Occupying Powers, previously guaranteed by the *habeas corpus* clause of the Occupation Statute[2] is superseded by the materially and formally more comprehensive protection of the basic rights section of the Bonn Basic Law[3] whose protective organs are thus permitted to exercise their full powers.

Although the Convention has not yet come into force, its signature does impose a moral obligation on the Occupying Powers to conform to the new

[1] This report was prepared by Dr. Karl Josef Partsch, *Privatdozent* in the University of Bonn, *Legationsrat* in the Foreign Office of the Federal Republic of Germany. English translation from the German text by the United Nations Secretariat.

Abbreviations

BGBl.	*Bundesgesetzblatt*
BGHZ	*Entscheidungen des Bundesgerichtshofs in Zivilsachen* (Civil Law Decisions of the Federal Court of Justice)
DÖV	*Die öffentliche Verwaltung* (Public Administration)
DVBl.	*Deutsches Verwaltungsblatt* (German Journal of Administration)
Entscheidungen	*Entscheidungen des Bundesverfassungsgerichts* (Decisions of the Federal Constitutional Court)
GVBl.	*Gesetz- und Verordnungsblatt (der Länder)* Journal of Laws and Orders (of the *Länder*)
JZ.	*Juristenzeitung*
MDR.	*Monatsschrift für deutsches Recht*
NJW.	*Neue Juristische Wochenschrift*

[2] See section 6 of that Statute in *Yearbook on Human Rights for 1949*, p. 79.

[3] *Ibid.*, pp. 79–81.

law in the exercise of their authority over individuals, or to keep its provisions in mind.

2. *Treaty constituting the European Defence Community*

The treaty was signed in Paris on 27 May 1952. Article 3, paragraph 1,[1] of the Treaty recognizes the public liberties and fundamental rights of the individual and states that the new community shall not infringe these rights.

3. *Treaty constituting the European Coal and Steel Community*

The treaty came into force on 23 July 1952[2] (see the Act of 29 April 1952, *BGBl.*, II, p. 445, and the proclamation of 14 October 1952, *BGBl.*, II, p. 978). This treaty represents an advance in the protection of basic social and economic rights in a particular field. It requires Member States to recognize the freedom of movement of coal and steel workers throughout the territory covered by the Treaty. Nationality may not be made a condition of employment except where basic considerations of health or public order otherwise require (article 69).

The treaty provides that the methods of fixing wages and social benefits in the coal and steel industries in force in the various Member States shall not be affected. However, the High Authority is empowered in exceptional cases to recommend the raising of wages and may enforce its recommendation by imposing fines and daily penalty payments on individual enterprises.

Member States are required to prohibit any discrimination in remuneration and working conditions between national workers and immigrant workers and to ensure that social security measures do not stand in the way of the movement of labour (article 69).

4. *Convention for the Protection of Human Rights and Fundamental Freedoms* of 4 November 1950[3]

The Convention was ratified by the Federal Republic of Germany on 5 December 1952 (see the ratification Act of 7 August 1952, *BGBl.*, II, p. 685). The Federal Republic thereby declared its acceptance of the minimum standard of basic rights adopted by the members of the Council of Europe. The ratification contained a reservation with regard to article 7 of the Convention since the Federal Republic could not agree to the weakening of the prohibition of retroactive criminal legislation. The practical effects of the Convention on positive German law are slight since in most cases the existing internal legislation of the Federal Republic gives a greater degree of protection than the minimum standard established by the European Declaration. A comparative study of the provisions of the Convention and those of the Basic Law made by the Foreign Affairs Sub-Committee of the *Bundestag* (Proceedings of the German *Bundestag*, First session, Annex I to the Verbatim Record of the 217th meeting of May 1952) showed only relatively slight differences for example in the matter of court procedure. Thus, under article 5 of the Convention, a person who has been arrested must automatically be provided with an interpreter immediately on arrest, whereas this right had previously existed only from the time when the accused was brought to trial. The main importance of this convention to the Federal Republic is that it is an international commitment which gives an additional guarantee of a minimum standard of rights.

B. Individual Measures

The transition from wartime to peacetime law, together with the progressive development of the international community, has resulted in a number of international agreements relating to the protection of human rights.

1. *Right to Regular Process of Law*

This right cannot be guaranteed by national legislation alone. In view of the individual's many relations with persons and companies in other countries, provision must be made for him to assert his claims there. In this connexion it may be noted that, in the year under review, the Federal Republic of Germany revived the Hague Convention relating to Civil Procedure, as far as Belgium and Italy are concerned (see the proclamations of 25 August 1952, *BGBl.*, II, p. 728, and 23 December 1952, *BGBl.*, II, p. 986).

2. *Secrecy of Telecommunications*

The secrecy of telecommunications is already guaranteed by article 10 of the Basic Law. This right may be infringed only on the basis of a law. By its accession to the Atlantic City International Telecommunication Convention, 1947 (see the Act of 29 January 1952, *BGBl.*, II, p. 341) the Federal Republic accepted the additional obligation "to take all possible measures, compatible with the system of telecommunication used, with a view to ensuring the secrecy of international correspondence" (Convention, article 32).[4]

3. *Freedom of Movement*

Freedom of movement within the Federal Republic has now been entirely restored following the relaxation of the restrictions necessitated by the housing shortage. The restrictions on travel to other countries, however, remain more severe than those normally governing travel between States. It is therefore noteworthy that agreements with Austria and Spain

[1] See p. 413 of this *Yearbook*.

[2] See the relevant articles on p. 412 of this *Yearbook*.

[3] See *Yearbook on Human Rights for 1950*, p. 418 and pp. 409–411 of this *Yearbook*.

[4] See *Yearbook on Human Rights for 1948*, p. 417.

to facilitate the exchange of workers were ratified by the Federal Republic in 1952 (see the Acts of 29 July 1952, *BGBl.*, II, p. 609, and 13 September 1952, *BGBl.*, II, p. 701). An agreement with Belgium on frontier workers was signed on 18 January 1952 (see Act of 21 August 1952, *BGBl.*, II, p. 704), and on 1 February 1952 an agreement was concluded, in the first instance for the year 1952, concerning passenger and goods traffic travelling by road (see the Act of 29 July 1952, *BGBl.*, II, p. 437) with the object of facilitating tourist and ordinary passenger and goods traffic.

4. *Property*

Slow progress is being made in the restoration of protection to the property rights of German citizens in the countries which were at war with Germany, where such protection was either suspended or withdrawn and much German property was seized as reparations. The termination of the state of war with these countries means that protection for the newly acquired property of German citizens is restored, but Switzerland is the only country with which it has been possible to reach an agreement on the restoration of protection for pre-war German property (see the agreement of 26 August 1952 and the ratification Act of 7 March 1953, *BGBl.*, II, p. 15).

Agreements for the protection of industrial property were negotiated as part of trade agreements with a number of countries in order to meet the special circumstances affecting this kind of property following the restoration of protection to German property in general. An agreement with Peru came into force on 14 June 1952 (*BGBl.*, II, p. 634) and ratifications of the agreements with Greece of 12 February 1951 and with Egypt of 21 April 1951 were published on 21 April 1952 (*BGBl.*, II, p. 517) and 24 April 1952 respectively (*BGBl.*, II, p. 525). A special agreement on the protection of industrial property was made with Italy (see Act of 13 March 1952, *BGBl.*, II, p. 436), whilst the question was also satisfactorily settled with Austria (see the Act of 5 December 1952, *BGBl.*, II, p. 975).

5. *Social Security*

A number of earlier International Labour Organisation agreements on social and humanitarian questions were reinstated in respect of countries with which Germany had been at war (see the notification of 5 June 1952, *BGBl.*, II, p. 607). A general convention between France and the Federal Republic of Germany respecting social security was signed in Paris on 10 July 1950 (see Act of 18 October 1951, *BGBl.*, II, p. 177) and came into force on 1 January 1952 (*BGBl.*, 1952, II, p. 437), whilst the agreements with Austria on social security of 21 April 1951 (see Act of 7 January 1952, *BGBl.*, II, p. 317) and unemployment insurance of 19 May 1951 (see Act of 28 July 1952, *BGBl.*, II, p. 612) were ratified by the legislative bodies.

6. *Right to Health*

With regard to health, the International Convention of 25 July 1934 for mutual protection against dengue fever, signed by Denmark, Egypt, France, Greece, Turkey, the Union of South Africa and Yugoslavia, was reinstated with effect from 1 May 1952 (Act of 13 September 1952, *BGBl.*, II, p. 953).

II. FEDERAL AND *LAND* LEGISLATION AND JUDICIAL DECISIONS

A. General

The enactment in the past years of the Basic Law and the *Land* Constitutions and the establishment of constitutional bodies for the protection of human rights in the Federal Republic laid the foundations for a national system based on respect for human dignity. In the year under review, therefore, the main developments were concerned with the completion of the structure, the main part of which already existed, and the practical exercise by the new bodies of their prospective functions.

1. *The Hamburg Constitution*

The final Constitution adopted by the Free Hanseatic Town of Hamburg on 6 June 1952 (Hamburg *GVBl.*, p. 117) was a measure of this kind. In common with the constitutions of other North German *Länder*, it does not re-state fundamental rights already guaranteed by the Basic Law, although the preamble (paragraph 5) contains the statement of principle that in order to achieve political, social and economic equality the ideas of political and economic democracy are linked together. Hamburg is declared to be "a democratic and social State based on the rule of law" (article 3). The Constitution makes no attempt to formulate the economic and social basic rights of the welfare State, and is almost completely confined to organizational provisions. Article 61 is important from the point of view of the protection of basic rights: "If any person considers that he has been injured by the public authorities in respect of his rights he may obtain redress through the administrative courts if no other legal remedy is available to him." In accordance with an old Hamburg tradition—which differs from federal law and the laws of the other German *Länder*—the administrative tribunals, and not the ordinary courts, have jurisdiction where no special remedy is provided.

2. *Development of the System of Protection*

(a) *The Federal Administrative Court*

The comprehensive system of protection built up in recent years through the introduction of the general clause in administrative law and the right to lodge a constitutional complaint with the federal constitutional court (in accordance with articles 90 to 96 of the Act concerning the federal constitutional court,

of 12 March 1951[1]) (*BGBl.*, I, p. 243) has now been further developed by the establishment of the Federal Administrative Court in Berlin (Act of 23 September 1952, *BGBl.*, I, p. 625). The new court is principally a reviewing body for the administrative courts in the *Länder*, and co-ordinates their decisions, which are concerned, among other matters, with violations by administrative bodies of the basic rights of the individual. This court will adjudicate constitutional complaints before they pass from administrative courts to the Federal Constitutional Court. This is expected to result in a reduction in the number of cases brought before the Constitutional Court, which is urgently necessary in order to ensure the effective protection of rights. In the year under review alone, 825 constitutional complaints were lodged with the Federal Constitutional Court.

(b) *Constitutional protection*

The combination of the *Länder* of Württemberg-Baden, Württemberg-Hohenzollern and Baden in the new *Land* of Baden-Württemberg necessitated certain changes in the machinery of the offices for the protection of the Constitution in the Federation and in the *Länder*. An order of 10 November 1952 (*Gesetzblatt für Baden-Württemberg*, p. 49) established a *Land* office in Stuttgart for the protection of the Constitution. Like the other offices for the protection of the Constitution, it is responsible for keeping under observation any activities directed towards the suspension, alteration or disturbance of the constitutional order or the placing of illegal restrictions or members of federal or *Land* constitutional bodies in the execution of their duties; it is required to collect and evaluate evidence of such activites and to report to the *Land* government, the Ministry of the Interior and the Federal Office for Constitutional Protection. It has no police or supervisory functions, and may not be organized as part of a police department, although it may call in the police through normal channels.

(c) *Disciplinary code for civil servants*

As civil servants accept certain limitations on their basic rights when they enter the service, the existence of a constitutional disciplinary code is particularly important. The former regulations were purged of all vestiges of national socialism in 1950, and the disciplinary rules for civil servants have been thoroughly overhauled with the introduction of the Federal Code of Discipline of 28 November 1952 (*BGBl.*, I, p. 761). The Code establishes a number of new penalties, chiefly financial. In addition, an official now has the right to request that official disciplinary proceedings be taken against himself so that charges made against him may be investigated.

[1] See *Yearbook on Human Rights for 1951*, pp. 106-107.

3. *Material Principles*

As the approval of the Occupation Authorities given on 12 May 1949 contained a reservation regarding the application of the Basic Law in Berlin, it was doubtful whether the basic rights part of the Basic Law was applicable in that city. In a decision of 25 October 1951 (*Entscheidungen*, vol. 1, p. 70) concerning a constitutional complaint against the judgement of a Berlin court, the Federal Constitutional Court removed this doubt. Following a statement by Federal Chancellor Adenauer at the thirteenth meeting of the *Bundestag* on 21 October 1949 (verbatim record, p. 309), the court concluded that the object of the reservation expressed by the military governors was "to postpone the direct organizational incorporation of Berlin into the West German Federal Republic in view of the continued international tension"... "Berlin is not to be administered by the Federation; nor are the powers of organs of the Federation to be exercised in Berlin. This consideration is, however, no justification for withholding the extension of the basic rights part of the Bonn Basic Law to Berlin since the protection of the individual provided by that Law is not dependent upon, and will not occasion, the direct organizational incorporation of Berlin in the West German Federal Republic."

In an opinion of 28 April 1952 (*DVBl.*, 1953, 471), the Federal Court stated the principle that any restriction of the essential validity and exercise of a basic right beyond what is urgently and absolutely necessitated by the grounds on which interference with the right is based constitutes a violation of the substance of the right. Such interference must therefore be justified by the most compelling necessity and be as closely circumscribed as circumstances will permit, whilst the guiding principle of leaving the basic right as far as possible unimpaired must be strictly observed.

A much disputed decision of the Stuttgart Administrative Court of 18 February 1952 (*NJW*, 52, 440) stated that interference with basic rights is permissible even on grounds of custom, including the customary general powers of the police to terminate potentially dangerous situations. In so doing, the authorities must not, however, impair the substance of basic rights.

B. Civil and Political Rights

1. *Right to the Development of Personality*

The Basic Law provides that everyone has the right to the free development of his personality, in so far as he does not infringe upon the rights of others or offend against the constitutional order or the moral code (article 2, para. 1). In previous years, there have been many judicial decisions concerned with the extent and limits of this right (see the

commentary by A. Hamann on the judicial interpretation of articles 2 and 3 of the Bonn Basic Law, *DÖV*, 1952, p. 132) and in the year under review various superior courts gave decisions resisting the attempt to extend this right indefinitely. Thus, the Hamburg Higher Administrative Court decided on 15 June 1952 that the right did not cover socially harmful or undesirable conduct (*DVBl.*, 1953, p. 405). On the other hand, an opinion of the Federal Court of Justice of 28 April 1952 (*DVBl.*, 1953, p. 471) rejected any undue limitation of the right. Where the Basic Law defined the right as being limited by the rights of others, constitutional order and the moral code, the expression "constitutional order" meant merely the fundamental principles of the Constitution and the general rules of international law; the "rights of others" could only be interpreted to mean those of particular persons entitled to rights and could not include general public interests. Further, the general right to the free development of personality, "one of the least definite of all the basic rights", could not be regarded as "the foundation of the other personal basic rights of the Basic Law". The limits of those rights were not congruent with those of the general right to the free development of personality, but were defined independently, in the provisions relevant to them. By this decision, the Federal Court resisted the attempts made on various occasions to restrict the individual basic rights set forth in the first section of the Basic Law to even narrower limits than those permitted by the Constitution. For example, the *Land* Administrative Court of Rhineland Palatinate (decision of 29 May 1952, *DÖV*, 1952, p. 664) sought to limit the right of free expression of opinion beyond the bounds set in article 5(2) in order to justify the banning of the film *Die Sünderin*, which was alleged to be morally undesirable.

2. *Personal Freedom*

(a) *Court decisions*

In a decision of 13 June 1952 (*Entscheidungen*, 1, p. 332) the Federal Constitutional Court held that the execution in the Federal Republic of a sentence imposed in the Soviet zone was not permissible if a basic right guaranteed in the Basic Law was thereby infringed. The question of whether such infringement existed must be determined by the executing authority, from whose decision the convicted person could appeal to a court.

Like many of the other *Länder*, Hesse adopted an act in 1946 which, without prejudice to the general provisions regarding the barring of criminal procedures by lapse of time, permitted the prosecution of crimes and offences which, for political reasons, had not been prosecuted under the National Socialist regime. On 18 September 1952, the Federal Constitutional Court (*Entscheidungen*, 1, p. 418) decided that a sentence of deprivation of liberty could be imposed under this Act. The court, being competent to consider the question of constitutionality, decided that the Act was constitutional and held that the measure, which was designed merely to restore justice, was not arbitrary.

(b) *Action by administrative authorities*

I. *Action in respect of persons of unsound mind.* Under the Basic Law (article 104(2)) which provides that the police may not, on their own authority, hold any person in its own custody beyond the end of the day following the arrest, and that only a judge is entitled to decide on the extension of a deprivation of liberty, the police are deprived of the right to commit dangerous lunatics to an institution. The *Länder* of Hamburg, Lower Saxony and Baden have already enacted legislation determining the judges competent to take such decisions, but in the other *Länder* the matter has not been regulated by law. Some courts accordingly held that the provision of the Basic Law in question was not yet enforceable. Most of them, however, had decided otherwise, and there was no agreement as to which courts were competent to decide on the detention of persons of unsound mind. The Federal Court, in a decision of 4 February 1952 (*BGHZ*, 5, 46), upheld the provisions of the Basic Law and declared that the ordinary courts were competent to decide in such cases by the procedure of voluntary jurisdiction, "which is intrinsically most suitable, and in accordance with which similar matters are decided". Shortly afterwards, legislation was enacted by the *Länder* of Württemberg-Hohenzollern (26 February 1952, *Regierungsblatt*, p. 12), Bavaria (30 April 1952, *GVBl.*, p. 163, and proclamation of 18 September 1952, *GVBl.*, p. 268), Hesse (19 April 1952, *GVBl.*, p. 111), and Berlin (24 July 1952, *GVBl.*, p. 630, and regulations of 28 October 1952, *GVBl.*, p. 976). In North Rhine-Westphalia a ministerial order of 26 April 1952 (*Ministerialblatt*, edition A, p. 439) provides that the administrative courts are competent to confirm orders for commital.

The Freiburg Administrative Court (decision of 4 April 1952, *NJW*, 1952, p. 1069) held that a judicial decision under article 104(2) of the Basic Law was enforceable immediately in favour of the person concerned, and that no further administrative act was required for the release of a person wrongfully detained as being of unsound mind.

If persons were detained in medical institutions without judicial authority, the doctors of such an institution could not enter a plea of necessity in justification (*Land* High Court, Celle, 17 October 1952, *Niedersächsische Rechtspflege*, 1953, p. 12).

II. *Vaccination and the control of venereal disease.* On 27 February 1952, the Lüneburg Administrative High Court (*DVBl.*, 1952, p. 569) rejected the contention that the Act of Lower Saxony of 28 to 31 March

1949 (*GVBl.*, p. 100) regarding the control of venereal disease, which provides for the compulsory treatment of venereal disease, constitutes an excessive restriction of the freedom of the person.

A similar decision was given by the Federal Court with reference to the Vaccination Act of 1874. The court took into consideration the danger to the community of smallpox epidemics and the extent of the impairment of the right. The Act complained of impaired the physical inviolability of the individual to the smallest possible extent in the circumstances, and was intended, by a fully justified medical operation affecting the physical inviolability of the individual, to eliminate the possibility of much greater harm being done to the individual and the community at large by epidemic disease (opinion of 25 January 1952, *DÖV*, 1953).

3. *Right to Regular Process of Law*

(a) *Occupation law*

The criminal procedure of the United States Military Government in Germany has been improved in one important respect. German criminal procedure attaches considerably less importance than American law to the statement of an accused person, so that Germans did not appreciate what the consequences of a statement might be. Previously, a United States court had merely to satisfy itself that the accused understood the significance of the statement and was not under the duty of explaining its significance to him. Under United States High Commission law No. 28, of 3 January 1952 (*Official Gazette*, p. 1406), the court is required to do so, and the accused is also given the right to repudiate his statement up to the time of sentence.

The German courts are not required to decide on the content, validity or purpose of orders issued by the occupation authorities or military forces, since these matters are reserved to the Allied High Commission. This Commission passed a law (No. 71, *Official Gazette*, p. 1399) on 10 January 1952 confirming that this limitation of German jurisdiction still applies, whether or not the order of the occupation authorities or armed forces concerns matters which are their special province under the terms of the Occupation Statute.

(b) *Fair trial*

The deliberate use of arbitrary power by a body appointed to exercise the authority of the State, as a result of which a citizen is compelled to flee the country, and the subsequent trial of the fugitive *in absentia* by an organ of that State authority, represent a violation of the principle that everyone has the right to a fair trial (Federal Constitutional Court, judgement of 13 June 1952, *Entscheidungen*, 1, p. 332).

(c) Ne bis in idem

The Federal Court held on 19 December 1952 that the principle, "*ne bis in idem*", was violated when proceedings on a charge of aggravated robbery were instituted against a person who had been sentenced by a forestry court to a small fine for the same offence (Penal Chamber) *NJW*, 1953, p. 393.

4. *Equality before the Law*

(a) *Measures of reparation*

Further measures were taken during the year under review for the reparation of discriminatory measures during the National Socialist period and to restore the equality of citizens subjected to such measures. Thus, the Act providing for the reparation of wrongs caused to members of the public service[1] was extended to persons who established their domicile or permanent residence, not later than 1949, in a foreign country with which the Federal Republic has diplomatic relations (Act of 18 March 1952, *BGBl.*, I, p. 137).

There has been considerable legislative activity in this field in all the *Länder* of the Federal Republic.

(b) *Interpretation of the principle of equality*

Article 3 of the Basic Law provides that all men are equal before the law and prohibits discrimination on various irrelevant grounds, which are enumerated. In earlier decisions, the Federal Constitutional Court, continuing the juridical practice of the concluding years of the Weimar regime, held that the principle of equality is binding on the legislator. Things which are essentially similar may not be treated differently; things which are essentially different may, however, be treated differently in a manner corresponding to the difference which exists. The court thus established that the principle of equality is violated if the reasons for the differential legislation do not arise from the nature of the case or from some clearly objective cause—i.e., when the differentiation must be regarded as arbitrary (judgement of 23 October 1951, *Entscheidungen*, 1, p. 14). In the year under review, the Federal Constitutional Court was called upon to define this principle more closely. It held that the principle of equality does not oblige the legislator in all circumstances to treat different things in a different manner. The decisive factor is whether the actual differences in any given connexion are of such importance when considered from the point of view of justice that the legislator must take them into account in his legislation (judgement of 30 April 1952, *Entscheidungen*, 1, p. 264).

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[1] See Note on the development of human rights in *Yearbook on Human Rights for 1951*, p. 104, No. 3.

5. *Free Expression of Opinion*

(a) *Film censorship*

The Administrative Court of the Rhineland Palatinate (judgement of 29 May 1952, *DÖV*, 1952, p. 664) considered that the prohibition of censorship in article 5, paragraph 1, sub-section 3, of the Basic Law referred merely to prior censorship and accordingly held that the banning of the film *Die Sünderin* by the police after they had seen the performance was legitimate. The court found the ban compatible with the general powers of the police, which it regarded as "general laws" within the meaning of the provisions limiting the free expression of opinion (article 5, paragraph 2) and the limitations of the right to free development of the personality among which the moral code is mentioned.[1]

(b) *Censorship of posters*

The Bavarian constitutional court (judgement of 18 February 1952, *DÖV*, 1952, p. 254), continuing the practice of the Weimar Republic, attached little importance to censorship. It upheld earlier police regulations requiring posters, leaflets and handbills to be produced to the police for inspection. "The free expression of opinion is limited by the general penal laws. It is the task of the police to prevent illegal actions. If, through the submission of posters, leaflets and handbills to the police, the latter are assisted in carrying out their constitutional duty to prevent crime, this is not a measure of censorship and does not violate the constitution."

(c) *Postal censorship*

The postal authorities cannot refuse to carry a packet, even if it is unsealed, on the grounds that it offends against morality (the packet in question was a magazine opposing prosecution of homosexuality). The right to express and disseminate opinions freely, guaranteed by article 5 of the Basic Law, precludes any such refusal. The legal guarantee implicit in this constitutional provision is wider than the corresponding provisions of the Weimar constitution (Hamburg, *Land* Administrative Tribunal, judgement of 23 June 1952, *MDR*, 1953, p. 125).

(d) *Limits in the use of boycott*

The youth organization of one of the major Hamburg political parties used its information service to advise against placing advertisements in a Communist Party newspaper; it asserted that the advertisers were rash and irresponsible, and even alleged that they wished to keep a foot in both the Communist and the anti-Communist camp. The organization stated that it was prepared to lead a fight to the finish against the newspaper. The Hanseatic High Court (judgement of 4 December 1951, *MDR*, 1952, p. 295) held that this was an incitement to boycott which was not covered by the right of the youth organization to express its opinion freely. The expression of opinion has limits which the youth organization had overstepped in its fight against its political opponents.

6. *Secrecy of the Postal Services*

The secrecy of the postal services is not violated through the fact that the postal administration instructs its servants to examine the contents of unsealed postal packages, which are not subject to the secrecy of the mail for such purposes as the exclusion of treasonable matter from the mails, provided that the outcome of such examinations is not communicated to any person outside the postal service (judgement of the Hamburg *Land* Administrative Court of 23 June 1952, *MDR*, 1953, p. 125).

7. *Freedom of Movement*

A Federal Office of Emigration was set up to investigate, consider and report its findings on applications for emigration and immigration (Act of 8 May 1952, *BGBl.*, I, p. 289).

Freedom of movement was restricted in respect of the island of Heligoland under an Act of 25 March 1952 (*BGBl.*, I, p. 197). Admission to the island, which was used as a bombing target for several years after the war, is subject to a special permit during the five-year period of reconstruction. An authorization is also required for a stay on the island. In pursuance of the provisions of the Basic Law, the Act specifies that the right to freedom of movement is restricted to the extent stated.

8. *Guarantee of Property*

(a) *Definition and scope*

"The guarantee and protection of property which have evolved historically on substantially similar lines and are still valid in a substantially similar form in the area of Western civilization are based on the following conflicting trends. The individual incorporated in the State requires a field of property ownership firmly secured by law in order to be able to live among his fellow men as a person—that is to say, as a free and responsible agent, and not to become the mere object of an all-powerful State; in other words, for the sake of his freedom and dignity. On the other hand, the State must also be able to interfere with the property rights of its citizens when the overriding interests of public policy so require. Moreover, the notions of property and property rights are not rigid as to their content but are subject, within certain limits, to change through historical evolution, especially in respect of the degree of social restraint to which they must submit. The conflict of forces outlined

[1] See the details under II A 3.

varies in acuteness according to historical developments." These are the words in which the Great Senate of the Federal Court of Justice (*BGHZ*, 6, p. 270) defined the nature of the guarantee of property in a fundamental ruling of 10 June 1952.

The occasion was a decision on the liability to furnish compensation arising from acts of the housing control authorities. From the fact that the State, both through legislation and through administrative measures, now interferes with all property rights of its citizens to a much greater extent than formerly, and at the same time permits expropriation on much less exacting conditions, the court concluded that it was now no longer possible, as it formerly had been, to rely on formal premises, and that not only real property, or property in moveable goods, but every property right of a citizen, regardless of whether it belonged to him under civil or under public law, required protection from State intervention. The Federal Court of Justice thereby extended the protection of property further than did the Federal Constitutional Court, which, in a judgement of 30 April 1952 (*Entscheidungen*, 1, p. 264), interpreted the notion of property in the light of civil law and denied protection to a legal status, such as the business of a master chimney-sweep, granted and determined predominantly by public law.

In its above-mentioned ruling of 10 June 1952, the Federal Court of Justice argued that it was immaterial whether an intervention took the form of the deprivation of a right or the imposition of an obligation, so long as it affected the individuals or groups concerned unequally in comparison with others and imposed on them sacrifices for the common good which were not imposed on those others. Expropriation in such circumstances was a violation of the principle of equality. In contrast to a substantive restriction of property affecting all alike, a special sacrifice enforced for the common good and not affecting all alike must, it was argued, create an obligation to furnish compensation.

On the basis of this fundamental argument, the Federal Court of Justice ruled that an obligation to furnish compensation was created not only in the case of a lawful, but also in the case of an unlawful intervention by a governmental agency (judgements of 16 October 1952, *BGHZ*, 7, p. 296, and 22 December 1952, *BGHZ*, 8, p. 256).

On the other hand, this interpretation of the legal properties protected by the property guarantee led the Federal Court of Justice to deny any obligation to furnish compensation for deprivation of property in connexion with war operations where the compensation claims concerned had been converted into an indemnity claim of a special kind by the *Equalization of Burdens Tax Act* of 14 August 1952 (*BGBl.*, I, p. 446; see also the observations under C1(a)) (judgement of 22 December 1952, *BGHZ*, 8, p. 256).

(b) *Socialization*

Under article 41 of the Constitution of Hesse, coal, potash and ore mines, iron and steel plants, power plants and certain transport undertakings are transferred to public ownership. The Court of Justice of the State of Hesse has held that public property, property of the State or the municipality, is not affected by the provision. Where socialization is applicable, however, the property is withdrawn from its previous owners with immediate effect (judgement of 4 April 1952, *DÖV*, 1952, p. 564).

9. *Freedom of Trade or Occupation*

No one may practise a manual trade independently without having acquired the skill for it and having proved his reliability by serving an apprenticeship, spending a period as a journeyman and passing a master's examination—the so-called major certificate of qualification (grosser Befähigungsnachweis). The German courts have in recent years frequently considered whether this system is compatible with the freedom of trade or occupation stipulated by article 12 of the Basic Law. The judicial decisions show that a strong attachment to order and security stands in the way of the realization of the principle of freedom laid down in the Constitution. In an opinion of 28 April 1952 (*DVBl.*, 1953, p. 471) furnished to the Federal Constitutional Court by the First Civil Senate of the Federal Court of Justice, the view is upheld that the major certificate of qualification may be required only in such manual trades—the building trades, for example—the exercise of which has been shown by experience to expose the public to special hazards. Such a hazard cannot be presumed in respect of all manual trades. After reviewing the historical background in Germany, the court held: "The manual trades' campaign for the introduction of the major certificate of qualification is being conducted, in the main, from motives of professional policy with a view to preserving the viability of the manual trades in the face of the keen competition of the large-scale mass-production industries. This does not—even where the professional interests of the manual trades coincide with the community's interest in maintaining the efficiency of those trades—justify the requirement of the major certificate of qualifications even in such manual trades as neither constitute a hazard to public safety nor pre-suppose a qualifying examination by virtue of the historical evolution of the trade." This view has, admittedly, not yet gained universal acceptance. Thus the Bavarian Constitutional Court (decision of 9 May 1952, *Amtl. Sammlung*, vol. 68, p. 119) has held that statutory restrictions on the freedom of trade or profession are permissible not merely on grounds of public safety, decency, health and welfare, but in fact quite generally.

10. *Freedom of Association*

(a) *Federal Administrative Court*

In the Federal Administrative Court set up in Berlin on 23 September 1952[1] an agency has been created with the function of deciding what "associations, the objects or activities of which conflict with the criminal laws or which are directed against the constitutional order or the concept of international understanding" are prohibited (Basic Law, article 9). No judgements have been issued in the year under review.

(b) *Prohibition of political parties*

On 23 October 1952 (*Entscheidungen*, 2, pp. 1–79), the Federal Constitutional Court for the first time gave a decision concerning the unconstitutionality of a political party. The party in question was the *Sozialistische Reichspartei*, a right-wing radical group. In the decision, the court established a number of important principles governing the prohibition of political parties. The provisions of the Basic Law stating that the parties participate in moulding the political will of people and that they may be freely founded[2] constitute not merely a programme, but directly applicable law. The same holds good of the requirement that their internal organization must conform to democratic principles. This principle embodies a prohibition restraining the parties from organizing themselves in a manner fundamentally at variance with democratic principles, as is the case, for example, when their dissolution is placed within the free discretion of an authoritarian leadership consisting of a few party officers. These democratic principles, which are also described as the "libertarian democratic basic order" (Basic Law, article 21), are defined as "an order which, to the exclusion of any form of violence and arbitrary rule, constitutes an order of State rule by law based on the self-determination of the people according to the will of the majority and the principles of freedom and equality. This order must, as a minimum requirement, be based on the following fundamental principles: respect for the human rights specified in the Basic Law, especially the right to life and to the free development of the personality, the sovereignty of the people, the division of powers, the responsibility of the Government, the obedience of the administration to the law, the independence of the courts, the multiple-party system and the equality of opportunity for all political parties, including the right to the constitutional formation and exercise of an opposition". A party may be prohibited if the organization of its internal structure departs so far from democratic principles as to be explicable only as the expression of a fundamentally anti-democratic attitude, especially if this attitude of the party is also confirmed by other circumstances. The parliamentary mandates of the party's parliamentary representatives lapse when the party is found to be unconstitutional.

(c) *Compulsory association*

The *Land* High Court of Hamburg ruled on 18 April 1952 (*NJW*, 1952, p. 943) that the compulsory membership of lawyers in the *Rechtsanwaltskammern* (Chambers of Lawyers) did not conflict with the principle of freedom of association.

11. *Freedom of Assembly*

So long as a party has not been declared unconstitutional by the Federal Constitutional Court, any general prohibition of assembly not providing for the consideration of each case on its merits is incompatible with the principle of the reasonableness of police intervention (Stuttgart Administrative Court, judgement of 18 February 1952, *NJW*, 1952, p. 440).

The District Court of Hamburg has reviewed the provisions of the road traffic regulations relating to organized events on public thoroughfares in the light of the principle of freedom of assembly and has ruled that it is incompatible with that principle to require the procurement of a police authorization for organized events merely because the public thoroughfares would, through such events, be utilized to a greater extent than in the normal course of traffic (judgement of 7 February 1952, *DVBl.*, 1952, p. 314).

12. *Right to Free Elections*

In order to enable the United Nations Commission to Investigate Conditions for Free Elections in Germany to do its work, its members and staff were accorded diplomatic privileges and immunities, and special penal provisions were enacted to protect the members and the General Secretary from assault (Act of 4 April 1952, *BGBl.*, I, p. 228).

In connexion with the negotiations between the Western Powers and the Soviet Union, the German *Bundestag* adopted on 6 February 1952 the draft of an Act concerning the principles for the free election of a Constituent German National Assembly. This draft is reproduced in Annex I.

C. Basic social and economic rights

Preliminary note

The basic social and economic rights are made effective by legislation. German law thus follows the same system as has been proposed in the drafts of the United Nations Commission on Human Rights. The individual has no right, enforceable by judicial proceedings, to general maintenance. Thus, in the case of the widow of a serviceman killed in the war who claimed, through a constitutional complaint, an increase in her statutory maintenance allowance, the Federal Constitutional Court, in a decision of

[1] See pp. 85–86 above.

[2] Art. 21 of the Basic Law.

19 December 1951 (*Entscheidungen*, 1, p. 97), held as follows:

"The basic rights have evolved from the rights of freedom and equality proclaimed in the eighteenth century. The idea underlying them was to protect the individual against the State, which was conceived as omnipotent and arbitrary, but not to vest in the individual a claim to assistance by the State. In the course of time, the idea of the care of the individual by the people, as represented in the State, has gained ground, and such care by the State has, principally through the consequences of the Second World War, become an elementary necessity. This relatively new idea of the individual's claim to positive assistance by the State has, however, achieved only limited inclusion among the basic rights.

"Article 2 (2), first sentence, of the Basic Law accords the individual no basic right to reasonable maintenance by the State. The provision proposed . . . concerning the right to a minimum of food, clothing and housing was subsequently deleted and was not incorporated in the Basic Law. The Law confines itself to the negative stipulation of a right to life and to physical inviolability—i.e. it excludes, in particular, State-organized murder and experiments performed on human beings against their will. No right to the allocation of specific monetary allowances exceeding the normal measure of public assistance can, therefore, be derived from article 2 of the Basic Law.

"This does not mean that the individual has no constitutional right whatever to assistance. Although the term 'social federal State' does not appear in the basic rights, but in article 20 of the Basic Law ('The Federation and the *Länder*'), it does embody an avowal of the principle of the social State which may be of decisive importance in interpreting the Basic Law and other laws. Only the legislator, however, can take the essential steps to make the social State effective; he is, certainly, bound by the Constitution to take social action, and more particularly to concern himself with the achievement of a tolerable balance between conflicting interests and with the provision of tolerable conditions of life for all who have been placed in want through the consequences of the Hitler regime. Only, however, if the legislator neglected this duty wilfully—i.e., without a good reason—would the individual possibly have a claim enforceable through the machinery of the constitutional complaint."

1. *Right to Social Security*

(a) *Equalization of Burdens Tax*

The significant legislative achievement of the year 1952 is the passing of the Act on the equalization of burdens tax of 14 August 1952 (*BGBl.*, I, p. 446), which, in the interests of social security and justice, equalizes the burdens between the sections of the population (refugees, war victims) particularly affected by the war and its consequences, on the one hand, and the economically strong sections—on whom heavy property tax burdens are imposed for the next thirty years—on the other. Details of the complicated provisions of this Act cannot be given in this context.

(b) *Refugees*

In addition to the equalization of burdens tax, the equalization of population between the *Länder* of Bavaria, Lower Saxony and Schleswig-Holstein, which have excessive refugee populations, on the one hand, and the *Länder* with fewer refugees on the other (a process which had begun in earlier years, but still necessitated legislative action in the year under report) was also designed to benefit refugees. The re-settlement drive involves no fewer than 600,000 expellees. The distribution of expellees to be re-settled was regulated by an Act of 23 September 1952 (*BGBl.*, I, p. 636), and an order of 26 September 1952 (*BGBl.*, I, p. 647) prescribed the dates by which the expellees to be re-settled were to be accepted by the receiving *Länder*. Since such persons are still arriving from the areas in the east from which they are displaced, provision had to be made for the preparation of transit camps and the allocation of expellees to the various parts of the federal territory (order of 28 March 1952, *BGBl.*, I, p. 236). The orders of 12 August 1952 (*BGBl.*, I, p. 413) and 28 October 1952 (*BGBl.*, I, p. 728) were issued for the purpose of ensuring accommodation for refugees arriving from the Soviet zones of occupation. The *Länder* of Bavaria, Schleswig-Holstein, Berlin and Lower Saxony enacted statutes and orders concerning the settlement and assimilation, emergency accommodation and care of refugees.

(c) *Prisoners of war*

Relief for the dependants of prisoners of war was regulated in 1950 by the Federal Act of 13 June 1950 (*BGBl.*, I, p. 204); this Act was supplemented and revised on 30 April 1952 (Act of 30 April 1952, *BGBl.*, I, p. 260). The *Länder* of Bavaria (Act of 15 January 1952, *GVBl.*, I, p. 14) and North Rhine-Westphalia (Act of 15 December 1952, *GVBl.*, p. 427) fixed the allowances due to those of their civil servants who were still prisoners of war.

(d) *War victims*

In order to adapt the benefits payable to war victims to the changing structure of prices and wages in the Federal Republic, the income limits applied in determining equalization allowances for the seriously disabled and their widows and parents were raised (Act of 19 March 1952, *BGBl.*, I, p. 141). Measures relating to the maintenance and care of war victims were also enacted in the Rhineland-Palatinate.

2. *Right to a Fair Wage*

The Wage Agreements Act was amended in several material respects on 11 January 1952 (*BGBl.*, I, p. 19). Under these amendments, wage agreements in general may be declared universally binding if this seems necessary in order to deal with a social emergency.

The Act on the establishment of minimum working conditions, of 11 January 1952 (*BGBl.*, I, p. 17), provides for the fixing by the State of minimum rates of pay and other working conditions in branches of the economy in which there are no trade unions or employer's associations. No use has, however, as yet been made of this facility.

3. *Protection of Employment*

A number of relaxations of employment protection which had been introduced during the war were eliminated on 21 March 1952 (*BGBl.*, I, p. 146).

The Protection of Working Mothers Act of 24 January 1952 (*BGBl.*, I, p. 69) introduces a number of improvements over the earlier Maternity Protection Acts of 1927 and 1942. Expectant and nursing women working for an employer continue to receive their previous wages, so that their livelihood is assured. They are protected from the loss of their employment by a prohibition of dismissal. The Act also applies to female apprentices, women employed in private households and in agriculture, and female home workers.

4. *Social Insurance*

In the field of social insurance there has been considerable legislative activity, primarily aimed at adapting the law to changed political and social conditions.

Under the Act on self-administration in social insurance (amended version of 13 August 1952, *BGBl.*, II, p. 427), which is of significance to all branches of social insurance, the insured persons and their employers again assume direct responsibility for the administration of social insurance. Insured persons and employers are equally represented on the representative bodies. An order governing elections to these bodies was issued on 14 August 1952 (*Bundesanzeiger*, 168, supplement).

Since industrial workers' wages had risen by approximately 32 per cent and the salaries of salaried employees by approximately 20 per cent since 1949, it was necessary to raise the income limit for compulsory sickness and pensions insurance (Act of 13 August 1952, *BGBl.*, I, p. 437). The contribution categories were amended at the same time. The rise in the cost of medical services, nursing and medicaments necessitated an increase in pensions insurance contributions (Act of 14 May 1952, *BGBl.*, I, p. 298). Accident insurance benefits were increased by 25 per cent (Act of 28 April 1952, *BGBl.*, I, p. 253).

The number of occupational diseases covered by the accident insurance scheme was increased from twenty-seven to forty in view of the advances achieved in the field of medicine (Act of 26 July 1952, *BGBl.*, I, p. 395).

Several other federal laws of a predominantly technical character were also enacted.

Regulations governing the social-insurance treatment of persons persecuted by the National Socialist regime were issued by the Rhineland-Palatinate.

5. *Representation of Workers in Undertakings*

New regulations governing the relations between employers and employees in undertakings are contained in the Works Representation Act of 11 October 1952 (*BGBl.*, I, p. 681) and the workers' powers of economic co-determination, which hitherto existed only in mining and in the iron and steel producing industry, have been extended to private industry in general. The regulations governing the election, composition, term of office and conduct of business of the works councils are largely modelled on the Works Councils Act of 1920. The works council is required to exercise vigilance, jointly with the employer, to prevent "any discriminatory treatment of persons on account of their race, religion, nationality, origin, political or trade union activity or attitude, or sex" (article 51). The works council has a right of co-determination in "social matters" (working conditions, protection of employment, works welfare institutions, and the internal organization of the undertaking and in personnel matters (laying-off, re-grouping, transfer and dismissal of employees). In addition, however, employees of undertakings of a prescribed minimum size now have a right of co-operation and co-determination in certain economic matters. Thus an economic committee of the works council is informed of and consulted on such matters as methods of work and production, the production plan, the financial situation of the undertaking, and its production and marketing facilities and prospects. The works council has a right of co-determination in respect of proposed material changes in the organization of an undertaking (the partial or total closing down of the undertaking or its partial or total transfer, the amalgamation of the undertaking with others, fundamental changes in the operation of the undertaking or in its equipment) and in respect of the introduction of completely new methods of working. In the event of disagreement between the employer and the works council, the matter may be referred to a conciliation agency. The employees' right of co-operation and co-determination is, however, primarily safeguarded by the fact that one-third of the directors of undertakings organized under a specified form of incorporation or exceeding a specified size must be representatives of the employees.

6. *Right to Housing*

The Federal Government, in its statement of 20 September 1949, mentioned the provision of housing as one of the most urgent tasks. It was stressed that the millions of displaced persons and persons rendered homeless by bombing could be restored to tolerable living conditions only if they were provided with accommodation. House-building was to be promoted primarily by making funds available. Moreover, in accordance with the Federal Government's economic policy, housing control and the rigid rent structure were to be cautiously and very gradually relaxed in order to induce private capital to play an increasingly large part, side by side with public funds, in the provision of housing, and thereby gradually to transfer the responsibilities and risks of house-building back to the private builder.

This policy has been implemented by the House-building Bonuses Act of 17 March 1952 (*BGBl.*, I, p. 139), which promotes the formation of private capital for house-building purposes by granting savings bonuses, and the Act for the promotion of the capital market of 15 December 1952 (*BGBl.*, I, p. 793), under which the interest on mortgage bonds the proceeds of which are used to finance social housing projects is exempted from tax.

The rents of old buildings were increased by 10 per cent under order *PR* 72/52, of 27 September 1952 (*BGBl.*, I, p. 648), this being a first step on the politically difficult road to achieving a proper proportion between the rents of old buildings and the enhanced level of prices, and thereby restoring the profitableness of old housing property. Lastly, under order *PR* 75/52, of 28 November 1952 (*BGBl.*, I, p. 792), the pegging of the prices of built-up sites and the sites of destroyed buildings was discontinued, a measure which allows for the free interplay of forces.[1]

7. *Rights of the Family*

The provision that marriage and the family are under special protection of the State (article 6 (1) of the Basic Law) is of immediate legal significance. The Federal Court of Justice has held that under this provision the wife is protected against the entry or introduction of her husband's mistress into the marriage, and more particularly into the matrimonial and family home. She can defend herself against such an eventuality by filing a complaint against the husband or the adulteress (judgement of 26 June 1952, *BGHZ*, 6, p. 361).

On the same date, the Federal Court of Justice ruled, moreover, that a wife working with her husband in the latter's business may require her husband to deny his mistress access to the business premises (*NJW*, 1952, p. 1136).

[1] Quoted from H. Schade's report in *Die Bundesgesetzgebung 1949/53*, published by the Federal Ministry of Justice, pp. 98-100.

8. *Educational and Parental Rights*

On 8 April 1952 (*GVBl.*, 61), the *Land* of North Rhine-Westphalia enacted a law regulating the school system in which the task of that system is defined in accordance with the *Land* Constitution, and in which reverence for God, respect for human dignity and a readiness for social action are specified as the primary goals of education (article 1). It is established as a premise that the *Land* is bound to ensure the provisions and maintenance of the basic schools which all children must attend. It is also provided, however, that school classes, which at present are much too large, shall be reduced in size in order to make educative instruction possible. In the elementary schools the average size of a class is to be gradually reduced to 40 children in 1956 (article 3). Where the need exists, parents may request the provision of new or the conversion of existing schools (section 24).

Admission to the higher schools and universities is open to every pupil according to his capacity and desire for education, regardless of the financial and social status of his parents (article 2).

Where no public schools exist or are planned in the *Land*, private schools taking their place may be established with the approval of the Ministry of Culture, and will be entitled to grants from public funds. The establishment of private schools otherwise is also permitted.

The right of parents to determine the course of their children's education is established (article 2). Parents co-operate through representative committees in the organization of schools. The function of these committees is "to support the school and the home in the education and moulding of youth, to further the communal educational programme and to promote the well-being of the school". The parents' representative committee has, however, no power to issue directives to the school, no right of supervision and no authority to settle complaints. The powers of the school management, the school board and the school administration remain intact.

Annex[2]

DRAFT ELECTION ACT OF THE GERMAN FEDERAL DIET (*BUNDESTAG*)

of 6 February 1952

Art. 1. (1) Free, secret, general, equal and direct elections to a Constituent German National Assembly shall be held on . . . , in the four zones of occupation of Germany, in accordance with the principles of proportional representation.

(2) The elections shall be conducted in accordance with election rules which shall contain the following provisions:

[2] See p. 91 above.

1

(1) All Germans who have attained the age of twenty years on the date of the election shall be entitled to vote unless they are under legal disability, provisional guardianship, or guardianship, or have been placed in a therapeutic or nursing institution because of mental disease or mental defect. Any person having attained the age of twenty-five years on the date of the election may stand for election.

(2) For the purposes of this Act, a German is a person who possesses German nationality or who, being a refugee or expellee of German ethnical descent, or being the spouse or descendant of such a person, resides permanently in the election area.

2

(1) The election area shall constitute a single electoral district. Each political party shall submit one list of candidates for the entire election area.

(2) Each list of candidates shall bear the signatures of not less than 10,000 qualified voters. A list of candidates submitted by a political party already existing on the entry into force of this Act shall require the signatures of only ten persons; the election rules shall enumerate such parties.

3

(1) One representative shall be returned for each 75,000 votes. A remainder of votes exceeding 37,500 shall have the full effect of 75,000 votes.

(2) A list of candidates which fails to obtain in at least one German *Land* 5 per cent of the votes cast in that *Land* shall be disregarded.

4

(1) Freedom of political activity in the preparation and conduct of the election shall be guaranteed.

(2) All restrictions on the movement of persons between the zones of occupation, including Berlin, shall be abolished not later than three months before the date of the election.

(3) Every duly nominated candidate for a seat in the National Assembly shall be guaranteed absolute personal freedom throughout the election area until the National Assembly convenes. Except with the consent of the international supervisory agencies (article 2), he may not be arrested, provisionally detained in custody, judicially or administratively proceeded against, discharged from his office or employment or otherwise called to account, or be restricted in his freedom of movement. He shall be granted such leave of absence as may be necessary for his preparations for the election.

(4) No one may be arrested, provisionally detained in custody, judicially or administratively proceeded against, discharged from his office or employment or otherwise called to account or placed at a disadvantage on account of the political attitude adopted by him before and during the election.

5

(1) Public meetings of a political party which has submitted a list of candidates in due and proper form, and public meetings of its candidates, shall be allowed without restriction and shall be placed under public protection.

(2) The distribution of newspapers, periodicals and other printed publications appearing in any German *Land*, and the reception of wireless broadcasts, may not be obstructed anywhere in the election area.

6

(1) The secrecy of the election shall be guaranteed.

(2) The ballot papers and their envelopes shall be identical for all voters, and may not be provided with distinctive features through which the voter may be identified. The voter shall mark the ballot paper in a booth at the polling station. He shall place his ballot paper, enclosed in an envelope, into the ballot box in the presence of the polling officers.

(3) The votes shall be counted in public by the polling officers. The polling officers shall be appointed from among the voters of the polling district in such a manner as to ensure equitable representation of the political parties

(4) The provisions of sub-sections (1) to (3) may not be waived. In the event of a violation of the said provisions, the international supervisory agency may declare the entire election in the polling district void and may direct that the election be repeated.

Art. 2. (1) The election shall be prepared and conducted under international protection and supervision.

(2) Such protection shall be entrusted to international supervisory agencies uniformly throughout the election area. The German authorities shall comply with the instructions of the said supervisory agencies.

(3) The supervisory agencies shall guarantee the rights and freedoms of the population arising out of this Act. Every German shall have the right of appeal to the supervisory agencies.

(4) The supreme international supervisory agency shall issue such detailed regulations on the protection and supervision of the election as may be necessary.

Art. 3. (1) The national Assembly shall convene in Berlin on the thirtieth day following the election.

(2) The member oldest in years shall open the National Assembly and shall preside while a president is elected. The candidate obtaining the largest number of votes shall be elected.

(3) The poll shall be scrutinized by an election review board to be elected by the National Assembly.

(4) The members of the National Assembly shall continue to be guaranteed personal freedom and protection against prosecution until the National Assembly regulates their status by a legislative act.

Art. 4. (1) The National Assembly shall adopt the Constitution.

(2) The National Assembly shall possess such power as may be necessary to establish and safeguard a democratic and federative order of government, based on the principles of freedom and the rules of law, pending the entry into force of an All-Germany Constitution.

GREECE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONSTITUTION

The Constitution of Greece of 22 December 1951 entered into force on 1 January 1952. The provisions on human rights of this Constitution, which are reproduced in the *Yearbook on Human Rights for 1951*,[2] retain the provisions of the Constitution of Greece previously in force and conform to the principles of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948. They include, however, certain new essential provisions among which those contained in article 104[3] are worth mentioning. This article broadly corresponds to the principle of the Universal Declaration relating to the development and guarantee of an adequate standard of living for the individual within the framework of the economic and social capabilities of the country.

II. LEGISLATION

Electoral Rights

Two Acts adopted during 1952 deal with electoral rights: Act No. 2159, of 7 June 1952, which is of particular significance in connexion with equal political rights for men and women provided by article 70 of the new Constitution and its explanatory memorandum, granting the right of women to vote and to be elected in parliamentary elections, and Act No. 2228, of 4 October 1952, to abolish the proportional representation system and introduce the majority representation system.

Extracts from both Acts are reproduced in this *Yearbook*.

Measures of Leniency; Rehabilitation of Offenders

Act No. 2057, of 17 April 1952 (published in *Official Gazette* No. 95, of 18 April 1952), confirms and supplements legislative decree No. 1623 of 1951, concerning stay of proceedings for certain offences, the provisional release of prisoners and the amendment of certain provisions of the Penal Code.

The provisions of articles 1–5 of decree No. 1623 (summarized in *Yearbook on Human Rights for 1951*, p. 119), are extended to apply to offences committed up to 31 December 1951 and to sentences imposed for such offences up to 18 April 1952. Stay of execution of sentence and conditional release of offenders may not be granted in the case of offences against morals or against the external security of the State. No further proceedings are to be instituted in connexion with libels published in the press before 31 December 1951. If an offence is differently regarded by the old Penal Code and the new Penal Code, then whichever code grants the more lenient period of limitation applies.

Act No. 2058, of 18 April 1952 (published in *Official Gazette*, *ibid.*) concerns measures of pacification. Court martial decisions may be reviewed. Persons convicted by court martial prior to 1 December 1951 may apply for a review of the court martial decision by a review tribunal. The review tribunal, in imposing sentence of imprisonment, may order a stay of execution. Persons banished from Greek territory by a court martial may apply for a review of the decision by the appellate court. Aliens who are nationals of an allied power and who have been convicted *in absentia* may also apply for review of their sentence by the appellate court.

Leniency will be shown towards rebels for offences committed by them in connexion with actions by the EAM or ELAS or the Greek Communist Party up to 1 November 1951, on condition that they report voluntarily to the authorities and allow themselves to be disarmed within two months from the entry into force of this Act. This also applies to members of armed bands in respect of offences committed by them. No questions are to be asked about the reasons for surrender. Leniency will also be extended to minor offences committed by members of the resistance movement against collaborators. The conditional release of prisoners convicted of an offence connected with the activities of EAM, ELAS or the Greek Communist Party, or of persons convicted of an offence committed in the course of the official action against these bodies, may be ordered by the Minister of Justice, irrespective of the term of their imprisonment, on the advice of a committee. Restrictive conditions may be imposed on the person concerned for a period of not more than five years; he may also be ordered to reside at a specified address, or he may be forbidden to enter the region where his offence

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[1] This note is based on texts and information received through the courtesy of Mr. Alexis Kyrou, formerly Permanent Representative of Greece to the United Nations.

[2] P. 115.

[3] *Ibid.*, p. 118; see also below, under II.

was committed. All death sentences shall be automatically commuted to imprisonment for life. Certain provisions are also enacted concerning appeals by German, Austrian and Italian war criminals, and the remission of penalties imposed on them. The Act further provides for favourable computation of days worked by imprisoned persons.

Act No. 2219 of 26 September 1952 (published in *Official Gazette* No. 269, of 29 September 1952) deals with stay of proceedings against nationals of foreign States.

A national of a foreign State who before the publication of this Act was convicted and sentenced for any criminal offence and is serving the sentence may be conditionally released from prison. The Ministers of Justice and Foreign Affairs may, with the prior agreement of the Council of Ministers, conditionally stay criminal proceedings against a national of a foreign State if such proceedings may disturb the international relations of Greece. Aliens released from prison or benefiting by stay of criminal proceedings shall be deported to their country of origin and shall be excluded from Greece for life.

Act No. 2220, of 26 September 1951 (published *ibid.*), amends Act No. 1616 of 1950 confirming legislative decree No. 1541 of 1950 to provide for the transfer of juvenile prisoners to practical, agricultural and technical schools of the National Foundation.

Any young person who has not attained 21 years of age at the time of the commission of an offence and is serving a sentence or is remanded in custody may, by order of the Minister of Justice made at the instance of the National Foundation, be sent to a practical, agricultural or technical school for national, moral and religious education. In the case of such a transfer, criminal proceedings or the execution of the sentence pronounced against the offender shall be stayed. A prisoner who refuses to attend a school shall be sent back to the reformatory or prison in which he was previously imprisoned.

Land Reform

Based on the above-mentioned article 104 of the Constitution (see I), Act No. 2185 of 15 August 1952 was enacted. By this Act, published in *Official Gazette* No. 217, of 15 August 1952, the Government was given compulsory powers to expropriate the large landed estates remaining in Greece, and all the cattle-breeding areas of the country, for the settlement of landless peasants and cattle breeders. Those powers have been freely exercised by a series of Government measures taken during 1952.

Protection of Labour

Act No. 2222, of 26 September 1952, published in *Official Gazette* No. 271, of 1 October 1952, provides for measures to protect the individual against unemployment. Against the background of the post-war economic *malaise* of the country it provided, for six months after its entry into force, for the prohibition of arbitrary dismissal of workers by termination of their labour contracts without permission from the Minister of Labour, granted, after compulsory arbitration between the parties (employers and workers) and the Minister, by decision of a special board consisting of superior State officials, representatives of workers and employers and university professors. Under this Act, any termination of a labour contract in breach of its provisions is void.

Act No. 2053, of 14 April 1952, published in *Official Gazette* No. 101, of 23 April 1952, sets up a sixteen-member board on trade union relations and disputes, to meet at the Ministry of Labour and to consist of superior State officials, professors and representatives of the producers. Its terms of reference are the stabilization, in relation to price stabilization, of salaries and wages, the negotiation on this basis of trade union labour contracts by branches of production, and the peaceful settlement of trade union disputes arising between workers and employers. It also acts in an advisory capacity in the fixing of minimum wages from time to time.

Public Health

Act No. 2285, of 10 October 1952, published in *Official Gazette* No. 299, of the same date, provides for the establishment of child welfare centres and the rehabilitation of lepers, to remedy the lack of modernized institutions for the protection of unprotected children which has hitherto been noticeable in Greece. The same Act also provides for the establishment of a colony for the settlement of lepers, and organizes their protection by settling them on agricultural lands where they will work, principally at agriculture, near hospitals and similar institutions.

Housing

Acts No. 2025, of 10 March 1952, and No. 2063, of 18 April 1952, published in *Official Gazette* No. 61, of 13 March, and No. 110, of 26 April 1952 respectively, concern measures to assist municipal housing and its classification as a public service, as well as popular housing. The purpose of these Acts is to provide adequate housing and to encourage efforts to reconstruct existing housing, so as to enable even the more needy families to be adequately housed. Certain other Acts and decrees issued during 1952 extend the moratorium and amend the rent-control provisions, to protect distressed debtors and to guarantee tenure of premises.

III. RATIFICATION OF INTERNATIONAL INSTRUMENTS

Protection of Labour

Act No. 2077, of 18 April 1952, published in *Official Gazette* No. 109, of 25 April 1952, ratified International Convention No. 11 concerning the rights of association and combination of agricultural workers, adopted by the International Labour Conference at its third session, in Geneva, in 1921 and guaranteeing to agricultural workers the same rights of trade union association and combination as those enjoyed by industrial workers.

Act No. 2078, of 18 April 1952, published in *Official Gazette* No. 116, of 28 April 1952, ratified International Convention No. 17, concerning workmen's compensation for accidents, adopted by the International Labour Conference at its seventh session, at Geneva, in 1925.

Act No. 2079, of 18 April 1952, published in *Official Gazette* No. 108, of 25 April 1952, ratified International Convention No. 29, concerning forced or compulsory labour, adopted by the International Labour Conference at its fourteenth session, at Geneva, in 1930 and prohibiting forced or compulsory labour.

Act No. 2080 of 18 April 1952, published *ibidem*, ratified International Convention No. 42 concerning workmen's compensation for occupational diseases, adopted by the International Labour Conference at its eighteenth session, at Geneva, in 1934, increasing protection for victims of occupational diseases and their families similar to that accorded to victims of accidents at work.

Act No. 2081, of 18 April 1952, published in *Official Gazette* No. 109, of 25 April 1952, ratified International Convention No. 52, concerning regular annual holidays with pay, adopted by the International Labour Conference at its twentieth session, at Geneva, in 1936, the provisions of which agree with the fundamental provisions of Greek legislation on the subject.

Exchange of Ideas Irrespective of National, Racial or Religious Differences

Acts No. 2010, of 27 February 1952, and No. 2073, of 18 April 1952, published in *Official Gazette* No. 53, of 6 March, and No. 103, of 23 April 1952, ratify educational agreements between Greece and Lebanon and between Greece and Turkey. These treaty-laws seek to achieve the fullest possible exchange of ideas and mutual understanding by means of friendly co-operation between the contracting countries in art, science and general culture, and full understanding of each other's institutions and social life.

ACT No. 2159 GRANTING WOMEN THE RIGHT TO VOTE AND TO BE ELECTED IN PARLIAMENTARY ELECTIONS[1]

of 7 June 1952

Art. 1. (1) The right to vote in parliamentary elections shall be exercised also by women who have completed their twenty-first year of age. The restrictions on the exercise of the voting right provided for in the legislation on parliamentary election shall also apply to women.

(2) Women registered on the electoral rolls or in possession of electors' identity cards of communes and municipalities shall be entitled to exercise the aforementioned right.

(3) The registration of women voters on electoral rolls or lists of electors' identity cards shall be compulsory.

(4) The exercise of the voting right shall be compulsory also for women. The penalties provided for men in the Act concerning parliamentary elections[2] shall apply also to women who fail to comply with this obligation.

Art. 2. Women who have completed their twenty-fifth year of age shall also have the right to be elected in parliamentary elections and shall also be subject to the relevant provisions of the legislation concerning parliamentary elections.

Art. 3. (1) Women entitled to vote under article 1 shall be registered on electoral rolls in accordance with the provisions in force governing the compilation and inspection of the electoral rolls and lists of electors' identity cards of women. The time limit for the registration of women for the current year shall be two months after the entry into force of the present Act, and may be extended by royal decree.

(2) The final electoral lists of women entitled to vote in communal and municipal elections shall be valid also for parliamentary elections . . .

[1] Greek text in *Official Gazette* No. 177, of 2 July 1952, received through the courtesy of Mr. Alexis Kyrou, formerly Permanent Representative of Greece to the United Nations. The Act came into force on the date of its publication.

[2] Act No. 5493 of 1932 as amended, art. 8, published in *Yearbook on Human Rights for 1949*, p. 87, and chapter VI.

ACT No. 2228 TO REPEAL THE PROVISIONS OF CODIFIED ACT No. 5493 OF 1932 (ROYAL DECREE OF 9 AUGUST 1951) CONCERNING THE ELECTION OF DEPUTIES BY THE SYSTEM OF PROPORTIONAL REPRESENTATION AND TO RESTORE THE SYSTEM OF MAJORITY REPRESENTATION[1]

of 4 October 1952

. . .

Art. 5. Article 73 of Codified Act 5493 shall be superseded by the following words:

"Coalitions of candidates may be established. For this purpose, a declaration shall be submitted, in the case of a party coalition, by the head or the executive committee of the party, or by a representative of the party appointed by them or, in the case of a coalition of independents, by the candidates forming such a coalition. The said declaration shall contain, in the case of a party coalition, the name of the party and the names of the candidates forming the coalition or, in the case of a district electing one deputy, the name of the candidate . . ."

Art. 7. Art. 6 of Codified Act No. 5493/32 shall be amended to read as follows:

"Members of the clergy and monks, whether orthodox or of any other denomination, shall not be entitled to vote or be elected."

Art. 16. 1. On the day following the date on which the returns are received from all the electoral divisions of the electoral district, the court of first instance shall make a simple count of the votes and shall forthwith in open court, by a judgement, declare to be deputies those candidates who have received the relative majority of the votes, and the judgement shall be communicated to all candidates by the law officer.

2. The candidates in favour of whom the greatest total number of ballots and votes otherwise recorded are cast shall be deemed to receive the relative majority of the votes.

3. If two or more candidates receive an equal number of votes, lots shall be drawn . . .

Art. 18. No person may be a candidate in more than one election district.

Art. 34. 1. All women entitled to vote under art. 1(1) of Act 2159/1952, must be registered on the electoral rolls or in the lists of electors' identity cards.

[The following paragraphs of art. 34 and the following articles contain provisions relating to the establishment of committees for the registration of women, and other procedural matters relating to the participation of women in elections, in places having fewer than 5,000 inhabitants and in places having over 5,000 inhabitants.]

Art. 43. The exercise by women of the right to vote shall be deferred until their registration in accordance with art. 34–43.

If elections are held before the expiry of the period provided for in the above-mentioned articles, women shall not exercise the right to vote in those elections.

. . .

[1] Greek text in *Official Gazette* No. 277, of 6 October 1952. English translation from the Greek text by the United Nations Secretariat.

GUATEMALA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. JUDICIAL DECISIONS

A survey of judicial decisions given in 1952 is published in this *Yearbook* under the title "Guatemalan legal practice and the Universal Declaration of Human Rights".

II. INTERNATIONAL INSTRUMENTS

On 21 April 1952, Guatemala ratified the four Geneva Conventions of 12 August 1949[2] signed by its representative at the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War.

On 6 September 1952, Guatemala signed the Universal Copyright Convention[3] adopted at the Intergovernmental Copyright Conference which convened at Geneva under the auspices of UNESCO.

[1] This note is based on texts and information received through the courtesy of the Government of Guatemala.

[2] See *Yearbook on Human Rights for 1949*, pp. 299–309.

[3] See p. 408 of this *Yearbook*.

GUATEMALAN LEGAL PRACTICE AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS[1]

The Constitution which is at present the basic law of the Guatemalan people is three years earlier in date than the solemn Universal Declaration of Human Rights adopted and proclaimed by the United Nations General Assembly on 10 December 1948.

Title III, "Individual and Social Guarantees",[2] of the Constitution, which entered into force on 15 March 1945, not only includes all the noble and civilized precepts contained in the United Nations Declaration, but in many cases, in addition to stating them more fully, contains provisions for their regulation. Thus, in the section on labour, for example, the legislators, in addition to fully recognizing the right to work, to the free choice of employment, to just and satisfactory working conditions and to protection against unemployment, laid down regulations regarding maximum hours of work, the welfare of pregnant women workers, the employment of minors, safety and health measures to be taken by the employer on behalf of the worker, and industrial accidents and diseases. The Guatemalan Constitution also goes beyond the Declaration in the section dealing with the organization of the family; in addition to protecting the rights conferred by marriage, it also provides for and lays down constitutional regulations concerning *de facto* unions, stating that the law shall determine the cases in which, for reasons of justice, a union between persons with legal capacity to marry must, because of its permanence and stability, be deemed equivalent to civil marriage. It might almost be said that, on the basis of the advances embodied in the Guatemalan Constitution, there should be some revision of the universal precepts of the United Nations Declaration of Human Rights which does not contain provisions, adapted to present-day conditions, ensuring fuller protection to the interests of men and women in the modern world, with their increasingly complex social relations.

Not only do the provisions of the Constitution go beyond the present limitations of world law, but the position is similar in regard to the practice of the courts of law in which the State puts the effectiveness of its constitutional provisions to the test. It would not profit a nation to possess a magnificent constitution in which the people's aspirations remained merely wishes and were not a rule of public conduct. It is therefore necessary to give an account of a few of the thousands of decisions given in 1952 in the courts of the Republic which confirm the fact that our Constitution is not only one of the most advanced in the world, but a safeguard for the people which produced it.

[1] Note prepared by the Secretary of the Supreme Court of Guatemala and received through the courtesy of Mr. J. R. Mendoza, Chief of the Section on Treaties in the Ministry of Foreign Affairs.

[2] See *Yearbook on Human Rights for 1946*, pp. 135–142.

I. Guatemala compensates a Guatemalan citizen for loss and injury caused by a European Power with which Guatemala was at War

(Decision of the Supreme Court of Justice of 14 November 1952)

Summary

The facts: Caligaris is a Guatemalan engineer who was residing in Italy on the outbreak of the Second World War. Solidarity with other American countries and its democratic convictions led Guatemala to declare war on the Nazi-Fascist axis, and Caligaris was therefore deemed to be an enemy national in Italy. He was interned in a German concentration camp and made to perform forced labour, even after Marshal Badoglio had signed an armistice with the Allies. He was subjected to all manner of privation, persecution and restrictions, and was eventually obliged to flee to the mountains with his wife and a small child. There he was captured and was about to be shot by the German SS troops, from whom he providentially made his escape and set out for Rome on foot, miserably dressed in rags, and physically and morally ill. His house was destroyed in the bombing of Piombino, and all his property was lost by looting and fire. He finally reached Guatemala extremely ill and indigent. He applied to the Guatemalan courts for a pension based on actuarial calculations, to enable him to live, or for compensation for the moral and material injury he had suffered as a result of the war, in which he had not personally taken part. The case was first brought before the Commission for the Settlement of War Affairs, and, when the original proceedings were unsuccessful, transferred to the Administrative Tribunal, which decided in favour of the applicant and ordered the State of Guatemala to pay compensation, the amount of which was to be taken from the liquidation of enemy assets undertaken in the Republic in conformity with the recommendations of the Special Commission on Enemy Property of the Inter-American Economic and Social Council dated 28 May 1947. On appeal by the Commissioner for German Affairs, the Supreme Court, analysing the rights of a Guatemalan victim of the war, allowed "the claim of Caligaris for loss and injury suffered in Italy as a result of his internment and performance of forced labour during the German occupation of that country in the Second World War" and ordered that "the amount of compensation for such loss and injury shall be fixed at 3,833 *quetzales* and 33 *centavos*, payable by the Ministry of Finance and Public Credit subject to the fiscal laws and chargeable to extraordinary expenses in its budget subject to the relevant decree, the payment being recorded for the purposes of article 4 of Decree 630 of Congress" (legislative decree 630, article 4): "The State shall set its war claims and the duly established war claims of its nationals against the amount of the compensation payable to the owners of property expropriated in accordance with article 92 of the Constitution and the relevant provisions of this law" (article 92 of the Constitution, relevant paragraph): "Enemy property may be seized for reasons of war and if it is expropriated payment of compensation may be deferred until the termination of hostilities."

Analysis of the Universal Declaration of Human Rights

Art. 3. Everyone has the right to life, liberty and the security of person.

Art. 9. No one shall be subjected to arbitrary arrest, detention or exile.

Art. 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

These guarantees of the life, security, freedom and property of men and women, stated with the full moral authority of the United Nations, are included among the constitutional principles of every nation, but there is no effective instrument to ensure that they will be enforced in the event of international conflict.

Analysis of Guatemalan Jurisprudence

In the case of Caligaris, the Republic made good from its own resources an international injury caused outside its frontiers, in order to give effect to the universal principles of law and paid compensation in accordance with municipal legislation arising from the war. In other words, "the individual guarantee given by the State, if in accordance with universal rules, must be provided with adequate possibilities of enforcement to render it effective, even during an international conflict".

II. Procedural Irregularities which do not affect the Investigation of Paternity even after the Death of the Presumed Father

(Decision of the Supreme Court of Justice of 2 October 1952)

Summary

The facts: While confined in a penal institution, Maria Cristina X. gave birth to a son who was not legally acknowledged by the presumed father. The latter died some time later, but from his actions during his lifetime it could reasonably be presumed that he was the father, as he visited the prisoner, arranged some special privileges for her, paid the medical expenses resulting from her confinement, etc., although in private documents he repeatedly denied that he was the father, and even instituted an action for jactitation as a result of which the mother was put to silence and thus made incapable of instituting filiation proceedings. After the death of the presumed

father, however, Maria Cristina X. instituted filiation proceedings on behalf of her son against the legal representatives of the deceased. In defence, the latter pleaded that the order putting the mother to silence, having force of *res judicata*, debarred the mother from instituting proceedings in the matter in regard to which she had been put to silence. The trial judge accepted that plea and refused to allow the filiation proceedings, and the decision was confirmed by a court of second instance. The Supreme Court of Justice, attributing greater importance to the right of investigation of paternity, held that the lower courts had committed certain purely formal errors in considering the evidence brought on behalf of the defence and therefore declared that the plaintiff had proved her case establishing "the filiation of Ricardo Eugenio, who was born on 28 July 1942 and is the son of Jose Ignacio X", entitled to all human rights deriving from filiation.

Analysis of the Universal Declaration of Human Rights

Art. 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Art. 25. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The Universal Declaration of Human Rights seems only to have considered the case of children born in or out of wedlock, without reference to the innumerable cases in which State protection is dependent on investigation of paternity. As a result of inexorable natural laws, there are more *de facto* than legalized unions, and in consequence a universal principle must be established guaranteeing protection of the right of investigation of paternity, when the maintenance of the children is determined by paternity. This consideration is not intended as a ratification of the individualist view of the family. It is based on the fact that the protection which should be provided by the State to the family becomes direct when the natural ties with the parents are established, if the latter are capable of furnishing such protection.

Guatemalan Doctrine

In addition to the obligations with regard to welfare and financial support incumbent upon the State as protector of the family, investigation of paternity is also a human right which is not extinguished by death, and is not suspended by temporary formal errors in the course of proceedings. The case of Maria Cristina X. set aside the jactitation proceedings on which the defence had based its plea of *res judicata* as grounds for the discontinuance of an investigation concerning the family, which is the fundamental unit of society.

III. State Protection of Paramount Public Interests Justifies Curtailment of the Use of Legal Remedies

(Decision of the Supreme Court of Justice of 16 October 1952)

Summary

The facts: Eduardo X. was a coffee processer and sold coffee to the public in small quantities for immediate consumption. He sent it to a coffee-roaster for roasting, but in order to increase his profits arranged to mix the roasted coffee with millet, thus defrauding the public and endangering the health of the consumers. The matter was brought before the health tribunal, which, in view of the State's prohibition of adulteration of food—in particular of coffee—ordered the seizure of the adulterated product, imposed a heavy fine on the offender and the coffee-roaster, gave a warning regarding further offences and provided for supplementary penalties in the event of commutation of the penalty imposed. The offenders contested the decision and appealed to the Suprerior Health Council, which confirmed the decision in its entirety. The offenders then appealed from this decision in second instance to the Administrative Tribunal, which held that it had competence in the matter, reviewed the case and amended the decision, exonerating the roaster, whom it did not consider to be an accomplice. On appeal, the Supreme Court of Justice quashed the proceedings in the Administrative Tribunal and held that, in the case of offences against public health, only the Health Tribunal and the Superior Health Council as courts of first and second instance, without the right of subsequent appeal, are competent to deal with problems immediately affecting the public.

Analysis of the Universal Declaration of Human Rights

Art. 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Traditional legislation has provided the people with a whole series of remedies designed to ensure that a judicial decision considered and confirmed by the courts of various instances represents an indispensable minimum of justice. The remedy of *amparo*, the right of appeal to the administrative tribunal, the right to institute proceedings against judges and magistrates for errors, etc., have been evolved as a public safeguard against the abuse of power. Nevertheless, in cases

where delay in the imposition of a penalty impairs its efficacy to the detriment of the public interest, remedies must be limited. It is now being discussed in Guatemala whether or not the remedy of *amparo*, which has afforded an avenue of escape in a great variety of judicial proceedings, shall apply in respect of agrarian disputes. For overriding reasons of national interest, this remedy has been ruled out in agrarian proceedings, as it would hamper the urgent benefits for which the people are hoping as the result of the present redistribution of land. The same should hold good in cases concerning public health.

Guatemalan Doctrine

In cases of public health offences, no appeal is allowed beyond the second instance. Both appeals to the Administrative Tribunal and the universal remedy of *amparo* are therefore inapplicable, out of consideration for the paramount interests of the public.

IV. Judgement against a Foreign Company for Defective Public Services

(Decision of the Supreme Court of Justice of 19 September 1952)

Summary

The facts: The incorporated company *Empresa Guatemalteca de Electricidad*, in which almost all the shares are held by aliens, furnishes electricity for light, power and heat on a monopoly basis in an area which includes the capital of the Republic and the adjacent towns, and in some neighbouring departments. As a result of the fact that the company provides a vital public service, almost all its deficiencies have been accepted with resignation, the more so because it operates under the protection of a monopolistic contract which was signed before the Guatemalan revolution and the revision of which is currently being considered by the National Congress. The only action taken in connexion with the numerous fires that have occurred in dwelling houses and commercial establishments has been an investigation to determine whether the fire was accidental or not, and as soon as it was established that the fire was not caused by a criminal act calling for punishment, it was presumed that there had been a short circuit, the origin of which was not investigated and the company had no liability. The consumer lost his house or his business; and if he was insured against fire, the insurance company bore the loss. Mr. Vasconcelos was the victim of an accident of this kind; his house and furniture were burnt and he suffered heavy loss. Instead of accepting the accident as an act of God, he sued the electricity supply company for compensation. He produced witnesses to prove that the fire had not started in his house, but in the cable outside the house, which was obviously defective. Electrical experts demonstrated that the short circuit, the frequent excuse which the company made in order to evade responsibility, had occurred on account of lack of proper insulation outside the house and that there had been flagrant breaches of the regulations governing the service furnished by the company. The injured owner claimed damages, interest and costs, but did not submit an expert appraisal of the damage to establish the amount. The court of first instance found against the *Empresa Guatemalteca de Electricidad* and held that the company should compensate the owner for the loss and injury sustained owing to the fire, because it was liable on account of the defects in its services. The Court of Appeals upheld this judgement and the Supreme Court confirmed the decision of the Court of Appeals.

Analysis of the Universal Declaration of Human Rights

Art. 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Guatemalan Doctrine

The Guatemalan courts give full effect to the provision of Article 10 of the Universal Declaration in guaranteeing to everybody a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations irrespective of who is the other party to the proceedings.

It is suggested that, when in the future the text of the Universal Declaration of Human Rights should be reviewed, article 10 should be re-worded to read: "*Any natural or legal person* is entitled . . ." (the remainder of the article as quoted above).

V. A German retains his Property despite the War Affairs Settlement Act

(Decision of the Supreme Court of Justice of 9 May 1952)

Summary

The facts: Klahr Ehlert is a German citizen owning immovable property in a distant town of the Department of Quiché. He had three illegitimate children in two separate homes; and, as a consequence of war reprisals, he was included in the Guatemalan "proclaimed lists" as being liable to pay the compensation required as a result of the war. He was required by the law offices of the nation to execute a written deed transferring his estate to the State on the ground that he was a German national by origin and consequently a national of a European power with which the Republic was at war. But in the expropriation proceedings he proved that he had no criminal record; that he was engaged in honest work and lived a respectable life; that he had spent thirty years in Guatemala as an honourable resident, although retaining his nationality of origin, engaged in work in the remote highlands; that his earnings were always invested in the land on which he lived

and where he provided for the maintenance of his offspring; that he had acknowledged his three children; that when Hitlerite Germany called upon German citizens resident in Latin America to vote, he had not gone to the ships where the German vote was being taken; that his name had never appeared in the list of the German National Socialist Party, or of the Fascist Party, or of any political group in the countries with which Guatemala was at war, or any of their branches, affiliated organizations or local organizations; that he had not been a representative or agent of any enemy government and had not in time of war emigrated to any country at war with Guatemala. His only offence was that he was a German. The Ministry of Finance and Public Credit issued an order for expropriation and ordered that a deed transferring ownership of the property in question should be executed. However, the Administrative Tribunal rescinded the order, holding that Klahr was not liable to expropriation. The Supreme Court of Justice rejected the appeal of the Commissioner for German Affairs on the ground that the rescinding tribunal had correctly appreciated the evidence submitted by the defence.

Universal Declaration of Human Rights

Art. 15: (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

A human being has the right not only to choose his nationality, but to retain the nationality which he has chosen. Some guarantee must be provided that under no circumstances, however adverse, may a man be subjected to threats to adopt another nationality, even apparently of his own free will.

Guatemalan Doctrine

A declaration of international enmity should not necessitate the adoption of Guatemalan nationality as a protection at law. Klahr Ehlert had need of no other means to save his property than that of making an honest human contribution to the life of the national community.

VI. *De facto* Marriage and its Legal Consequences

(Decision of the Supreme Court of Justice of 30 July 1952)

Summary

The facts: Aurelio and Rosario had lived together for sixteen years and had six children. By their joint efforts they had amassed a fairly large amount of capital invested in a guest house, a billiard saloon, a refreshment room and a sawmill, the whole property being worth over 6,000 quetzales. Experience with this type of family partnership in which, under the old laws, women who had not contracted marriage were left unprotected and the property which they had acquired was frequently taken over by another woman who had contracted marriage later, led to the promulgation in Guatemala of marriage laws providing for equal rights for *de facto* wives if they had by their efforts contributed to the formation of capital and had lived in common with the husband for a reasonable period of time. In exercise of this right, Rosario appealed for a declaration of *de facto* marriage, consummated with her partner Aurelio. When judgement was given in her favour, she instituted proceedings for the division of the joint estate. She furnished proof of the *de facto* marriage and the existence and amount of the divisible property, as a result of which both the court of first instance and the court of appeal decided to allow division of half the property acquired by the two partners by virtue of their life in common, which, although not legalized, carried with it full human protection. The Supreme Court of Justice rejected the appeal on the grounds that no irregularities had been found in the consideration of the evidence put forward.

Universal Declaration of Human Rights

Art. 16. (3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Traditional civil law has not extended State protection to *de facto* wives: they do not bear their husbands' names and do not inherit their property. The Declaration of Human Rights should clearly define what is to understood by the word "family", and, in deference be to social realities, *de facto* wives should be included in the definition so as to protect them against injustice.

Guatemalan Doctrine

This is contained in legislative decree No. 444, of 29 October 1947, art. 1: "Legal recognition shall be accorded to a *de facto* union between a man and a woman, with capacity to marry, entered into with the intention of living together, producing children, supporting and bringing up their children and providing each other with mutual assistance, such union being maintained with public knowledge for more than three consecutive years, always provided that the couple have established a home and that they have treated each other as husband and wife before their next of kin or their acquaintances." With regard to the legal effect of such unions, the decree provides (art. 11): "In the case of a *de facto* union attested in the manner prescribed in this law, the man and the woman shall, from the date established as the date of commencement of the union, by analogy, have the same mutual rights and obligations as are laid down for man and wife by articles 99, 104, 105, 106, 107, 110, 111, 112, 113, 114 and 115 of the Civil Code, provided that the parties may opt for community of property." Art. 13: "The surviving partner of such a union shall enjoy all the rights established by law in respect of husbands and wives, pensions, allowances, compensation for accident and other special provisions."

HAITI

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONSTITUTION

The Constitution of the Republic of Haiti, of 25 November 1950, was not modified during the year 1952.

II. LEGISLATION

Three new acts relating to human rights were adopted during the year 1952.

1. The Act of 14 July 1952 sets up in each civil court of the country a special section for the purpose of trying juvenile delinquents. This Act was promulgated on 16 July 1952 and published in the *Moniteur* No. 66, of 31 July 1952.

The Act is based on article 102 of the Haitian Constitution, which provides that land courts, labour courts and juvenile courts may be set up, the organization, number, site and operation of which shall be determined by law. It has not as yet been possible to set up juvenile courts owing to difficulties of a financial and budgetary nature. Their establishment remains dependent on an improvement in the financial condition of the country.

2. The Act of 18 September 1952 repeals article 1551 of the Haitian Civil Code. This Act was promulgated on 20 September 1952 and was published in the *Moniteur* No. 98, of 9 October 1952.

Article 1551 is a word-for-word reproduction of article 1781 of the French Civil Code of 1804. In the preamble of the Act, it is stated that this text "runs counter to article 9 of the Constitution proclaiming the principles of equality of all citizens before the law; that in reality this text is a relic of an obsolete feudal system, under which, in any dispute over the amount of remuneration or the payment of wages and accounts, the employer's word is taken as representing the indisputable truth, . . . this text has no place in the legislation of an essentially democratic nation".

3. The Act of 19 September 1952 provides regulations concerning contracts of employment. This Act was promulgated on 23 September 1952 and was published in the *Moniteur* No. 105, of 30 October 1952.

A summary of this Act is published in the current *Yearbook*.

III. CONVENTIONS AND AGREEMENTS

1. The convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week, which was signed at Washington on 29 October 1919, was approved by the National Assembly of Haiti on 3 September 1951. The convention was promulgated on 4 September 1951 and was published in the *Moniteur* No. 1, of 3 January 1952.

2. The convention concerning labour inspection in industry and trade signed at Geneva on 11 January 1947 was approved on 3 September 1951 and was published in the *Moniteur* No. 9, of 28 January 1952.

3. The Inter-American Convention on the rights of the author in literary, scientific and artistic works, which was signed at Washington on 22 June 1946, was approved by the National Assembly on 2 September 1952.

4. An agreement on the hiring of Haitian labour by sugar mills in the Dominican Republic was signed at Port-au-Prince on 5 January 1952,[2] approved by the National Assembly of Haiti on 26 May 1952, promulgated on 27 May 1952 and published in the *Moniteur* No. 65, on 28 July 1952.

This agreement deals with the problem of seasonal migration of Haitian labourers to the neighbouring republic; it lays down certain guarantees concerning the journey, regulates housing conditions and wages, and contains rules governing cases of occupational illness and accidents. The agreement aims at putting an end to the abuses and difficulties which arose in connexion with individual uncontrolled migration.

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[1] This note was prepared by Dr. Clovis Kernisan, Professor at the University of Port-au-Prince.

[2] See also p. 49 of this *Yearbook*.

ACT TO MAKE REGULATIONS CONCERNING CONTRACTS OF EMPLOYMENT[1]

of 19 September 1952

SUMMARY

The Act amends and clarifies the earlier provisions enacted on the subject—viz., the Act of 10 August 1934 concerning conditions of employment as amended by the Act of 5 September 1934, the decrees of 4 May and 24 September 1942, and the Act of 5 May 1948.[2]

The Act states that it is the duty of the State and in the interest of the community to safeguard peace and stability in labour relations, and that contracts of employment, which are the main foundation of labour relations, should be regulated in accordance with rules of justice and equity calculated to safeguard the legitimate rights and claims of employers and workers. The first part of the Act defines the expressions "contract of employment", "employer", "contractor", "employee" and "worker" and specifies the particulars which must be given in contracts of employment. A contract of employment may be entered into by any person in possession of full civil rights and by minors over the age of eighteen years; a married woman must have the consent of her husband. If the husband refuses to give his consent, or if it is impossible to obtain it, the wife may apply to the competent judicial authority. Young persons under the age of eighteen years may enter into a contract of employment only with the authorization of the employment office, granted on the request of their guardians or persons responsible, and for specified types of employment suited to their age and capabilities and not prejudicial to their school attendance. In all establishments, whether owned by Haitians or aliens, not less than 95 per cent of the employees must be Haitians, excluding Haitians who are not permanently employed. The Act also lays down the conditions that must be satisfied by alien workers taking paid employment in a Haitian undertaking. The alien worker must obtain a certificate from the employment office stating that he is engaged in work for which no Haitian worker with the necessary capability or occupational training can be recruited locally. The alien worker must also undertake to instruct one or more Haitian trainees in his work.

The other parts of the Act are concerned with the suspension of contracts of employment, the cancellation of contracts, the obligations of the parties and general provisions. The worker must carry out his work diligently and competently, treat his employer and colleagues with respect and consideration, act loyally towards the undertaking, being careful not to divulge its manufacturing or trade secrets, refrain from entering into competition with the employer and compensate the employer for any damage which may be caused to premises, material, equipment or crops through the worker's own fault. The employer must pay the agreed remuneration in full and when due, respect the personal dignity of the worker, being careful not to mistreat him physically or abuse him verbally, not require him to do work other than that stipulated in the contract, make available to him a place of work, machinery or tools satisfying safety requirements and in good working order, and conscientiously discharge the obligations imposed by the social legislation.

[1] French text in the *Moniteur* No. 105, of 30 October 1952.

[2] See the text of the Act of 5 May 1948 in *Yearbook on Human Rights for 1948*, p. 89–90.

HONDURAS

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

1. On 10 December 1952, the President of the Republic ratified decree No. 15, adopted by the National Congress on 19 December 1951, amending articles 16 and 62 of the Political Constitution.[1] This decree is published in *La Gaceta* No. 14877, of 17 December 1952.

2. On 11 December 1952 the President of the Republic ratified decree No. 36, adopted by the National Congress on 31 December 1951. Decree No. 36 amends article 97 of the Political Constitution dealing with incompatibilities between the office of a deputy and other public office, including diplomatic and consular posts. Whilst maintaining the incompatibilities listed in article 97 of the Constitution; the amendment provides that persons temporarily employed in the diplomatic and consular services or delegated for participation in international congresses may be deputies.

The presidential decree of 11 December, which embodies the new text of article 97, is published in *La Gaceta* No. 14877 of 17 December 1952.

3. On 6 February 1952, the National Congress adopted the Act on the work of minors and women, which was published in *La Gaceta* No. 14626, of 18 February 1952. A complete English translation of the Act is published in: International Labour Office, *Legislative Series 1952*—Hond. 1.

The Act prohibits the employment of minors under twelve years of age for any type of work, including agricultural labour, throughout the republic. It further prohibits the employment of minors over twelve years of age who have not yet completed their primary education. The director or local inspector of a primary school may, however, authorize the employment of such minors under certain specified circumstances. The hours of work of minors under sixteen years of age may not exceed six hours daily and thirty-six hours weekly.

Minors under sixteen years of age and women may not be employed on night work, subject to certain specified exceptions and they are entitled to a rest period of two hours in the middle of the day.

Articles 7 and 8 read as follows:

"*Art.* 7. It shall be unlawful to employ boys under sixteen years of age and minors of the female sex in workshops where written works, advertisements, illustrations, paintings, carvings, emblems, prints and other objects are produced which, although not infringing penal law, are capable of offending morality and decency.

"*Art.* 8. It shall be unlawful to employ women and persons under sixteen years of age in dangerous or unhealthy trades or operations."

The articles following specify some of the industries and work to which the prohibition of article 8 relates.

The prohibition of night work for women may be suspended in specified establishments by governmental decision if the national interest so requires.

Pregnant women working in all public or private offices or undertakings are entitled to leave with pay for three weeks before and after confinement, and also to medical care by such social institutions as may be established in the future for the protection of maternity.

No woman may be dismissed on account of pregnancy, and her post shall be kept open for her during her absence from work. During the nursing period, a women is entitled to feed her infant for a period not exceeding one hour a day during working hours.

The Act determines which authorities are responsible for the administration of this law, and specifies penalties for offenders.

4. On 4 September 1952, the President issued a regulation designed to prevent accidents incurred at work. This regulation is published in *La Gaceta* No. 14817, of 8 October 1952.

5. On 25 September 1952, the President issued a regulation on the General Directorate of Labour and Social Welfare and the General Inspectorates of Labour. This regulation is published in *La Gaceta* No. 14822, of 14 October 1952.

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[1] See *Yearbook on Human Rights for 1951*, p. 127.

HUNGARY

CODE OF CIVIL PROCEDURE[1]

Act No. III of 1952

Introductory Note. The new Code of Civil Procedure is based on the democratic principles of the Constitution of the Hungarian People's Republic relating to judicial organization and civil procedure.

It fully realizes the principle of public proceedings as laid down in Section 40 of the Constitution of the Hungarian People's Republic[2] (section 7); it also establishes the duty to speak the truth, and equality of rights for both litigants. No prejudice to any person in the proceedings may be caused by lack of knowledge of the Hungarian language. Persons who do not speak Hungarian may use their mother-tongue in the course of proceedings (section 8).

Sect. 1. This Act is intended to ensure that all legal disputes, brought before the courts in connexion with the status and property rights of the citizens, or with the property rights of the State or those of other juridical persons, are decided in accordance with material truth.

. . .

Sect. 7. (1) Judicial hearings shall be held in public.

(2) The public may be excluded from the hearings by order of the court, provided only that such exclusion is necessary in order to preserve State, military or official secrets, or for reasons of morality.

Sect. 8. The language of the proceedings shall be Hungarian. No person shall suffer prejudice because of his lack of knowledge of the Hungarian language. Persons who do not know Hungarian may use their mother tongue, in speaking and in writing, during the entire course of the proceedings.

[1] Hungarian text in *Magyar Közlöni* No. 48, of 6 June 1952. English translation and introductory note received through the courtesy of the Legation of the Hungarian People's Republic, Washington.

[2] See *Yearbook on Human Rights for 1949*, p. 95.

MARRIAGE, FAMILY AND GUARDIANSHIP ACT[1]

Act No. IV of 1952

Introductory Note. This Act, which incorporates the Family Law, is based on provisions of the Constitution of the Hungarian People's Republic dealing with equal rights for men and women (section 50), the protection of the institutions of marriage and the family (section 51) and the promotion of the welfare and education of youth[2] (section 52).

The Act abolishes the husband's privileged legal status in family matters, and ensures equal rights to both spouses. The wife is entitled—but not obliged—to bear the name of her husband; she is also permitted to bear her own name alone (sections 23, 25, 26).

The Act abolishes the difference between the legal status of the child born in wedlock and that of the child born out of wedlock (sections 41 and 42). It also abolishes the so-called "parental power", replacing it by "parental supervision" which is entrusted equally to both parents and which is to be exercised in the interest of the minor (section 72).

With respect to guardianship the Act abolishes the restriction on the appointment of women as guardians.

Sect. 1. Based on sections 50 to 52 of the Constitution, the Marriage, Family and Guardianship Act —in accordance with the social order of our people's democracy and the socialist moral conception—is intended to regulate and protect the institutions of marriage and family, to ensure equal rights to women in marriage and married life, to safeguard the interests of children, and to promote the welfare and education of youth.

[1] Hungarian text in *Magyar Közlöni* No. 48, of 6 June 1952. English translation and introductory note received through the courtesy of the Hungarian People's Republic, Washington.

[2] See *Yearbook on Human Rights for 1949*, p. 95.

Sect. 23. Husband and wife shall have equal rights and duties in family matters.

Sect. 25. The spouses shall choose their dwelling in agreement. Except for conclusive reasons, neither spouse may depart from the agreement respecting the dwelling place, without the consent of the other.

Sect. 26. (1) The wife shall bear either the name of her husband with a suffix indicating her married state, or her own name alone. If she wishes to bear only her own name, she shall give notice of her intention to the registrar prior to the marriage.

(2) If the husband dies and the wife has borne his name, she may choose either to retain the name of her husband or to give notice to the registrar that she will henceforth bear only her own name.

(3) A woman whose marriage has been annulled or dissolved may bear the name of her former husband provided that she has borne it previously, and has not become unworthy of it, and provided further that the court has, at her request, so authorized her in the judicial decree annulling or dissolving the marriage.

(4) Any subsequent change of a name established in accordance with the foregoing provision shall be subject to permission of the competent authority.

Sect. 41. (1) The registry of births shall register *ex officio* fictitious persons as parents, or father of the child respectively, in the following cases and at the following times: if both parents of the child are unknown, immediately after the birth; if the identity of the father cannot be ascertained, at any time when requested by the mother; in any case, after the completion of the third year of the child. The Public Guardianship Authority shall have authority to take the aforesaid measures.

(2) In choosing a name for the fictitious father, the family name of the next kinsman in the mother's ascending line shall be entered as the father's name. Failing such kinsman, the particulars of the personal data to be registered shall be determined by the Public Guardianship Authority at its discretion, without prejudice to the rightful interests of other persons.

Sect. 72. (1) Parental supervision shall be jointly exercised by the parents.

(2) If the parents of the child do not live together, and the child has been placed with one of them, supervision shall be exercised by the parent with whom the child has been placed. If, however, a child of parents living separately has been placed with a third person, and there is no agreement between the parents, the Public Guardianship Authority shall appoint one of them to exercise the parental supervision.

Sect. 75. (1) Within the sphere of parental supervision, it is the duty of the parents to care for the child, to educate him, and to promote the child's physical and mental development. They shall endeavour to ensure that the child becomes a healthy, educated person, faithful to his people, loving his country and contributing useful work to the construction of socialism. They have the right and the duty to do everything in their power in order to attain these aims, and to refrain from everything possibly impeding or retarding such attainment.

(2) The child has the duty to respect and obey his parents, and to endeavour to render their efforts successful.

ICELAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONSTITUTION

No constitutional changes were made during the past year. The committee engaged in reviewing the Constitution has not yet rendered its report.

II. LEGISLATION

A. Civil and Political Rights

Nationality

In 1952, a new Icelandic Nationality, Act, No. 100 of 23 December 1952[2] (published in part A, page 187), of the *Official Gazette [Stjórnartíðindi]* was enacted. This Act came into force on 1 January 1953. At the same time, Act No. 64, of 28 January 1935, concerning nationality and its acquisition and loss, was repealed. The new Nationality Act largely reflects the corresponding Danish, Norwegian and Swedish legislation, in the preparation of which there was collaboration amongst the Scandinavian countries.[3] The legislation on this subject is very similar in all Scandinavian countries. Though Iceland did not participate directly in that collaboration, amendments to the Icelandic nationality legislation were considered advisable so as to bring it into line with the new nationality Acts of the Scandinavian countries.

A major change in the new Nationality Act is that women are in every respect placed on the same footing as men with regard to the acquisition and loss of Icelandic nationality. A wife's nationality thus no longer depends on the nationality of her husband, and married women have the same independent rights in this matter as do unmarried women. Under the Nationality Act of 1935, an alien woman who married an Icelander acquired Icelandic nationality through the marriage. Under the new Act, however, marriage in itself has no effect on the acquisition of nationality. An alien woman who married an Icelander therefore does not now acquire Icelandic nationality through the marriage, but must obtain it in the same way as an alien man or unmarried alien woman.

The same applies, *mutatis mutandis*, to the loss of Icelandic nationality. Under the previous Act, the general rule was that an Icelandic woman who married an alien lost her Icelandic nationality through the marriage. If, however, she was an Icelandic national by birth, she retained her Icelandic nationality until she left the country. Under the new Act, an Icelandic woman does not lose Icelandic nationality through marriage to an alien, but only through those circumstances which otherwise entail loss of Icelandic nationality (see article 7 of the Act).

The former provisions have also been modified by several less important amendments, two of which are mentioned below.

Under the previous Act, an alien born in Iceland and domiciled there continuously until the age of nineteen received Icelandic nationality automatically. Under the new Act, however, he must make a special declaration in order to acquire Icelandic nationality. The general rule is that he cannot make this declaration before reaching the age of twenty-one, but if he is stateless or proves that he will lose his foreign nationality on acquiring Icelandic nationality, he may by way of exception make the declaration on reaching the age of eighteen. Otherwise the conditions continue, as formerly, to be birth and continuous domicile in Iceland until the prescribed age is reached.

The Act contains new provisions concerning the recovery of Icelandic nationality (see articles 4 and 11).

The Danish, Norwegian and Swedish nationality Acts authorize the conclusion between the Scandinavian countries of special agreements providing, *inter alia*, that birth in one of the contracting States will be equivalent for certain purposes to birth in any of the others, and further that, subject to certain conditions such as age, domicile, conduct and the like, a national of one of the contracting States may choose the nationality of another contracting State if he is domiciled there and has lived there for a specified time. Such agreements have already been concluded between Denmark, Norway and Sweden,[4] but the Icelandic Nationality Act does not authorize them. The granting of such authorization by Iceland was not considered advisable, since the numerical smallness of the nation puts it in a peculiar position in this matter.

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[1] Note prepared by Professor Olafur Jóhannesson, University of Iceland, Reykjavik.

[2] For an English translation of the complete text of the Act, see *Laws concerning Nationality* (published in the Legislative Series of the United Nations) 1954.

[3] See Professor Max Sorensen's note on the development of human rights in Denmark, in *Yearbook on Human Rights for 1950*, pp. 67-68; also the text of the Swedish Citizenship Act of 1950, *ibid.*, pp. 265-267.

[4] See *Yearbook on Human Rights for 1950*, p. 434.

In other respects, the Icelandic Nationality Act is, as has already been mentioned, generally in conformity with the other Scandinavian Acts on the same subject.

B. Economic and Social Rights

Act No. 12, of 30 January 1952, provides that the inheritance tax provided for in Act No. 30, of 27 June 1921, and any inheritance which devolves upon the State under article 33 of the Inheritance Act No. 42 of 1949 shall be paid into a special fund, called the Inheritance Fund, administered by the Social Security Institute [Tryggingarstofnun ríkisins]. The money paid into the Inheritance Fund is to be used for loans and grants for the construction of work homes and workrooms and the provision of work equipment for disabled and aged persons, so that their capacity for work may be put to the fullest possible use. Loans and grants for this purpose may be made to communes, societies and individuals.

Mention may also be made here of Act No. 23 of 1 February 1952 concerning safety precautions in workplaces. This Act prescribes various measures for protecting the health and well-being of workers and for protection against industrial accidents. It provides, *inter alia*, that work shall normally be arranged so as to allow each worker at least eight consecutive hours of rest from his work in every twenty-four hour period. There are some exceptions, however, to this general rule—e.g., with regard to any kind of salvage work, the saving of any kind of product from spoiling, etc. (see article 28 of the Act). Drivers of passenger motor-vehicles and operators of dangerous machines must not normally work more than twelve hours in a twenty-four-hour period. Workers must in the course of their work be given adequate rest periods at suitable intervals. Further rules on this subject may be made by the Minister, in consultation with the Director of the Labour Inspectorate.

III. RATIFICATION OF INTERNATIONAL INSTRUMENTS

On 15 July 1952, Iceland became a party to the ILO convention No. 91, concerning vacation holidays with pay for seafarers (see notice No. 63, of 3 November 1952 (published in part *A* of the *Official Gazette* 1952, p. 134)).

On the same date, Iceland also became a party to the ILO convention No. 98, concerning the application of the principles of the right to organize and to bargain collectively[1] (see notice No. 64, of 3 November 1952, published in part *A* of the *Official Gazette* 1952, p. 139).

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[1] See *Yearbook on Human Rights for 1949*, pp. 291–292.

INDIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. AMENDMENT OF THE CONSTITUTION

In 1952, an important measure for the amendment of article 81 of the Constitution of India[2] relating to representation in the Parliament of India—namely, the Constitution (Second Amendment) Act, 1952, was passed.

Article 81(1)(*a*) of the Constitution provides that the House of the People shall consist of not more than five hundred members directly elected by the voters in the states. Article 81(1)(*b*) lays down that the states shall be divided, grouped or formed into territorial constituencies, and that the number of members to be allotted to each such constituency shall be so determined as to ensure that there shall be not fewer than one member for every 750,000 of the population and not more than one member for every 500,000 of the population. Article 81(3) enjoins that upon the completion of each census, the representation of the several territorial constituencies in the House of the People shall be readjusted.

As a result of the census operations in 1951, the readjustment of the representation of the several territorial constituencies in the House of the People became necessary, but difficulties were felt in effecting such readjustment in view of the over-all limit of 500 members prescribed in article 81(1)(*a*) unless the upper limit of 750,000 prescribed in article 81(1)(*b*) was changed. This amending Act[3] was accordingly passed to remove the upper limit altogether.

II. OTHER LEGISLATIVE ENACTMENTS

Besides the Constitution (Second Amendment) Act, 1952, certain other measures relating to human rights passed in the year 1952 are mentioned below, indicating concisely the rights involved.

A. PERSONAL FREEDOM

The Preventive Detention (Amendment) Act, 1952 (Act XXXIV of 1952) and the Preventive Detention (Second Amendment) Act, 1952 (Act LXI of 1952)

The Preventive Detention (Amendment) Act, 1952, extended the life of the Preventive Detention Act, 1950[4] (Act IV of 1950) for a period of six months only, leaving it to the new Parliament after it was constituted in accordance with the provisions of the Constitution to give due consideration to the further extension of the life of the Act.

The Preventive Detention (Second Amendment) Act, 1952, which was passed by the Parliament as constituted under the provisions of the Constitution, further extended the life of the parent Act up to 31 December 1954, as it was considered that the reasons which necessitated the enactment of the measure had not ceased to exist. The said Act also made the following important modifications in the parent Act.

(*a*) The amending Act has provided a maximum period of detention for twelve months from the date of confirmation of the detention order.

(*b*) The Preventive Detention Act, 1950, provided that an Advisory Board might hear a *detenu* in person if in any particular case it considered it essential to do so. It has now been provided in addition by the amending Act that a *detenu* shall be heard in person by the Advisory Board if he desires to be so heard.

(*c*) Provision has been made by the amending Act to ensure that the grounds on which the order of detention is made are communicated to the *detenu* not later than five days from the date of detention.

(*d*) Provision has also been made by the amending Act for the reduction from six weeks to thirty days of the period within which a reference to the Advisory Board has to be made.

(*e*) A new provision has been inserted by the amending Act in the parent Act to make it clear that a fresh detention order can be passed against a person only on the basis of fresh facts arising after the date of revocation or expiry of the last detention order.

The relevant provisions of the Preventive Detention Act, 1950, as modified by the Preventive Detention (Amendment) Act, 1952, and the Preventive Detention (Second Amendment) Act, 1952, are reproduced in this *Tearbook*.

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[1] Note prepared by Mr. S. N. Mukerjee, Secretary, Council of States, New Delhi.

[2] See *Yearbook on Human Rights for 1949*, p. 100.

[3] By this Act the words "not less than one member for every 750,000 of the population and" in article 81(1)(*b*) (*ibid.*, p. 105) were repealed. The amending Act is published in *Gazette of India*, Extraordinary, part II, section 1, p. 81 of 1 May 1953.

[4] See *Yearbook on Human Rights for 1951*, pp. 149–151.

B. Social and Economic Rights

(1) *The Employees' Provident Funds Act, 1952 (Act XIX of 1952)*[1]

This Act makes provision for the future of the industrial worker after he retires or for his dependants in case of his early death. It provides for the institution, in the first instance, of contributory provident funds for employees in major organized industries (except undertakings owned by the Central or a state government or by a local authority), such as any industry engaged in the manufacture or production of cement, cigarettes, electrical, mechanical or general engineering products, iron, steel, paper or textiles. It also empowers the Central Government to extend the application of this Act to other industrial undertakings.

(2) *The Bihar Prevention of Beggary Act, 1951 (Bihar Act I of 1952), passed by the Bihar Legislature*

This Act was enacted to check begging and reclaim children accompanying the beggars, with a view to making them useful citizens.

(3) *The Uttar Pradesh Children Act, 1951 (Uttar Pradesh Act I of 1952), passed by the Uttar Pradesh Legislature*

This Act provides for the custody, protection, treatment and rehabilitation of children and also for the custody, trial and punishment of youthful offenders. A special feature of this Act is that it provides for a plan whereby juvenile delinquents may be treated not as criminals, but as wards of society, so as to receive the care, custody and supervision which they require for developing into useful citizens of the State.

(4) *The Hyderabad Compulsory Primary Education Act, 1952 (Hyderabad Act XL of 1952), passed by the Hyderabad Legislature*

This Act provides for free and compulsory primary education with a view to giving effect to the policy of introducing universal, free and compulsory primary education in the State of Hyderabad by a programme of progressive expansion.

(5) *The Hyderabad Labour Housing Act, 1952 (Hyderabad Act XXXVI of 1952), passed by the Hyderabad Legislature*

This Act was passed to provide for the welfare of labour by the establishment of a corporation which will be charged with the duty of providing proper housing accommodation for employees.

[1]This Act is published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 97–104, of 5 March 1952.

III. JUDICIAL DECISIONS

There have been a number of judicial decisions in 1952 on questions relating to human rights. Summaries of some of these decisions which are considered to be important to the development of human rights are published in this *Yearbook*.

LEGISLATION

PREVENTIVE DETENTION ACT, 1950, AS MODIFIED BY THE PREVENTIVE DETENTION (AMENDMENT) ACT, 1952, AND THE PREVENTIVE DETENTION (SECOND AMENDMENT) ACT, 1952[1]

1. *Short Title, Extent and Duration*

. . .

(3) It shall cease to have effect on the 31st day of December, 1954[2] save as respects things done or omitted to be done before that date.

2. *Definitions*

In this Act, unless the context otherwise requires,

(*a*) "State Government" means, in relation to a Part C State, *the Lieutenant-Governor or, as the case may be,*[3] the Chief Commissioner of the State;

. . .

3. *Power to make Orders detaining Certain Persons*

. . .

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forth-

[1]English text in *Gazette of India*, Extraordinary, part II, section 1, pp. 152–153, of 15 March 1952, and part II, section 1, pp. 282A–282C, of 22 August 1952. Extracts received through the courtesy of Mr. S. N. Mukerjee, Secretary, Council of States, New Delhi. For the text of the Preventive Detention Act 1950, as amended in 1951, see *Yearbook on Human Rights for 1951*, pp. 149–151. See also the preceding note on the development of human rights under IIA.

[2]Substituted by the Preventive Detention (Second Amendment) Act, 1952 (Act LXI of 1952), s. 2, for "1st day of October 1952". The words and figures "1st day of October, 1952" had been substituted for the words and figures "1st day of April 1952" by the Preventive Detention (Amendment) Act, 1952 (Act XXXIV of 1952), s. 2.

[3]Words in italics added by the Preventive Detention (Second Amendment) Act, 1952.

with report the fact to the state government to which he is subordinate, together with the grounds on which the order has been made and such other particulars as in his opinion *have a bearing on the matter*,[1] and no such order made after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the state government.

(4)[2] When any order is made or approved by the state government under this section, the state government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the state government have a bearing on the necessity for the order.

. . .

6. *Powers in relation to Absconding Persons*

(1)[3]

(2)[4] Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence under clause (*b*) of sub-section (1) shall be cognizable.

7. *Grounds of Order of Detention to be disclosed to Persons affected by the Order*

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, *but not later than five days from the date of detention*[5] communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the appropriate government.

. . .

8. *Constitution of Advisory Boards*

. . .

(2) Every such board shall consist of three persons who are, or have been or are qualified to be appointed as judges of a high court, and such persons shall be appointed by the Central Government or the state government, as the case may be.

[*Provided that where, immediately before the commencement of the Preventive Detention (Amendment) Act, 1951, any reference under section 9 is pending before an advisory board, such board may, for the purpose of disposing of that reference only, consist of two persons.*][6]

(3)[7] The appropriate government shall appoint one of the members of the Advisory Board who is or has been a judge of a high court to be its chairman, and in the case of a part *C* state the appointment to the Advisory Board, of any person who is a judge of the high court of a part *A* state or a part *B* state shall be with the previous approval of the state government concerned.

Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952, to dispose of any reference under section 9 pending before it at such commencement.

9.[8] *Reference to Advisory Boards*

In every case where a detention order has been made under this Act, the appropriate government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.

10.[9] *Procedure of Advisory Boards*

(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate government or from any person called for the purpose through the appropriate government or from the person concerned, and if in any particular case it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate government within ten weeks from the date of detention.

. . .

(3) Nothing in this section shall entitle any person against whom a detention order has been made [*to attend in person or*][10] to appear by any legal *practitioner*[11] in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

. . .

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[1] Substituted by section 4(1), *ibid.*, for the words "have a bearing on the necessity for the order".

[2] Clause inserted by the Preventive Detention (Second Amendment) Act, 1952 (Act LXI of 1952), s. 4(ii).

[3] Re-numbered by s. 5, *ibid.*

[4] Inserted, *ibid.*

[5] Words in italics added by s. 6., *ibid.*

[6] Words in italics and between brackets omitted by the Preventive Detention (Second Amendment) Act, 1952, s. 7(*a*).

[7] Inserted by s. 7(*b*), *ibid.*

[8] Substituted by s. 8, *ibid.*

[9] Substituted by s. 9(*a*), *ibid.*

[10] Words in italics and between brackets omitted by s. 9(*b*), *ibid.*

[11] Substituted, *ibid.*, for "representative".

11-A.[1] *Maximum Period of Detention*

(1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 11 shall be twelve months from the date of detention.

(2) Notwithstanding anything contained in sub-section (1), every detention order which has been confirmed under section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall, unless a shorter period is specified in the order, continue to remain in force until the first day of April 1953, or until the expiration of twelve months from the date of detention, whichever period of detention expires later.

(3) The provisions of sub-section (2) shall have effect notwithstanding anything to the contrary contained in section 3 of the Preventive Detention (Amendment) Act, 1952 (XXXIV of 1952), but nothing contained in this section shall affect the power of the appropriate government to revoke or modify the detention order at any earlier time.

. . .

13. *Revocation of Detention Orders*

(2)[2] The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a state government or an officer, as the case may be, is satisfied that such an order should be made.

. . .

[1]Inserted by s. 10, *ibid.*

[2]Substituted by s. 11, *ibid.*

JUDICIAL DECISIONS

EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAWS—TEST OF EQUALITY BEFORE LAW—ESSENTIALS OF REASONABLE CLASSIFICATION —CONSTITUTION OF INDIA, ARTICLE 14

THE STATE OF WEST BENGAL *v.* ANWAR ALI SARKAR
(appeal No. 297 of 1951)

THE STATE OF WEST BENGAL *v.* GAJEN MALI
(appeal No. 298 of 1951)

Supreme Court of India[1]

11 January 1952

The facts. Anwar Ali Sarkar, the respondent in appeal No. 297, and forty-nine other persons were charged with various offences alleged to have been committed by them in the course of their raid as an armed gang on the factory of Messrs. Jessop and Company at Dum Dum. On 26 February 1949 the raid took place. On 17 August 1949, an ordinance known as the West Bengal Special Courts Ordinance was promulgated under section 88 of the Government of India Act, 1935, by the Governor of West Bengal. The accused, or most of them, were arrested some time after the promulgation of the said ordinance. In March 1950, this ordinance was replaced by the West Bengal Special Courts Act, 1950 (West Bengal Act X of 1950), which contained provisions almost identical with those contained in the ordinance. On 28 October 1949, when the said ordinance was in force, the West Bengal Government appointed the sessions judge of Alipore a special judge with powers to try cases under the ordinance. On 25 January 1950, the Government of West Bengal, by a notification, directed that the case of Anwar Ali and his co-accused should be tried by the special judge in accordance with the provisions of the ordinance. A formal complaint was lodged before the special judge in respect of these persons on 2 April 1950—that is to say, after the Special Courts Act was passed replacing the ordinance. The trial lasted for several months, and on 31 March 1951 the accused were convicted and sentenced by the special judge, some of them being sentenced to transportation for life while others were sentenced to varying terms of imprisonment according to the gravity of their offence.

[1](1952) *Supreme Court Reports.* The summaries of this and the following decisions were prepared by Mr. S. N. Mukerjee, Secretary, Council of States, New Delhi.

The West Bengal Special Courts Act, 1950, was entitled "An Act to provide for the speedier trial of certain offences" and its preamble declared that the object of the Act was to provide for the speedier trial of certain offences. Section 3 of the Act empowered the state government to constitute, by notification in the *Official Gazette*, special courts of criminal jurisdiction for such areas and to sit at such places as may be specified in the notification.

Section 4 provided for appointment of a special judge to preside over a special court.

Section 5, whose constitutionality was impugned, ran as follows:

"5(1) A special court shall try such offences or classes of offences or cases or classes of cases as the state government may by general or special order in writing direct.

"(2) No direction shall be made under sub-section (1) for the trial of an offence for which an accused person was being tried at the commencement of this Act before any court, but, save as aforesaid, such direction may be made in respect of an offence, whether such offence was committed before or after the commencement of this Act."

Sections 6 to 15 prescribed the procedure which the special court was to follow in the trial of the cases referred to it. The procedure so prescribed was different in many respects from that laid down in the Code of Criminal procedure for the trial of offences generally. The main features of such procedure which marked a departure from the normal procedure laid down in the Code of Criminal Procedure were the elimination of the committal procedure in sessions cases and the substitution of the procedure provided in the Code for trial of warrant cases by the magistrate, trial without jury or assessors, restriction of the court's power in granting adjournments, special provisions to deal with refractory accused, and dispensation of *de novo* trial on transfer of a case from one special court to another.

On 1 May 1951, Anwar Ali, the respondent, applied to the High Court at Calcutta under article 226 of the Constitution for the issue of a writ of *certiorari* quashing the conviction and the sentence on the ground that the special court had no jurisdiction to try the case, inasmuch as section 5(1) of the Act, under which it was sent to that court for trial, was unconstitutional and void under article 13(2)[1] as it denied to the respondent the equal protection of the laws enjoined by article 14.[2]

On 21 May 1951, a similar application was filed before the High Court at Calcutta by one Gajan Mali, the respondent in appeal No. 298, who, along with five other persons, was being tried for offences of murder and conspiracy to murder before another special judge appointed under the West Bengal Special Courts Act, 1950.

Both these cases were heard by a special bench of the High Court.

The High Court held that section 5(1) of the West Bengal Special Courts Act, 1950, was void to the extent that it empowered the State to direct any case to be tried by the special court, and quashed the conviction and directed the trial of the respondent and the other accused persons according to law. Thereupon the State of West Bengal appealed to the Supreme Court from the judgement of the special bench of the High Court in both the cases.

Held: That the appeals should be dismissed. Section 5(1) of the West Bengal Special Courts Act, 1950, infringed the provisions of article 14 of the Constitution and was void inasmuch as it vested an unrestricted discretion in the state government to direct any case which it liked to be tried by the special court in accordance with the procedure laid down in the Act, which varied substantially from that prescribed for trial of offences generally by the Code of Criminal Procedure, and it did not classify or mention any basis for the classification of the cases which might be directed to be tried by the special court.

Fazl Ali, J., in delivering an opinion which may be taken to be representative of the views of the majority of the court said:

". . . There is no doubt that the West Bengal Special Courts Ordinance, 1949, which was later replaced by the impugned Act (West Bengal Special Courts Act X of 1950, to be hereinafter referred to as 'the Act'), was a valid Ordinance when it was promulgated on the 17th August 1949. The Act, which came into effect on 15 March 1950, is a verbatim reproduction of the earlier ordinance, and what we have to decide is whether it is invalid because it offends against article 14 of the Constitution. In dealing with this question, the following facts have to be borne in mind:

"(1) The framers of the Act have merely copied the provisions of the ordinance of 1949, which was promulgated when there was no provision similar to article 14 of the present Constitution.

"(2) The provision of the American Constitution which corresponds to article 14 has, ever since that Constitution has been in force, greatly exercised the minds of American judges, who, notwithstanding their efforts to restrict its application within reasonable limits, have had to declare a number of laws and executive acts to be unconstitutional. One is also amazed at the volume of case-law which has grown

[1] Art. 13(2) of the Constitution reads as follows: "The States shall not make any law which takes away or abridges the rights conferred by this part, and any law made in contravention of this clause shall, to the extent of the contravention, be void."

[2] Article 14 reads as follows: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territories of India."

round this provision, which shows the extent to which its wide language can be stretched and the large variety of situations in which it has been invoked.

"(3) Article 14 is as widely worded as, if not more widely worded than, its counterpart in the American Constitution, and is bound to lead to some inconvenient results and seriously affect some pre-Constitution laws.

"(4) The meaning and scope of article 14 have been elaborately explained in two earlier decisions of this court (viz. *Chiranjitlal Chowdhury* v. *The Union of India and Others* and *The State of Bombay and another* v. *F. N. Balsara*) and the principles laid down in those decisions have to be kept in view in deciding the present case. One of these principles is that article 14 is designed to protect all persons placed in similar circumstances against legislative discrimination, and if the legislature takes care to classify persons reasonably for legislative purposes, and if it deals equally with all persons belonging to a well-defined class, it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons.

"(5) There is nothing sacred or sacrosanct about the test of reasonable classification, but it has undoubtedly proved to be a useful basis for meeting attacks on laws and official acts on the ground of infringement of the equality principle.

"(6) It follows from the two foregoing paragraphs that one of the ways in which the impugned Act can be saved is to show that it is based on a reasonable classification of the persons to whom or the offences in respect of which the procedure laid down in it is to apply, and hence it is necessary to ascertain whether it is actually based on such a classification.

"With these introductory remarks, I will proceed to deal with some of the more important aspects of the case.

"The first thing to be noticed is that the preamble of the Act mentions speedier trial of certain offences as its object. Now the framers of the Criminal Procedure Code (which is hereinafter referred to as 'the Code') also were alive to the desirability of having a speedy trial in certain classes of cases, and with this end in view they made four different sets of provisions for the trial of four classes of cases, these being provisions relating to summary trials, trial of summons cases, trial of warrant cases and trial of cases triable by a court of session. Broadly speaking, their classification of the offences for the purpose of applying these different sets of provisions was according to the gravity of the offences, though in classifying the offences fit for summary trial the experience and power of the trying Magistrate was also taken into consideration. The net result of these provisions is that offences which are summarily triable can be more speedily tried than summons cases; summons cases can be more speedily tried than warrant cases; and warrant cases can be more speedily tried than sessions cases. The framers of the Code appear to have been generally of the view that the graver the offence the more elaborate should be the procedure for its trial, which was undoubtedly an understandable point of view, and no one has suggested that their classification of offences for the four different modes of trial to which reference has been made is unreasonable in any sense.

"The impugned Act has completely ignored the principle of classification followed in the Code, and it proceeds to lay down a new procedure without making any attempt to particularize or classify the offences or cases to which it is to apply. Indeed, section 5 of the Act, which is the most vital section, baldly states that the 'special court shall try such offences or classes of offences or cases or classes of cases, as the state government may, by general or special order in writing, direct'. I agree with my learned brothers that to say that the reference to speedier trial in the preamble of the Act is the basis of classification is to read into the Act something which it does not contain and to ascribe to its authors what they never intended. As I have already stated, the Act is a verbatim copy of the earlier ordinance which was framed before the present Constitution came into force, and article 14 could not have been before the minds of those who framed it because that article was not then in existence.

"The second point to be noted is that in consequence of the Act, two procedures—one laid down in the Code and the other laid down in the Act—exist side by side in the area to which the Act applies, and hence the provisions of the Act are apt to give rise to certain anomalous results, some of which may be stated as follows:

"(1) A grave offence may be tried according to the procedure laid down in the Act, while a less grave offence may be tried according to the procedure laid down in the Code.

"(2) An accused person charged with a particular offence may be tried under the Act, while another accused person charged with the same offence may be tried under the Code.

"(3) Certain offences belonging to a particular group or category of offences may be tried under the Act, whereas other offences belonging to the group or category may be tried under the Code.

"Some of my learned colleagues have examined the provisions of the Act and shown that of the two procedures—one laid down in the Act and the other in the Code—the latter affords greater facilities to the accused for the purpose of defending himself than the former; and once it is established that one procedure is less advantageous to the accused than the other, any person tried by a special court constituted under the

Act, who but for the Act would have been entitled to be tried according to the more elaborate procedure of the Code, may legitimately inquire: Why is this discrimination being made against me and why should I be tried according to a procedure which has not the same advantages as the normal procedure and which even carries with it the possibility of one's being prejudiced in one's defence?

"It was suggested that the reply to this query is that the Act itself, being general and applicable to all persons and to all offences, cannot be said to discriminate in favour of or against any particular case or classes of persons or cases, and if any charge of discrimination can be levelled at all, it can be levelled only against the act of the executive authority if the Act is misused. This kind of argument however does not appear to me to solve the difficulty. The result of accepting it would be that even where discrimination is quite evident one cannot challenge the Act simply because it is couched in general terms; and one cannot also challenge the act of the executive authority whose duty it is to administer the Act, because that authority will say: I am not to blame, as I am acting under the Act. It is clear that if the argument were to be accepted, article 14 could be easily defeated. I think the fallacy of the argument lies in overlooking the fact that the 'insidious discrimination complained of is incorporated in the Act itself', it being so drafted that whenever any discrimination is made such discrimination would be ultimately traceable to it. The Act itself lays down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root cause of the discrimination which may result by the application of the Act.

"In the course of the arguments, it was suggested than the Act is open to criticism on two different and distinct grounds, these being—

"(1) That it involves excessive delegation of legislative authority amounting to its abdication in so far as it gives unfettered discretion to the executive, without laying down any standards or rules of guidance, to make use of the procedure laid down by it; and

"(2) That it infringes article 14 of the Constitution.

"The first criticism, which is by no means an unsubstantial one, may possibly be met by relying on the decision of this court in special reference No. I of 1951, *In* re *Delhi Laws Act*, 1912, *etc.* but the second criticism cannot be so easily met, since an Act which gives uncontrolled authority to discriminate cannot but be hit by article 14, and it will be no answer simply to say that the legislature, having more or less the unlimited power to delegate, has merely exercised that power. Curiously enough, what I regard as the weakest point of the Act (*viz.* its being drafted in such general terms) is said to be its main strength and merit, but I really cannot see how the generality of language which gives unlimited authority to discriminate can save the Act.

"In some American cases, there is a reference to 'purposeful or intentional discrimination', and it was argued that unless we can discover an evil intention or a deliberate design to mete out unequal treatment behind the Act, it cannot be impugned. It should be noted, however, that the words which I have put in inverted commas have been used in a few American cases with reference only to executive action, where certain Acts were found to be innocuous but were administered by public authority with 'an evil eye and an unequal hand'. I suggest most respectfully that it will be extremely unsafe to lay down that unless there was evidence that discrimination was 'purposeful or intentional' the equality clause would not be infringed. In my opinion, the true position is as follows. As a general rule, if the Act is fair and good, the public authority who has to administer it will be protected. To this general rule, however, there is an exception, which comes into play when there is evidence of *mala fides* in the application of the Act. The basic question, however, still remains of whether the Act itself is fair and good, which must be decided mainly with reference to the specific provisions of the Act. It should be noted that there is no reference to intention in article 14 and the gravamen of that article is equality of treatment. In my opinion, it will be dangerous to introduce a subjective test when the article itself lays down a clear and objective test.

"I must confess that I have been trying hard to think how the Act can be saved, and the best argument that came to my mind in support of it was this: The Act should be held to be a good one, because it embodies all the essentials of a fair and proper trial—namely (1) notice of the charge, (2) right to be heard and the right to test and rebut the prosecution evidence, (3) access to legal aid, and (4) trial by an impartial and experienced court. If these are the requisities—so I argued with myself—to which all accused persons are equally entitled, why should a particular procedure which ensures all those requisites not be substituted for another procedure, if such substitution is necessitated by administrative exigencies or is in public interest, even though the new procedure may be different from and less elaborate than the normal procedure? This seemed to me to be the best argument in favour of the Act, but the more I thought of it, the more it appeared to me that it was not a complete answer to the problem before us. In the first place, it brings in the 'due process' idea of the American Constitution, which our Constitution has not chosen to adopt. Secondly, the Act itself does not state that public interest and administrative exigencies will provide the occasion for its application. Lastly, the discrimination involved in the application of the Act is too evident to be explained away.

"The framers of the Constitution have referred to equality in the preamble, and have devoted as many as five articles—namely, articles 14, 15, 16, 17 and 18 in the chapter on fundamental rights—to ensure equality in all its aspects. Some of these articles are confined to citizens only, and some can be availed of by non-citzens also; but on reading these provisions as a whole, one can see the great importance attached to the principle of equality in the Constitution. That being so, it will be wrong to whittle down the meaning of article 14, and however well-intentioned the impugned Act may be and however reluctant one may feel to hold it invalid, it seems to me that section 5 of the Act, or at least that part of it with which alone we are concerned in this appeal, does offend against article 14 of the Constitution and is therefore unconstitutional and void . . ."

RIGHT TO PERSONAL FREEDOM—PREVENTIVE DETENTION—VALIDITY—PREVENTIVE DETENTION ACT, 1950

NARANJAN SINGH NATHAWAN *v.* THE STATE OF PUNJAB

Supreme Court of India[1]

25 January 1952

The facts. On 5 July 1950, the petitioner in these proceedings was arrested and detained under an order of the district magistrate of Amritsar under section 3 of the Preventive Detention Act, 1950 (Act IV of 1950), and the grounds of his detention were served on him, as required by section 7 of the Act, on 10 1950. Thereafter, the Act having been amended by the Preventive Detention (Amendment) Act, 1951, with effect from 22 February 1951, a fresh order dated 17 May 1951 was served on the petitioner on 23 May 1951, but no grounds in support of this order were served on him. The petitioner thereupon applied to the Supreme Court under article 32 of the Constitution for the issue of a writ of *habeas corpus* for his release from custody on the ground that the aforesaid order was illegal inasmuch as, (1) the grounds of detention communicated to him on 10 July 1950, were "quite vague, false and imaginary", and (2) he was not furnished with the grounds on which the order dated 17 May 1951 was based.

During the pendency of this application, the state government issued an order on 18 November 1951, revoking the order of detention dated 17 May 1951, and on the same date the district magistrate, Amritsar, issued another order for the detention of the petitioner under sections 3 and 4 of the amended Act. This last order, along with the grounds on which it was based, was served on the petitioner on 19 November 1951. Thereupon the petitioner submitted a supplemental petition to the Supreme Court on 28 November 1951, questioning the validity of the last order on the ground that it was only a device to defeat the *habeas corpus* petition of the petitioner, and he also put forward an additional ground of attack on the legality of the earlier order dated 17 May 1951—namely, that it fixed the term of detention till 31 March 1952, before obtaining the opinion of the Advisory Board as required by section 11 of the amended Act. This ground was evidently based on the view expressed by the Supreme Court that the specification of the period of detention in the initial order of detention under section 3 of the amended Act before obtaining the opinion of the Advisory Board rendered the order illegal.

Held: That in *habeas corpus* proceedings the court should have regard to the legality or otherwise of the detention at the time of the return, and not with reference to the date of the institution of the proceedings. In the absence of proof of bad faith, it would be competent for the detaining authority to supersede an earlier order of detention which had been challenged as defective merely on formal grounds and to make a fresh order, wherever possible, which would be free from defects and would duly comply with the requirements of the law in that behalf.

The Court said: ". . . It will be seen from the affidavit filed on behalf of the respondent that the case of the petitioner, along with this representation against the detention order of 17 May 1951, was placed before the Advisory Board for its consideration, and the Board reported on 30 May 1951 that in its opinion there was sufficient cause for the detention of the petitioner. It is said that, on the basis of that report, the government decided that the petitioner should be detained till 31 March 1952, but while a properly framed order under s. 11 should 'confirm' the detention order and 'continue' the detention for a specified period, the order of 17 May 1951 was issued under a misapprehension in the form of an initial order under s. 3 of the amended Act, on the same grounds as before, without any fresh communi-

[1](1952) S.C.R. 395.

cation thereof to the petitioner. To avoid arguments based on possible defects of a technical and formal character, the said order was revoked under s. 13, and on a review of the case by the district magistrate, a fresh order of detention was issued under s. 3 on 18 November 1951, and this was followed by a formal communication of the same grounds as before, as there could be no fresh grounds, the petitioner having throughout been under detention.

"It is contended by the Advocate-General of the Punjab that the decision reported in 1945 F.C.R. 81 is clear authority in support of the validity of the aforesaid order. On essentially similar facts the court laid down two propositions, both of which have application here. (1) Where an earlier order of detention is defective merely on formal grounds, there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the courts; and (2) if, at any time before the court directs the release of the *detenu*, a valid order directing his detention is produced, the court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention but whether in the face of the later valid order the court can direct the release of the petitioner. The learned judges point out that the analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings has no application to proceedings in the nature of *habeas corpus* where the court is concerned solely with the question of whether the applicant is being lawfully detained or not.

"The petitioner's learned counsel conceded that he could not challenge the correctness of the second proposition, but took exception to the first as being no longer tenable after the Indian Constitution came into force. It was urged that article 22 lays down the procedure to be followed in cases of preventive detention and the said procedure must be strictly observed as the only prospect of release by a court must be on the basis of technical or formal defects, a long line of decisions having held that the scope of judicial review in matters of preventive detention is practically limited to an inquiry as to whether there has been strict compliance with the requirements of the law. This is undoubtedly true, and this court had occasion, in the recent case of *Makhan Singh Tarsikka* v. *The State of Punjab* (petition No. 308 of 1951), to observe 'it cannot too often be emphasized that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected'. This proposition, however, applied with equal force to cases of preventive detention before the commencement of the Constitution, and it is difficult to see what difference the Constitution makes in regard to the position. Indeed, the position is now made more clear by the express provisions of s. 13 of the Act, which provides that a detention order may *at any time* be revoked or modified and that such revocation shall not bar the making of a fresh detention order under s. 3 against the same person. Once it is conceded that in *habeas corpus* proceedings the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the date of the institution of the proceeding, it is difficult to hold, in the absence of proof of bad faith, that the detaining authority cannot supersede an earlier order of detention challenged as illegal and make a fresh order wherever possible which is free from defects and duly complies with the requirements of the law in that behalf . . ."

EQUAL PROTECTION OF THE LAWS—CONTRAVENTION—ESSENTIALS OF VALID CLASSIFICATION—CONSTITUTION OF INDIA, ARTICLE 14

KATHI RANING RAWAT *v.* THE STATE OF SAURASHTRA

Supreme Court of India[1]

27 February 1952

The facts. In April 1948, the Rajpramukh of the State of Saurashtra promulgated an ordinance known as the Saurashtra State Public Safety Measures Ordinance, 1948 (ordinance No. IX of 1948), "to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra." In 1949, this ordinance was amended by the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949 (ordinance No. XLVI of 1949), by the insertion of sections 7 to 18 therein, and these new sections provided for the establishment of special courts of criminal jurisdiction in certain areas to try certain classes of offences in accordance with a simplified and shortened procedure. Section 9 empowered the state government to constitute by notification special

[1](1952) S.C.R. 435.

courts for such areas as may be specified in the notification. Section 10 provided for the appointment of special judges to preside over such courts. Section 11 provided that the special judge was to try such offences or classes of offences or such cases or classes of cases as the government might, by general or special order in writing, direct. Sections 12 to 18 laid down the procedure for the trial of cases by the special judge which varied from the normal procedure prescribed by the Code of Criminal Procedure in two material respects—namely:

(1) Where a case was triable by a court of sessions, no commitment proceeding was necessary and the special judge might take cognizance without any commitment.

(2) There was no provision for trial by jury or with the aid of assessors.

In exercise of the power conferred by sections 9, 10 and 11 of the ordinance, the government issued a notification constituting a special court for certain specified areas and empowered that court to try certain specified offences which included offences under sections 302, 307 and 392 read with section 34 of the Indian Penal Code (as adapted and applied to the State of Saurashtra).

The appellant was tried by the special court for offences alleged to have been committed by him under sections 302, 307 and 392 of the Indian Penal Code read with section 34 thereof. His conviction and sentence were upheld on appeal by the State High Court. He then preferred an appeal to the Supreme Court against the decision of the High Court. A preliminary objection was raised on behalf of the appellant as to the jurisdiction of the Special Court to try the appellant and it was contended that the ordinance of 1949 which authorized the establishment of the special court violated the provisions of article 13(1) thereof.

Held: That the preliminary objection should be overruled. The impugned ordinance, in so far as it authorized the state government to direct offences or classes of offences or classes of cases to be tried by the special court, did not offend against the provisions of article 14 of the Constitution and was not void.

Fazl Ali, J., in delivering an opinion which may be taken to be representative of the views of the majority of the Court, said: ". . . the main contention advanced before us on behalf of the appellant is that the Ordinance of 1949 violates the provisions of article 14 of the Constitution, by laying down a procedure which is different from and less advantageous to the accused than the ordinary procedure laid down in the Criminal Procedure Code, and thereby discriminating between persons who are to be tried under the special procedure and those tried under the normal procedure. In support of this argument, reliance is placed on the decision of this court in *The State of West Bengal* v. *Anwar Ali Sarkar and Gajen Mali* (Cases Nos. 297 and 298 of 1951), in which certain provisions of the West Bengal Special Courts Act, 1949, have been held to be unconstitutional on grounds similar to those urged on behalf of the appellant in the present case. A comparison of the provisions of the ordinance in question with those of the West Bengal Act will show that several of the objectionable features in the latter enactment do not appear in the ordinance, but, on the whole, I am inclined to think that the circumstance by itself will not afford justification for upholding the ordinance. There is, however, one very important difference between the West Bengal Act and the present ordinance which, in my opinion, does afford such justification, and I shall try to refer to it as briefly as possible.

"I think that a distinction should be drawn between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances. The main objection to the West Bengal Act was that it permitted 'without reason' or without any rational basis. Having laid down a procedure which was materially different from and less advantageous to the accused than the ordinary procedure, that Act gave uncontrolled and unguided authority to the state government to put that procedure into operation in the trial of any case or class of cases or any offence or class of offences. There was no principle to be found in that Act to control the application of the discriminatory provisions or to correlate those provisions to some tangible and rational objective, in such a way as to enable anyone reading the Act to say: If that is the objective, the provisions as to special treatment of the offences seem to be quite suitable, and there can be no objection to dealing with a particular type of offences on a special footing. The mere mention of speedier trial as the object of the Act did not cure the defect, because the expression 'speedier trial' standing by itself provided no rational basis of classification. It was merely a description of the result sought to be achieved by the application of the special procedure laid down in the Act, and afforded no help in determining what cases required speedier trial.

"As regards the present ordinance, we can discover a guiding principle within its four corners, which cannot but have the effect of limiting the application of the special procedure to a particular category of offences only and establish such a nexus (which was missing in the West Bengal Act) between offences of a particular category and the object with which the

ordinance was promulgated as should suffice to repel the charge of discrimination and furnish some justification for the special treatment of those offences. The ordinance, as I have already stated, purported to amend another ordinance, the object of which was to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the state. It was not disputed before us that the preamble of the original ordinance would govern the amending ordinance also, and the object of promulgating the subsequent ordinance was the same as the object of promulgating the original ordinance. Once this is appreciated, it is easy to see that there is something in the ordinance itself to guide the state government to apply the special procedure not to any and every case, but only to those cases or offences which have a rational relation to or connexion with the main object and purpose of the ordinance and which for that reason become a class by themselves requiring to be dealt with on a special footing. The clear recital of a definite objective furnishes a tangible and rational basis of classification to the state government for the purpose of applying the provisions of the ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquillity. Thus, under section 11, the state government is expected to select only such offences or class of offences or class of cases for being tried by the special court in accordance with the special procedure as are calculated to affect public safety, maintenance of public order, etc., and under section 9, the use of the special procedure must necessarily be confined only to disturbed areas or those areas where adoption of public safety measures is necessary. That this is how the ordinance was intended to be understood, and was in fact understood, is confirmed by the notification issued on 9–11 February by the state government in pursuance of the ordinance. That notification sets out forty-nine offences under the Indian Penal Code as adopted and applied to the state and certain other offences punishable under the ordinance, and one can see at once all these offences directly affect the maintenance of public order and peace and tranquillity. The notification also specifies certain areas in the state over which only the special court is to exercise jurisdiction. There can be no dispute that if the state legislature finds that lawlessness and crime are rampant and there is a direct threat to peace and tranquillity in certain areas within the state, it is competent to deal with offences which affect the maintenance of public order and preservation of peace and tranquillity in those areas as a class by themselves, and to provide that such offences shall be tried as expeditiously as possible in accordance with a special procedure divised for the purpose. This, in my opinion, is in plain language the *rationale* of the ordinance, and it will be going too far to say that in no case and under no circumstances can a legislature lay down a special procedure for the trial of a particular class of offences, and that recourse to a simplified and less cumbrous procedure for the trial of those offences, even when abnormal conditions prevail, will amount to a violation of article 14 of the Constitution. I am satisfied that this case is distinguishable from the case relating to the West Bengal Act, but I also feel that the legislatures should have recourse to legislation such as the present only in very special circumstances. The question of referring individual cases to the special court does not arise in this appeal, and I do not wish to express any opinion on it. . . . In the result, I would hold that the Saurashtra State Public Safety Measure (Third Amendment) Ordinance is not unconstitutional, and accordingly overrule the objection as to the jurisdiction of the special court to try the appellant."

RIGHT TO CARRY ON TRADE—RESTRICTIONS THEREON—MUNICIPAL BY-LAWS IMPOSING LICENCE FEE FOR CARRYING ON OF TRADE—LEGALITY OF BY-LAW—CONSTITUTION OF INDIA, ARTICLE 19

MOHAMMAD YASIN *v.* THE TOWN AREA COMMITTEE, JALALABAD AND ANOTHER

Supreme Court of India[1]

27 February 1952

The facts. The petitioner Mohammad Yasin was a wholesale dealer in fresh vegetables and fruits at Jalalabad in the district of Muzaffarnagar in the State of Uttar Pradesh, and carried on such business at his shop situated in the town of Jalalabad. The vegetable and fruit growers used to bring their goods to the town and get them auctioned through one of the vegetable dealers, who used to charge one anna in the rupee by way of commission. The respondent committee had framed certain by-laws under which all right and power to levy or collect commission on sale or purchase of vegetables and fruits within the

[1](1952) S.C.R. 572.

limits of the town vested in the respondent committee or any agency appointed by it and no one except the respondent committee was authorized to deal in wholesale vegetables and fruits and collect the commission thereof. The respondent committee gave the contract for sale of vegetables and fruits and for collecting the commission to the respondent Bishambar Das. The respondent committee had not set up any market, nor had it framed any by-laws for issue of licences to the vegetable and fruit merchants.

The petitioner applied to the Supreme Court under article 32 of the Constitution of India[1] for the protection of his fundamental right of carrying on his business. He contended that by granting a monopoly of the right to do wholesale business in vegetables and fruits to the respondent Bishambar, the respondent committee had in effect totally prevented the petitioner from carrying on his business and had thereby infringed his fundamental right under article 19(1)(*g*) of the Constitution.[2] In the alternative, the petitioner contended that the respondent committee had no legal authority to impose a tax of the kind it had sought to do, that the imposition of a tax calculated at one anna in the rupee was in the nature of a sale-tax and could not be regarded as a licence fee and such unauthorized impost constituted an illegal restraint on his fundamental right under article 19(1)(*g*).

Held: That the by-laws in question which imposed a charge on the wholesale dealer in the shape of the prescribed fee were *ultra vires* the powers of the respondent committee and, therefore, the by-laws could not be said to constitute a valid law which alone might, under article 19(6) of the Constitution, impose a restriction on the right conferrred by article 19(1)(*g*). In the absence of any valid law authorizing it, such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business guaranteed to him by article 19(1)(*g*) of the Constitution.

The court said: ". . . The petitioner has to his petition annexed copies of a set of by-laws dated 24 June 1942 and a copy of a resolution of the respondent committee dated 16 March 1950, recommending the addition of several by-laws to the previous by-laws. At the hearing of the petition before, it was agreed by and between counsel on both sides that the petition had to be disposed of on the basis of the by-laws of 1942 only and learned counsel for the respondent committee has produced the original by-laws of 1942 before us. By-law 1 provides only that no person shall sell or purchase any vegetable or fruit within the prescribed limits of the Town Area Committee, Jalalabad, by wholesale or auction, without paying the fee fixed under these by-laws to the licensee appointed by the town magistrate. By-law 4(*b*) expressly provides that any person can sell in wholesale at any place in the town area provided he pays the prescribed fees to the licensee. It is therefore clear that these by-laws do not, in terms, prohibit anybody from dealing in vegetables and fruits, as alleged by the petitioner, and in this respect they materially differ from the by-laws which this court had to consider in the *Kairana case*, which consequently does not govern this case.

"Learned counsel, however, contends—and we think with considerable force and cogency—that although, in form, there is no prohibition against carrying on any wholesale business by anybody, in effect and in substance the by-laws have brought about a total stoppage of the wholesale dealers' business in a commercial sense. The wholesale dealers, who will have to pay the prescribed fee to the contractor appointed by auction, will necessarily have to charge the growers of vegetables and fruits something over and above the prescribed fee so as to keep a margin of profit for themselves, but in such circumstances no grower of vegetables and fruits will have his produce sold to or auctioned by the wholesale dealers at a higher rate of commission, but all of them will flock to the contractor who will charge them only the prescribed commission. On the other hand, if the wholesale dealers charge the growers of vegetables and fruits only the commission prescribed by the by-laws, they will have to make over the whole of it to the contractor without keeping any profit themselves. In other words, the wholesale dealers will be converted into mere tax collectors for the contractor or the respondent committee without any remuneration from either of them. In effect, therefore, the by-laws, it is said, have brought about a total prohibition of the business of the wholesale dealers in a commercial sense and from a practical point of view. We are not of opinion that this contention is unsound or untenable.

"Learned counsel for the petitioner, however, does not leave the matter there. He goes farther, and urges that the respondent committee has no legal authority to impose this fee of one anna in the rupee on the value of goods sold or auctioned, and that such imposition is in the nature of a sale-tax rather than a licence fee.

"Learned counsel for the respondent in reply takes a preliminary objection to this line or argument. He points out that as the levying of a tax without authority of law is specifically prohibited under article 265 of the Constitution, article 31(1) must

[1]This article guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III (Fundamental Rights) of the Constitution.

[2]Right "to practise any profession, or to carry on any occupation, trade or business."

be construed as referring to deprivation of property otherwise than by levying of a tax, and that levying of a tax in contravention of article 265 does not amount to a breach of a fundamental right. He contends, on the authority of the decision of this court in *Ramjilal* v. *The Income-tax Officer, Mohindar Garh*, that while an illegal imposition of tax may be challenged in a properly constituted suit, it cannot be questioned by an application of article 32. This argument overlooks the difference between a tax such as income tax and a licence fee for carrying on a business. A licence fee on a business not only takes away the property of the licensee, but also operates as a restriction on his right to carry on his business, for without payment of such fee the business cannot be carried on at all. This aspect of the matter was not raised or considered in the case relied on by the learned counsel, and that case, therefore, has no application to the facts of this case. Under article 19(1)(*g*) the citizen has the right to carry on any occupation, trade or business which right under that clause is apparently to be unfettered. The only restriction to this unfettered right is the authority of the State to make a law relating to the carrying on of such occupation, trade or business as mentioned in clause (6) of that article as amended by the Constitution (First Amendment) Act, 1951. If, therefore, the licence fee cannot be justified on the basis of any valid law no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under article 19(1)(*g*), and such infringement can properly be made the subject matter of a challenge under article 32 of the Constitution.

"Learned counsel for the respondents then refers us to the United Provinces Town Areas Act (No. II of 1914), which governs the respondent committee. Section 14 of this Act requires the committee annually to determine and report to the district magistrate the amount required to be raised in any town area for the purposes of this Act, and provides that the amount so determined shall be raised by the imposition of a tax to be assessed on the occupiers of houses or lands within the limits of the town area according either to their general circumstances or to the annual rental value of the houses or lands so occupied by them, as the committee may determine. There were, at the time when the by-laws of the respondent committee were framed, five provisos to this section, none of which authorized the imposition of any tax on any business, and therefore they have no bearing on the question now under consideration. Learned counsel for the respondents, however, draws our attention to section 38 of the Act, which authorizes the provincial government, by notification in the *Official Gazette*, to extend to all or any or any part of any town area any enactment for the time being in force in any municipality in the United Provinces and to declare its extension to be subject to such restrictions and modifications, if any, as it thinks fit. Then he proceeds to draw our attention to notification No. 397/XI–871–E, dated 6 February 1929, whereby in supersession of all previous notifications, the provincial government, in exercise of the powers conferred by section 38(1) of the United Provinces Town Areas Act, 1914, extended the provisions of sections 293(1) and 298(2)(J)(*d*) of the United Provinces Municipalities Act (II of 1916) to all the town areas in the United Provinces in the modified form set forth therein. The original by-laws produced by learned counsel purport, however, to have been framed by the respondent Committee under sections 298(2)(F)(*a*) and 294 of the United Provinces Municipalities Act (II of 1916). We have not been referred to any notification whereby section 294 of the U.P. Municipalities Act was extended to the respondent committee. It appears, however, that the by-laws of the respondent committee were revised in September 1942 and were then said to have been made under section 298(2)(J)(*d*). It will therefore, have to be seen whether these by-laws come within the purview of section 298(2)(J)(*d*) as modified in their application to the respondent committee. It will be noticed that under section 298(2)(J)(*d*) as modified as aforesaid, the respondent Committee is authorized only to make by-laws fixing any charges or fees or any scale of charges or fees to be paid under section 293(1) and prescribing the times at which such charges or fees shall be payable and designating the persons authorized to receive payment thereof. Section 293(1), as modified, authorizes the respondent Committee to charge fees to be fixed by by-laws or by public auction or by agreement for the use or occupation (otherwise than under a lease) of any immoveable property vested in or entrusted to the management of the town area committee, including any public street or place of which it allows the use or occupation, whether by allowing a projection thereon or otherwise. By-law 1 of the respondent committee, to which a reference has already been made, forbids a person from using any land within the limits of the town area for the sale or purchase of fruits and vegetables without paying the prescribed fee. By-law 4(*b*), however, allows any person to sell in wholesale at any place in the town area, provided he pays the prescribed fees to the licensee. These by-laws do not purport to fix a fee for the use or occupation of any immoveable property vested in or entrusted to the management of the Town Area Committee, including any public street or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise. Sections 293(1) and 298(2)(J)(*d*) of the U.P. Municipalities Act, 1916, as amended at the time they were extended to the town areas in the United Provinces, do not empower the Town Area Committee to make any by-law authorizing it to charge any fees otherwise than for the use or occupation of

any property vested in or entrusted to the management of the Town Area Committee, including any public street. Therefore, the by-laws, *prima facie*, go much beyond the powers conferred on the respondent committee by the sections mentioned above, and the petitioner complains against the enforcement of these by-laws against him as he carries on business in his own shop and not in or on any immoveable property vested in the Town Area Committee or entrusted to their management. Learned counsel for the respondent committee, however, urges that the growers of vegetables and fruits come on foot or in carts or on horses along the public street and stand outside the petitioner's shop and for such use of the public street the respondent committee is well within its powers to charge the fees. From the way the case was formulated by the learned counsel, it is quite clear that if anybody uses the public street it is the growers of vegetables and fruits who come to the petitioner's shop to get their produce auctioned by the petitioner, and the petitioner cannot be charged with fees for use of the public street by those persons. In our opinion, the by-laws which impose a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation by him of immoveable property vested in or entrusted to the management of the Town Area Committee including any public street, are obviously *ultra vires* the powers of the respondent committee, and therefore the by-laws cannot be said to constitute a valid law which alone may, under article 19(6) of the Constitution, impose a restriction on the right conferred by article 19(1)(*g*). In the absence of any valid law authorizing it, such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by article 19(1)(*g*) of our Constitution.

"In this view of the matter, the petitioner is entitled to a suitable order for protection of his fundamental right. The prayer in the petition, however, has been expressed in language much too wide and cannot be granted in that form. The proper order would be to direct the respondent committee not to prohibit the petitioner from carrying on the business of a wholesale dealer in vegetables and fruits within the limits of the Jalalabad Town Area Committee until proper and valid by-laws are framed and thereafter except in accordance with a licence to be obtained by the petitioner under the by-laws to be so framed. The respondent committee will pay the costs of this application to the petitioner."

RIGHT TO FORM ASSOCIATIONS—LAW IMPOSING RESTRICTIONS IN THE INTEREST OF PUBLIC ORDER—CONSTITUTION OF INDIA, ARTICLE 19

STATE OF MADRAS *v.* V. G. ROW

Supreme Court of India[1]

31 March 1952

The facts. On 10 March 1950, the Government of Madras issued the following order under section 16 of the Indian Criminal Law Amendment Act, 1908 (Act XIV of 1908), declaring a society called the People's Education Society an unlawful association:

"*Whereas*, in the opinion of the State Government, the association known as the People's Education Society, Madras, has for its object interference with the administration of the law and the maintenance of law and order, and constitutes a danger to the public peace;

"*Now, therefore*, His Excellency the Governor of Madras, in exercise of the powers conferred by section 16 of the Indian Criminal Law Amendment Act, 1908 (Central Act XIV of 1908), hereby declares the said association to be an unlawful association within the meaning of the said Act."

No copy of this order was served on the respondent V. G. Row, who was the general secretary of the society, or on any other office-bearer of the society, but it was notified in the *Official Gazette*, as required by the Act.

The respondent applied to the High Court at Madras on 10 April 1950, under article 226 of the Constitution, complaining that the Indian Criminal Law Amendment Act, 1908, and the order dated 10 March 1950 purporting to have been made thereunder infringed the fundamental right conferred on him by article 19(1)(*c*) of the Constitution to form associations or unions and seeking appropriate reliefs.

During the pendency of the application which was taken up for hearing on 21 August 1950, the Indian Criminal Law Amendment Act, 1908, was amended by the Indian Criminal Law Amendment (Madras) Act, 1950 (Madras Act XI of 1950). The material changes made by the amending Act were as follows.

[1](1952) S.C.R. 597.

(1) The definition of "unlawful association" in s. 15(2)(*b*) of the Act was modified so as to include within that definition "an association which has been declared by the state government by notification in the *Official Gazette* to be unlawful on the ground (to be specified in the notification) that such association

"(i) Constitutes a danger to the public peace, or

"(ii) Has interfered or interferes with the maintenance of public order or has such interference for its object, or

"(iii) Has interfered or interferes with the administration of the law or has such interference for its object."

(2) For old section 16, sections 16 and 16A were substituted. The new section 16 provided that a notification issued under s. 15(2)(*b*) should

(*a*) Specify the ground on which it was issued, the reasons for its issue and such other particulars, if any, as might have a bearing on the necessity thereof, and

(*b*) Fix a reasonable period for any office-bearer or member of the association or any other person interested to make a representation to the state government in respect of the issue of the notification.

Under section 16A, the government was required, after the expiry of the time fixed in the notification for making representations, to place before an advisory board a copy of the notification and of the representations, if any, received before such expiry, and to cancel the notification if the board found that there was no sufficient cause for the issue of the notification in respect of the association concerned.

There was no amendment of section 17 of the Act of 1908, which prescribed penalties for membership or management of an unlawful association.

By section 6 of the amending Act, notifications already issued and not cancelled before the amendment were to have effect as if they had been issued under s. 15(2)(*b*) as amended, and it was provided that in such cases a supplementary notification should also be issued as required under section 16 as amended, and thereafter the procedure provided by the new section 16A should be followed. It was under this provision that the validity of the notification issued on 10 March 1950, under old section 16, fell to be considered in the light of the provisions of the amending Act when the petition came up for hearing in the High Court at Madras on 21 August 1950. The High Court, by a full bench of three judges, allowed the application on 14 September 1950. The State of Madras appealed to the Supreme Court against the order of the High Court.

Held: That the appeal should be dismissed. Section 15(2)(*b*) of the Indian Criminal Law Amendment Act, 1908, as amended by the Indian Criminal Law Amendment (Madras) Act, 1950, imposed restrictions on the fundamental right to form associations guaranteed by sub-clause (*c*) of clause (1) of article 19 of the Constitution which did not fall within the limits of authorized restrictions under clause (4) of that article, and was therefore unconstitutional and void.

The court said: ". . . the test under s. 15(2)(*b*) is, as it was under s. 16, a subjective one, and the factual existence or otherwise of the grounds is not a justiciable issue.

"It is on this basis, then, that the question has to be determined as to whether s. 15(2)(*b*) as amended falls within the limits of constitutionally permissible legislative abridgement of the fundamental right conferred on the citizen by article 19(1)(*c*). Those limits are defined in clause (4) of the same article.

" '(4) Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.'

"It was not disputed that the restrictions in question were imposed 'in the interests of public order'. But, are they 'reasonable' restrictions within the meaning of article 19(4)?

"Before proceeding to consider this question, we think it right to point out—what is sometimes overlooked—that our Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitution, unlike in America, where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted 'due process' clause in the Fifth and Fourteenth Amendments. If, then, the courts in this country face up to such important and none too easy tasks, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the 'fundamental rights', as to which this court has been assigned the role of a sentinel on the *qui vive*. While the court naturally attaches great weight to the legislative judgement, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the courts in the new set-up are out to seek clashes with the legislatures in the country.

"The learned judges of the High Court unanimously held that the restrictions under s. 15(2)(*b*) were not reasonable, on the ground of (1) the inadequacy of the publication of the notification, (2) the omission to fix a time limit for the government's sending the papers to the advisory board or for the latter to make its report, no safeguards being provided against the government's enforcing the penalities in the mean-

time, and (3) the denial to the aggrieved person of the right to appear either in person or by pleader before the Advisory Board to make good his representation. In addition to these grounds, one of the learned judges (Satyanarayana Rao J.) held that the impugned Act offended against article 14 of the Constitution in that there was no reasonable basis for the differentiation in treatment between the two classes of unlawful association mentioned in s. 15(2)(*a*) and (*b*). The other learned judges did not, however, agree with this view. Viswanatha Sastri J. further held that the provisions for forfeiture of property contained in the impugned Act were void, as they had no reasonable relation to the maintenance of public order. The other two judges expressed no opinion on this point. While agreeing with the conclusion of the learned judges that s. 15(2)(*b*) is unconstitutional and void, we are of the opinion that the decision can be rested on a broader and more fundamental ground.

"This court had occasion in *Dr. Khare's* case[1] to define the scope of the judicial review under clause (5) of article 19, where the phrase 'imposing reasonable restrictions on the exercise of the right' also occurs, and four out of the five judges participating in the decision expressed the view (the other judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorized. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgement in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking, but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable.

"Giving due weight to all the considerations indicated above, we have come to the conclusion that s. 15(2)(*b*) cannot be upheld as falling within the limits of authorized restrictions on the right conferred by article 19(1)(*c*). The right to form associations or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields, that the vesting of authority in the executive government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry, is a strong element which, in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed by s. 15(2)(*b*) on the exercise of the fundamental right under article 19(1)(*c*); for no summary and what is bound to be a largely one-sided review by an advisory board, even where its verdict is binding on the executive government, can be a substitute for a judicial inquiry. The formula of subjective satisfaction of the Government or of its officers, with an advisory board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights. In the case of preventive detention, no doubt, this court upheld in *Gopalan's* case[2] deprivation of personal liberty by such means, but that was because the Constitution itself sanctions laws providing for preventive detention, as to which no question of reasonableness could arise in view of the language of article 21. As pointed out by Kania C. J. at p. 121, quoting Lord Finlay in *Rex* v. *Halliday*, 'the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based'.

"The Attorney-General placed strong reliance on the decision in *Dr. Khare's* case, where the subjective satisfaction of the government regarding the necessity for the externment of a person, coupled with a reference of the matter to an advisory board whose opinion, however, had no binding force, was considered by a majority to be 'reasonable' procedure for restricting the right to move freely conferred by article 19(1)(*b*). The Attorney-General claimed that the reasoning of that decision applied *a fortiori* to the present case, as the impugned Act provided that the advisory board's report was binding on the government. We cannot agree. We consider that that case is distinguishable in several essential particulars. For one thing, externment of individuals, like preventive detention, is largely precautionary and based on suspicion. In fact, s. 4(1) of the East Punjab Public

[1] See *Yearbook on Human Rights for 1950*, pp. 141–143.

[2] *Ibid.*, pp. 130–139.

Safety Act, which was the subject of consideration in *Dr. Khare's* case, authorized both preventive detention and externment for the same purpose and on the same ground—namely, 'with a view to preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order it is necessary, etc.'. Besides, both involve an element of emergency requiring prompt steps to be taken to prevent apprehended danger to public tranquillity, and authority has to be vested in the government and its officers to take appropriate action on their own responsibility. These features are, however, absent in the grounds on which the government is authorized, under s. 15(2)(*b*), to declare associations unlawful. These grounds, taken by themselves, are factual and not anticipatory or based on suspicion. An association is allowed to be declared unlawful because it 'constitutes' a danger or 'has interfered or interferes' with the maintenance of public order or 'has such interference for its object', etc. The factual existence of these grounds is amenable to objective determination by the court, quite as much as the grounds mentioned in clause (*a*) of sub-s. (2) of s. 15, as to which the Attorney-General conceded that it would be incumbent on the Government to establish, as a fact, that the association, which it alleged to be unlawful, 'encouraged' or 'aided' persons to commit acts of violence, etc. We are unable to discover any reasonableness in the claim of the Government in seeking, by its mere declaration, to shut out judicial inquiry into the underlying facts under clause (*b*). Secondly, the East Punjab Public Safety Act was a temporary enactment which was to be in force only for a year, and any order made thereunder was to expire at the termination of the Act. What may be regarded as a reasonable restriction imposed under such a statute will not necessarily be considered reasonable under the impugned Act, as the latter is a permanent measure, and any declaration made thereunder would continue in operation for an indefinite period until the government should think fit to cancel it. Thirdly, while, no doubt, the Advisory Board procedure under the impugned Act provides a better safeguard than the one under the East Punjab Public Safety Act, under which the report of such body is not binding on the government, the impugned Act suffers from a far more serious defect in the absence of any provision for adequate communication of the government's notification under s. 15(2)(*b*) to the association and its members or office-bearers. The government has to fix a reasonable period in the notification for the aggrieved person to make a representation to the government. But, as stated already, no personal service on any office-bearer or member of the association concerned or service by affixture at the office, if any, of such association is prescribed. Nor is any other mode of proclamation of the notification at the place where such association carries on its activities provided for. Publication in the *Official Gazette*, whose publicity value is by no means great, may not reach the members of the association declared unlawful, and if the time fixed expired before they knew of such declaration, their right of making a representation, which is the only opportunity of presenting their case, would be lost. Yet the consequences to the members which the notification involves are most serious, for their very membership thereafter is made an offence under s. 17.

"There was some discussion at the bar as to whether want of knowledge of the notification would be a valid defence in a prosecution under that section. But it is not necessary to enter upon that question, as the very risk of prosecution involved in declaring an association unlawful with penal consequences, without providing for adequate communication of such declaration to the association and its members or office-bearers, may well be considered sufficient to render the imposition of restrictions by such means unreasonable. In this respect an externment order stands on a different footing, as provision is made for personal or other adequate mode of service on the individual concerned, who is thus assured of an opportunity of putting forward his case. For all these reasons the decision in *Dr. Khare's* case is distinguishable and cannot rule the present case as claimed by the learned Attorney-General. Indeed, as we have observed earlier, a decision dealing with the validity of restrictions imposed on one of the rights conferred by article 19 (1) cannot have much value as a precedent for adjudging the validity of the restrictions imposed on another right, even when the constitutional criterion is the same—namely, reasonableness—as the conclusion must depend on the cumulative effect of the varying facts and circumstances of each case.

"Having given the case our best and most anxious consideration, we have arrived at the conclusion, in agreement with the learned judges of the High Court, that, having regard to the peculiar features to which reference has been made, s. 15(2)(*b*) of the Criminal Law Amendment Act, 1908, as amended by the Criminal Law Amendment (Madras) Act, 1950, falls outside the scope of authorized restrictions under clause (4) of article 19, and is therefore unconstitutional and void.

"The appeal fails and is accordingly dismissed with costs."

FREEDOM OF MOVEMENT—LAW IMPOSING RESTRICTIONS—VALIDITY—ORDER OF EXTERNMENT—CONSTITUTION OF INDIA, ARTICLES 14 AND 19

GURBACHAN SINGH *v.* THE STATE OF BOMBAY AND ANOTHER

Supreme Court of India[1]

7 May 1952

The facts. The petitioner Gurbachan Singh, who was an Indian citizen and was residing with his father at Dadar, was served on 23 July 1951 with an order purporting to have been made by the Commissioner of Police, Bombay, under section 27(1) of the City of Bombay Police Act, 1902 (Bombay Act IV of 1902), directing him to remove himself from Greater Bombay and go to his native place at Amritsar in East Punjab. It was stated in the order that the petitioner was to comply with its directions within two days from the date it was made, and that he was to proceed to Amritsar by rail. Section 27(1) of the City of Bombay Police Act, 1902 provided as follows:

"Whenever it shall appear to the Commissioner of Police,

"(*a*) That the movements or acts of any person in Greater Bombay are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or an offence punishable under chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of the Commissioner witnesses are not willing to come forward to give evidence in public against such persons by reason of apprehension on their part as regards the safety of their person or property;

"(*b*) . . . the Commissioner of Police may, by an order in writing duly served on him . . . direct such person . . . to remove himself outside the state or to such place within the state and by such route and within such time as the Commissioner of Police shall prescribe and not to enter the state or, as the case may be, Greater Bombay."

On 25 July 1951, the petitioner applied to the Commissioner of Police for an extension of the time within which he was to remove himself from Greater Bombay, and thereupon the Commissioner of Police gave him time till 30 July 1951. The petitioner then himself wrote a letter to the Commissioner of Police on 30 July 1951, praying that he might be allowed to stay at Kalyan, which is outside Greater Bombay but within the State of Bombay, and that he might be given a railway ticket from Dadar to that place. Acting on this letter the police took the petitioner to Kalyan on the evening of 30 July 1951 and left him there. Thereafter, the petitioner commenced proceedings in the Bombay High Court, first in its original side under the letters patent and then in the appellate criminal bench of the court under articles 226 and 228 of the Constitution, complaining of the externment order mentioned above and praying for a writ of *certiorari* to have it quashed. Both these applications were dismissed, and the petitioner then filed a petition before the Supreme Court under article 32 of the Constitution praying for a writ in the nature of *mandamus* restraining the respondents from enforcing the externment order on the ground that his fundamental rights under sub-clauses (*d*) and (*e*) of clause (1) of article 19 of the Constitution[2] had been infringed by that order. The petitioner contended that section 27(1) of the City of Bombay Police Act, 1902, under which the externment order was purported to have been made, contravened the provisions of sub-clauses (*d*) and (*e*) of clause (1) of article 19 of the Constitution and also offended against article 14 thereof.

Held: That the petition should be dismissed. Section 27(1) of the City of Bombay Police Act, 1902, was enacted in the interest of the general public. The said section did not, therefore, contravene the provisions of article 19 of the Constitution. The restrictions imposed by that section on the fundamental right of free movement of a citizen enumerated in article 19(1)(*d*) of the Constitution would come within the purview of article 19(5), for having regard to the class of cases to which the said section applied and the menace which an externment order passed under it was intended to avert, it would be difficult to say that such restrictions were unreasonable.

Although a procedure different from what was laid down under the ordinary law had been provided for a particular class of persons against whom proceedings could be taken under section 27(1) of the City of Bombay Police Act, 1902, the discrimination, if any, was based upon a reasonable classification which was within the competency of the legislature to make.

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[1]Report (1952) S.C.R. 737.

[2]Rights "to move freely throughout the Territory of India" and "to reside and settle in any part of the Territory of India".

The said section did not, therefore, offend against article 14 of the Constitution.

The court said: ". . . There can be no doubt that the provision of section 27(1) of the Bombay Act was made in the interest of the general public and to protect them against dangerous and bad characters whose presence in a particular locality may jeopardize the peace and safety of the citizens. The question, therefore, is whether the restrictions that this law imposes upon the rights of free movement of a citizen come within the purview of clause 5 of article 19 of the Constitution; or, in other words, whether the restrictions are reasonable. It is perfectly true that the determination of the question as to whether the restrictions imposed by a legislative enactment upon the fundamental rights of a citizen enunciated in article 19(1)(*d*) of the Constitution are reasonable or not within the meaning of clause 5 of the article would depend as much upon the procedural part of the law as upon its substantive part; and the court has got to look in each case to the circumstances under which and the manner in which the restrictions have been imposed. The maximum duration of the externment order made under section 27(1) of the Bombay Act is a period of two years, and the Commissioner of Police can always permit the externee to enter the prohibited area even before the expiration of that period. Having regard to the class of cases to which this sub-section applies and the menace which an externment order passed under it is intended to avert, it is difficult to say that this provision is unreasonable. The Commissioner of Police can in a proper case cancel the externment order any moment he likes, if, in his opinion, the return of the externee to the area from which he was removed ceases to be attended with any danger to the community. As regards the procedure to be followed in such cases, section 27(4) of the Act lays down that before an order of externment is passed against any person; the Commissioner of Police or any officer authorized by him shall inform such person, in writing, of the general nature of the material allegations against him and give him a reasonable opportunity of explaining these allegations. He is permitted to appear through an advocate or an attorney, and can file a written statement and examine witnesses for the purpose of clearing his character. The only point . . . in regard to the reasonableness of this procedure is that the suspected person is not allowed to cross-examine the witnesses who deposed against him and on whose evidence the proceedings were started. In our opinion, this by itself would not make the procedure unreasonable having regard to the avowed intention of the legislature in making the enactment. The law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses, for fear of violence to their person or property, are willing to depose publicly against certain bad characters whose presence in certain areas constitutes a menace to the safety of the public residing therein. This object would be wholly defeated if a right to confront or cross-examine these witnesses was given to the suspect. The power to initiate proceedings under the Act has been vested in a very high and responsible officer, and he is expected to act with caution and impartiality while discharging his duties under the Act. This contention . . . must, therefore, fail.

". . . It is true that a procedure different from what is laid down under the ordinary law has been provided for a particular class of persons against whom proceedings could be taken under section 27(1) of the City of Bombay Police Act, but the discrimination, if any, is based upon a reasonable classification which it is within the competency of the legislature to make. Having regard to the objective which the legislation has in view and the policy underlying it, a departure from the ordinary procedure can certainly be justified as the best means of giving effect to the object of the legislature. In our opinion, therefore, there is no substance in the petition and it shall stand dismissed."

RIGHT TO FREEDOM OF SPEECH AND EXPRESSION—LAW IMPOSING RESTRICTIONS IN THE INTERESTS OF THE SECURITY OF THE STATE—VALIDITY—CONSTITUTION OF INDIA, ARTICLE 19—INDIAN PRESS (EMERGENCY POWERS) ACT, 1931, SECTION 4 (1)

THE STATE OF BIHAR *v.* SHAILABALA DEVI

Supreme Court of India[1]

26 May 1952

The facts. The respondent Shailabala Devi was the keeper of the Bharati Press at Purulia in the State of Bihar. A pamphlet under the heading *Sangram* was printed at the said press and was alleged to have been circulated in the town of Purulia in the districts of Manbhum. The Government of Bihar considered that the pamphlet contained objectionable matter of the nature described under section 4(1) of the Indian Press (Emergency Powers) Act, 1931 (Act XXIII of 1931), and required the press, by an order issued under section 3(3) of the Act, to furnish security in the sum of Rs. 2,000 by 19 September 1949. On 26 September 1949, the respondent applied to the High Court at Patna under section 23 of the Act for setting aside the above order. This application was allowed by the majority of the judges constituting the special bench of the High Court.

One of the main objections raised to the validity of the order issued by the Government of Bihar was that the provisions of section 4(1) of the Act were inconsistent with article 19(1) of the Constitution[2] and as such void under article 13 thereof.[3] Two of the judges of the special bench of the High Court, on a construction of the decisions of the Supreme Court in *Romesh Thapar* v. *The State of Madras* and *Brij Bhushan* v. *The State of Delhi* held that section 4(1)(*a*) of the Act was repugnant to the Constitution and therefore void.

Thereupon the State of Bihar preferred an appeal to the Supreme Court against the judgement of the special bench of the High Court.

Held: That the restrictions imposed by section 4(1)(*a*) of the Indian Press (Emergency Powers) Act, 1931, on freedom of speech and expression were solely directed against the undermining of the security of the State or the overthrow of it and were within the ambit of article 19(2) of the Constitution.[4] The said section was therefore valid and not repugnant to the Constitution.

The court said: ". . . Section 3(3) of the Act under which the notice was issued in the present case enacts as follows:

" 'Whenever it appears to the provincial government that any printing press is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representation of the nature described in section 4, sub-section (1), the provincial government may, by notice in writing to the keeper of the press . . . order the keeper to deposit with the magistrate security . . .'.

"Clause (*a*) of section 4(1) deals with the words or signs or visible representations which incite to or encourage, or tend to incite to or encourage the commission of any offence of murder or any cognizable offence involving violence. It is plain that speeches or expressions on the part of an individual which incite to or encourage the commission of violent crime, such as murder, cannot but be matters which would undermine the security of the State and come within the ambit of a law sanctioned by article 19(2) of the Constitution. I cannot help observing that the decisions of this court in *Romesh Thapar's* case[5] and in *Brij Bhushan's* case have been more than once misapplied and misunderstood and have been construed as laying down the wide proposition that restrictions of the nature imposed by section 4(1)(*a*) of the Indian Press (Emergency Powers) Act or of similar character are outside the scope of article 19(2) of the Constitution inasmuch as they are conceived generally in the interests of public order . . .

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[1] Report (1952) S.C.R. 654.

[2] "All citizens shall have the right (*a*) to freedom of speech and expression . . ."

[3] Article 13(1) reads as follows: "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency be void."

[4] Art. 19(2) reads as follows: "Nothing in sub-clause a of clause 1 shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

[5] See *Yea book on Human Rights for 1950*, pp. 143–146.

"The question that arose in *Romesh Thapar's* case was whether the impugned Act (Madras Maintenance of Public Order Act, XXIII of 1949), in so far as it purported by section 9 (1-A) to authorize the provincial government 'for the purpose of securing the public safety and the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the province of Madras or any part thereof any document or class of documents' was a law relating to any matter which undermined the security of or tended to overthrow the State, and it was observed that whatever ends the impugned Act may have been intended to subserve and whatever aims its framers may have had in view, its application and scope could not, in the absence of delimiting the words in the statute itself, be restricted *to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State*, nor was there any guarantee that those authorized to exercise the powers under the Act would in using them discriminate between those who act prejudicially to the security of the State and those who do not. Section 4(1)(*a*) of the impugned Act, however, is restricted to aggravated forms of prejudicial activity. It deals specifically with incitement to violent crimes and does not deal with acts that generally concern themselves with the maintenance of public order. That being so, the decision in *Romesh Thapar's* case given on the constitutionality of section 9(1-A) of the Madras Maintenance of Public Order Act has no relevancy for deciding the constitutionality of the provisions of section 4(1)(*a*) of the Indian Press (Emergency Powers) Act. Towards the concluding portion in *Romesh Thapar's* judgement it was observed as follows:

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed *solely* against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that section 9(1-A), which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order, falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional.

"The restrictions imposed by section 4(1)(*a*) of the Indian Press (Emergency Powers) Act on freedom of speech and expression are solely directed against the undermining of the security of the State or the overthrow of it and are within the ambit of article 19(2) of the Constitution. The deduction that a person would be free to incite to murder or other cognizable offence through the press with impunity drawn from our decision in *Romesh Thapar's* case could easily have been avoided . . .

. . .

"Be that as it may, the matter is now concluded by the language of the amended article 19(2) made by the Constitution (First Amendment) Act, which is retrospective in operation, and the decision of the High Court on this point cannot be sustained."

. . .

IRAN

JUDICIAL DECISION

PERSONAL STATUS—LAW OF IRAN—COURTS BOUND BY LAW ON PERSONAL STATUS TO APPLY RULES AND USAGES OF THEIR RELIGION TO NON-CHIITE IRANIANS

X *v.* Y

Court of Cassation[1]

29 November 1951

Facts. The plaintiff and the defendant were Christians belonging to the Armenian minority in Iran. The plaintiff brought an action against her husband demanding the payment of 160,800 rials and of a monthly alimony for her. She claimed that her husband had authorized her to await her confinement in the house of her parents in Teheran, where she lived then. The defendant refused, however, to make the payments, claiming that she had estranged herself from him and showed disobedience to him by her refusal to return to him; he had approached the Armenian Patriarch at Tabriz and started divorce proceedings, and had been granted the divorce. The claim of the plaintiff for alimony was not allowed by the tribunal of first instance; the Court of Appeals held that she had not proved that she had been obedient to her husband and therefore confirmed the judgement as far as she was concerned. The court stated, however, that the tribunal of first instance had not determined the question of the payment of alimony to the child, and therefore returned the files to that tribunal for the determination of this question. The plaintiff appealed against this judgement to the Court of Cassation.

Held: That, since plaintiff and defendant are Christians, the rules of the personal status provided by their religion must be applied in accordance with the law on the personal status of 31 tir 1313 (20 July 1934).[2] Since the Court of Appeals rendered its judgement without taking these rules into consideration, the judgement is void and the case is referred to another chamber of the Court of Appeals.

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[1]Summary received through the courtesy of Dr. A. Matine-Daftary, Professor in the Faculty of Law of the University of Teheran, President of the Iranian Association of the United Nations.

[2]This law reads as follows:

"*Single article.* With regard to the personal status, inheritance and wills of non-Chiite Iranians, the courts must, subject to provisions concerning public policy, take into consideration the usages established by the religion of these Iranians and practised by them.

"(1) In questions concerning marriage and divorce, the usage of the husband's religion obtains.

"(2) In questions concerning inheritance and wills, the usage of the religion of the deceased obtains.

"(3) In questions concerning adoption, the usage of the religion of the adopting man or woman obtains."

IRAQ

ELECTORAL LAW[1]

Decree No. 6 of 1952

PREAMBLE

ELIGIBILITY OF ELECTORS

Art. 1. A deputy shall be elected by direct suffrage in accordance with the provisions of this decree.

Art. 2. Any male Iraqui citizen who has attained the age of twenty years and whose name has been entered on the electoral rolls shall be an elector unless he:

1. Has been declared bankrupt and has not obtained his discharge;

2. Has been placed under a disability and the disability has not been removed;

3. Has been sentenced to imprisonment for a term of not less than one year for an offence other than a political offence, or has been sentenced to imprisonment for theft, fraud or a similar offence reflecting upon his honour, unless his forfeited rights have been restored to him;

4. Is of unsound mind or mentally defective.

Art. 3. A person may not be a deputy if he:

1. Is not an Iraqi national by birth or by virtue of the Treaty of Lausanne[2] or, being a member of an Ottoman family which was ordinarily resident in Iraq before 1914, by naturalization, provided that more than ten years have elapsed since his naturalization;

2. Is under the age of thirty years;

3. Has been declared bankrupt and has not obtained his legal discharge;

4. Has been placed under a disability by a court order and that order has not been rescinded;

5. Has been sentenced to imprisonment for a term of not less than one year for an offence other than a political offence, or has been sentenced to a term of imprisonment for theft, fraud, breach of trust, forgery, embezzlement or other offence reflecting on his honour in an absolute sense;

6. Holds an office or employment under or is in the service of any person or establishment which is in a contractual relationship with any government department, or has any material interest, direct or indirect, in that person's or establishment's contract with a government department, unless such interest arises through his being a shareholder in a company composed of more than twenty-five persons, though this provision shall not apply to lessees of government lands or property;

7. Is of unsound mind or mentally defective;

8. Is related to the King up to the fourth degree.

CHAPTER I

ORGANIZATION

The Electoral Constituency

Art. 4. 1. Every *qadá* in which the number of males on the electoral rolls is not less than 15,000 and not more than 70,000 shall be deemed to be an electoral constituency.

Art. 8. The Christian minority shall have the following number of deputies:

In the *qadá* of the provincial capital of Baghdad, 2;

In the *qadá* of the provincial capital of Basra, 1;

In the *qadá* of the provincial capital of Mosul, 3.

This number shall be additional to the number determined in articles 4 and 6. The President of the Court of Appeal shall determine the number of electoral constituencies in each of the aforesaid *qadás* in which the Christians are in a majority, proportionately to the number of deputies assigned to the *qadá* for the purpose of the election of the aforesaid deputies; and the constituencies so determined shall be deemed the one constituency for the purpose of the election of the Christian deputies in each *qadá*.

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[1] Arabic text in *Official Gazette* No. 3198, of 18 December 1952. English translation from the Arabic text by the United Nations Secretariat. In addition to minor changes, the new Act provides for a system of direct elections instead of indirect elections; changes the provisions on representation of minorities; and includes a chapter on election propaganda. See extracts from the Electoral Law of 1946, which has been superseded by the present Act, in *Yearbook on Human Rights of 1949*, pp. 119-120.

[2] Treaty of Peace with Turkey, signed on 5 September 1924; English text in *League of Nations, Treaty Series*, vol. 28 (1924), pp. 13-113.

CHAPTER III

NOMINATION OF CANDIDATES

Art. 22. 1. Any Iraqi citizen who satisfies the conditions governing eligibility may submit his candidature.

2. If the candidate is a person to whom the provisions of article 8 of this decree apply, he may submit his candidature only in the constituencies determined in the manner described in that article.

Art. 23. 1. Provincial administrators [mutasarrifs] or assistant administrators [qa'immaqams] or mayors of communes or judges or heads of land survey commissions Ru'asa-al-taswiye or commissioners of police or military commanders may not submit their candidatures in the constituency or constituencies in which they exercise their functions.

2. Members of the Committee of Inspection may not submit their candidatures in the electoral constituency in which they exercise their functions.

Art. 24. A person may not be a candidate in more than two electoral constituencies.

Election propaganda

Art. 29. Election propaganda shall be freely permitted within the limits of the law.

Art. 30. Posters or manifestos may not be displayed or posted for propaganda purposes during the elections except in places to be specified by the municipal authorities.

Art. 31. Material used for election propaganda at the time of elections shall be exempt from all dues and duties.

Art. 32. The affixing or distribution of any printed matter such as posters or manifestos or popular tracts, etc. as election propaganda shall be forbidden as from the morning of the second day preceding the day appointed for the election.

CHAPTER IV

ELECTION OF DEPUTIES

Art. 40. Persons who are not electors registered on the roll of electors for the ward shall not enter the polling station on the day appointed for the election; no elector shall interfere by dictation or suggestion or in any other way with the right of any other elector to exercise his freedom to vote; and no elector shall remain in the polling station after recording his vote.

Art. 41. It shall be unlawful for any elector, even if the holder of a firearm permit, to bear firearms or other weapons when he presents himself to record his vote in the election.

Art. 44. No elector shall record his vote except in the electoral ward in which his name is registered in the roll of electors . . .

Art. 48. 1. The operation of classifying the votes shall be performed publicly by the election committee. The names of all candidates in the constituency shall be recorded on a paper. The names of all candidates on each ballot shall be read out, and every time a name is read out the figure "1" shall be written against it until all the ballot papers have been read out. Then the votes obtained by each candidate, whether acceptable or unacceptable, shall be added up, and a document shall be drawn up indicating in figures and in words the number of votes which each of them obtained and shall be sent to the chairman of the committee of inspection together with the ballot papers and placed in a bag sealed with the seal of the election committee.

2. The document mentioned in the preceding paragraph shall be exhibited at the polling station for forty-eight hours.

Art. 49. The following ballot papers shall be deemed invalid:

(*a*) 1. Blank ballot papers;

2. Ballot papers which do not give adequate indication of the name of the candidate inscribed thereon;

3. Ballot papers which bear the signature or seal of the elector, or which are marked in such a way as to clearly indicate the elector's identity;

4. Ballot papers which contain insulting remarks referring to a candidate;

5. Ballot papers not bearing the seal of the committee of inspection.

(*b*) Ballot papers mentioned in the preceding paragraph should not be taken into account in the course of the classification of ballot papers in the manner prescribed in article 48; and this shall be recorded in the report prepared by the election committee.

CHAPTER V

OFFENCES AND PENALTIES

Art. 62. A person is guilty of an offence against this decree if he:

1. Records his vote, knowing or having good grounds to believe that he has no right to vote;

2. Knowingly records a vote under a name other than his own;

3. Records his vote more than once in one election;

4. Knowingly registers or aids in registering names in the roll or register of electors in contravention of this decree;

5. Knowingly omits or causes to be omitted from the roll or register of names any name which ought to be registered therein;

6. Uses violence or threats or fraud or authority in order to influence the elections;

7. Gives or promises to give presents or advantages in order to influence the elections;

8. Accepts or demands a present or advantage as aforesaid for himself or for an elector;

9. Knowingly writes down any name other than that which the elector dictates to him to fill in;

10. Frustrates or hampers the electoral operations by creating a disturbance or riot or by spreading false or slanderous rumours concerning the candidates for election;

11. Contravenes the provisions of articles 32, 40 and 41.

A person guilty of an offence against this decree shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding 100 dinars, or to both penalties concurrently.

Art. 63. All complaints relating to interference by officials in the course of the elections shall be submitted to the committees of inspection, who shall then undertake the preliminary investigation and transmit the result thereof directly to the competent criminal court. If, however, the complaint was directed against the committee of inspection, it shall be submitted directly to the criminal court, which shall proceed against the said committee as prescribed by law.

LAWS ON EDUCATION 1951-1952

SUMMARY

In 1951 and 1952, several noteworthy developments relating to education are to be recorded.

The Educational Service Act, No. 21 of 1951, came into force on 11 May 1951.[1] This Act improves considerably the working and retirement conditions of teachers, entitles those who fall ill as a result of carrying out their regular duties to medical treatment at government expense in Iraq or abroad, and rewards teachers serving in unhealthy or isolated areas by a monthly bonus. The Act also establishes machinery for granting leave of absence for study in Iraq or abroad to teaching personnel.

Article 4 of regulation No. 12 of 1950, on elementary schools (which had replaced the earlier regulation of 1930), was amended by regulation No. 62 of 1952[2] so as to read: "Instruction in these schools shall be free for all students. The Ministry of Education shall furnish all students with books and stationery free of charge. It may take measures to provide food and clothing to needy students."

Regulation No. 31, of 21 July 1952, on secondary schools[3] replaces regulation No. 14 of 1944 on the same subject. It authorizes the Ministry of Education to establish day and evening classes providing commercial, agricultural and technical education, as well as evening classes for general secondary education. It also authorizes the Ministry of Education to establish boarding sections for out-of-town students; board and lodging fees for students shall be according to cost, and needy students may be totally or partially exempted from paying fees. Tuition is free. Regulation No. 61, of 4 December 1952[4] amends article 6 of regulation No. 31 by authorizing the Ministry of Education to provide students with books, stationery and school equipment free of charge.

Regulation No. 9 of 1952[5] amends article 25 of regulation No. 21 of 1943, on the College of Law, by reducing the tuition fees.

Regulation No. 44 of 1952,[6] on the Shari'a College, provides that the Department of Public Waqfs, under the supervision of the Ministry of Education, shall administer the college and provide food, clothing and school equipment to all students. Students are admitted free. They receive monthly allowances for each month of schooling. Out-of-town students receive travelling expenses from and to their homes. Medical services are provided free of charge. Graduates of the college shall be considered as holders of Higher

[1] A summary of the main provisions of this Act is contained in the report presented by the delegate of the Government of Iraq to the XIVth International Conference on Public Education in *International Yearbook of Education*, 1951, published by UNESCO and the International Bureau of Education, Paris and Geneva, pp. 156-160.

[2] Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3194, of 8 December 1952, reproduced in *Collection of Laws and Regulations for 1952*, pp. 288-289.

[3] *Ibid.*, No. 3149, of 21 August 1952, reproduced n *Collection of Laws and Regulations for 1952*, pp. 97-120.

[4] *Ibid.*, No. 3194, of 8 December 1952, reproduced in *Collection of Laws and Regulations for 1952*, pp. 287-288.

[5] Arabic text in *Annual Report on the Progress of Education for 1951-1952*, published by the Ministry of Education, Iraq, 1953, pp. 141-142.

[6] Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3169, of 12 October 1952, reproduced in *Collection of Laws and Regulations for 1952*, pp. 180-192.

Education Certificates for the purposes of the existing laws and regulations, and shall be given preferential treatment when applying for positions, scientific or administrative, in the Department of the Public Waqfs and in the Shari'a courts.

Regulation No. 45 of 1952,[1] on the religious Waqf schools, provides for the establishment of religious schools on the elementary and secondary (intermediate and preparatory) levels, with boarding sections for out-of-town students in the latter. It authorizes the Department of Public Waqfs to provide students with free books, stationary and school equipment, as well as with monthly allowances. Tuition is free.

Regulation No. 48 of 1952[2] amends regulation No. 73 of 1941, on scholarships, by re-defining the conditions of eligibility for the receipt of scholarships for further study abroad. It establishes minimum grades at the public secondary examinations and at school. To qualify, men students must have obtained a minimum average of 75 per cent in the public examinations, a minimum grade of 80 per cent in the major fields of study at school and a minimum general average of 66 per cent during the last year of school; women students, however, are required to have achieved 70 per cent, 75 per cent and 66 per cent averages or grades respectively.

[1] Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3170, of 12 October 1952, reproduced in *Collection of Laws and Regulations for 1952*, pp. 193–198.

[2] *Ibid.*, No. 3172, of 16 October 1952, reproduced in *Collection of Laws and Regulations for 1952*, pp. 206–207.

IRELAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

The following Acts, promulgated during the year 1952, are related to human rights:

1. Vital Statistics and Births, Deaths and Marriages Registration Act, 1952 (Act No. 8 of 1952).

This Act makes provision for the collection and publication of statistics regarding births, deaths, marriages and other vital matters so designated by the Minister for Health.

2. Social Welfare Act, 1952 (Act No. 11 of 1952). A summary of this Act is published in this *Yearbook*.

3. Social Welfare (Children's Allowances) Act, 1952 (Act No. 12 of 1952).

A parent is entitled in respect of each child after the first, who is under the age of sixteen years, ordinarily resident in the State and not detained in a reformatory or an industrial school, to an allowance. The parent need not be an Irish citizen. In certain circumstances a claim for such an allowance may be made by a person other than the parent. There is no means test.

4. Agricultural Workers (Weekly Half-holidays) Act, 1952 (Act No. 26 of 1952).

The Agricultural Workers (Holidays) Act, 1950 (Act No. 21 of 1950) and this Act shall be construed together as one Act. The Act of 1952 repeals the Agricultural Workers (Weekly Half-holidays) Act 1951 (No. 13 of 1951). For the Acts of 1950 and 1951 see *Yearbook on Human Rights for 1950*, p. 158, and *idem* for 1951, p. 180.

According to the text now in force, an agricultural employer is directed under penalty of a fine, to allow to an agricultural worker one half-day with pay in respect of each week worked.

5. Merchant Shipping (Safety Convention) Act, 1952 (Act No. 29 of 1952).

This Act is to enable effect to be given to the provisions of the International Convention for the Safety of Life at Sea, signed in London on 10 June 1948. The provisions of the Act relate to the construction of passenger steamers, life-saving appliances, wireless and radio navigational aids and other matters affected by the above-mentioned Convention.

II. JUDICIAL DECISIONS

Summaries of four judicial decisions are published in this *Yearbook*.

III. INTERNATIONAL INSTRUMENTS

The Irish instruments of acceptance of the Protocol amending the Convention for the Suppression of the Circulation of and the Traffic in Obscene Publications, concluded at Geneva on 12 September 1923 and of the Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910 were deposited on 28 February 1952. They were published as Nos. 2 and 3 of *Treaty Series 1952* (Dublin, Stationery Office).

[1]This note is based on texts and information received through the courtesy of the Embassy of Ireland, Washington. All Acts indicated in this note were published by the Stationery Office, Dublin.

LEGISLATION

SOCIAL WELFARE ACT, 1952[1]

SUMMARY

The new Insurance Scheme embraces all those who were previously insured for national health, unemployment or widows' and orphans' pensions and, in addition, extends social insurance to certain other important groups not previously insured. Of these, the main additional groups are non-manual workers whose rate of remuneration lies between the previous ceiling of £500 and the new ceiling of £600 a year and male employees in agriculture, who are now insured against unemployment for the first time. An insured person who ceases to be an employed

[1]Act No. 11 of 1952, published by the Stationery Office, Dublin. Summary received through the courtesy of the Embassy of Ireland, Washington.

contributor, otherwise than by reaching the upper age limit of seventy, is entitled to become a voluntary contributor.

Rates of Contribution

The weekly rates of contribution vary according to the nature of the employment. The contribution payable by a voluntary contributor, whether male or female, is 1*s.* 6*d.* a week. A voluntary contributor is insured only for widows' ond orphans' pensions.

The new contribution conditions for receipt of benefit are of two kinds:

(*a*) The total contributions received must be such that a certain minimum number of contributions will have been actually paid since entry into insurance; and

(*b*) The recent contribution record must be such that it reaches or averages a certain specified minimum standard.

Sickness and Unemployment

The insurance provisions for these two major social hazards are now co-ordinated.

Under the new arrangement, disability benefit replaces the earlier sickness and disablement benefits. The previous six waiting days for unemployment benefit are reduced to three, as in the case of disability benefit. During periods of sickness or unemployment, credits are now granted which maintain insurance rights intact.

Widows' and Orphans' Pensions

The rates of payment for contributory and non-contributory widows' and orphans' pensions vary.

Under the new Act, allowances for dependent children are limited to two. Children or orphans between fourteen and sixteen years are not now disqualified for non-attendance at school, and a widow is not now disqualified because her husband was over the age of sixty at the date of marriage. The maximum rates of non-contributory pensions shown above may be reduced in accordance with the means of the claimant as calculated under the Act. Means are reckoned on almost identical lines to old age pensions (see note on old age pensions below).

Old Age and Blind Pensions

The weekly rate of pension depends on the amount of the yearly means.

The principal items contituting means are:

(1) Yearly value of investments, capital or property not personally used, calculated by excluding the first £25 of capital value, taking one-twentieth of the next £375, and one-tenth of any balance;

(2) Cash income, excluding the following:

Any pension, allowance, assistance or benefit under the Old Age Pensions Acts, Widows' and Orphans' Pensions Acts, Unemployment Assistance Acts, Children's Allowances Acts, or Social Welfare Act, 1952; home assistance, infectious diseases maintenance allowances, income from items referred to in (1) above, outgoings in respect of alimony; pensions and allowances under the (Irish) Army Pensions Acts and Military Service Pensions Acts to a limit of £80 a year, and voluntary or gratuitous payments to a limit of £52 5*s.* a year; Gaeltacht or Breac-Gaeltacht[1] grants to parents or guardians by the Minister for Education;

(3) Yearly value of property personally used or enjoyed (e.g., a farm);

(4) Yearly value of any property or income deemed to have been transferred in order to qualify for pension, save in the case of a small farmer (rateable value £30 or less) transferring his holding to one or more of his children.

NOTE: The means of one of a married couple living together are taken as one-half their joint means, and on the death of one, the means of the other are not regarded as increased so as to reduce the pension rate.

In the case of blind persons, the amount of pension payable is the same as under the Old Age Pension Scheme, but in calculating means, earnings up to £52 a year are disregarded as well as £39 if the blind person has a wife or dependent husband and £26 for each child under sixteen years of age.

Unemployment Assistance

Unemployment assistance, subject to revised means limits, is payable.

The principal items constituting means for the purpose of Unemployment Assistance are:

(1) Yearly value of investments, capital or property not personally used, calculated in accordance with the relevant regulations;

(2) Cash income, excluding current earnings, disability benefit, unemployment benefit, marriage benefit or maternity benefit, children's allowances and home assistance.

(3) Yearly value of property personally used or enjoyed;

(4) Yearly value of any benefit or privilege enjoyed, such as board and lodging.

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[1] "Gaeltacht" is the name applied to those districts of Ireland in which the Irish language is used as the normal spoken tongue; the word "Breac-Gaeltacht" refers to areas in which both Irish and English are commonly used.

The previous six waiting days are reduced to three, as in the case of unemployment benefit.

Marriage Benefit

Marriage benefit consists of a payment to a woman who is an insured person and marries. The previous maximum benefit payable was £3. Under the new Act this has been increased to £10.

Maternity Benefit

Maternity benefit, which is payable to a woman, consists of:

(1) A lump sum maternity grant of £2 payable in respect of confinement, and

(2) A maternity allowance of 24*s.* a week for twelve weeks—six weeks before and six weeks after confinement.

A maternity grant is payable either on the husband's or on the woman's own insurance; if there is a double qualification, two grants are payable.

The maternity allowance is payable only on the woman's own insurance.

Treatment Benefit

Treatment benefit, such as hospital and convalescent home benefit, medical and surgical appliances, optical and specialist medical and specialist surgical treatment are available for the time being to insured persons, subject to prescribed conditions.

JUDICIAL DECISIONS

HABEAS CORPUS—INFANT—CUSTODY—PARTIES OF DIFFERENT RELIGIONS—DIVORCE GRANTED TO APPLICANT IN ENGLISH COURTS ON GROUNDS OF CRUELTY—ORDER OF ENGLISH COURTS AS TO CUSTODY OF INFANT—RESPONDENT'S FAILURE TO COMPLY WITH THAT ORDER—COMITY OF COURTS—PRINCIPLES GOVERNING RESPECTIVE RIGHTS OF PARENTS TO CUSTODY OF CHILDREN OF THE MARRIAGE

Re: Corcoran, an Infant

Supreme Court of Justice[1]

17 May 1950

The facts. The applicant and the respondent's son were married in England, in a Roman Catholic church, the applicant being a member of the Church of England and her husband a Roman Catholic. In 1953, the applicant left her husband on the grounds of his alleged cruelty and instituted proceedings against him in the magistrates' court, Southampton. Upon a divorce granted by that court to parties who were domiciled and resident in England, custody of the sole child of the marriage was awarded to the mother. The father, who had already placed the child in the care of his mother in Ireland, refused to comply with the English court's order. The mother thereupon took *habeas corpus* proceedings in the Irish courts for return of the child, relying upon the English court's order, and her lawful rights as mother.

Held by the High Court and, on appeal, by the Supreme Court: That the mother's application must be refused for the following reasons:

1. Although the courts of the country where the infant actually is will pay the greatest consideration to the law of that country which is the personal law of the child and will follow that law in the absence of sound and compelling reasons to the contrary, such reasons did not exist in this case. The Irish court had to consider not only whether the English court's order, then three years old, was still in the interests of the child, but also whether it was consistent with Irish law, since article 42 of the Irish Constitution[2] recognized the inalienable rights of

[1]Source: 86 *Irish Law Times Reports*, 6. The text of this and of the following decisions were received through the courtesy of the publishers of the *Irish Law Times Reports*. Summary of this decision received through the courtesy of the Embassy of Ireland, Washington.

[2]Article 42, section 1, of the Constitution reads as follows: "The State acknowledges that the primary and natural educator of the child is the family, and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children."

parents to the custody of their children, and this is impossible to harmonize with English law, which, since 1925, appears to disregard all other considerations save the welfare of the child.

2. The main consideration for a court in determining whether the custody of an infant should be awarded to the father or the mother is the welfare of the child, but it is not necessary that this should be the sole consideration, for the court must consider other matters, such as the tender years of the infant. Article 42, section 5, of the Constitution of Ireland[1] illustrates the guiding principle of Irish law in dealing with infants.

When the family, which is the natural educator of the child, has been broken up, it is the duty of the State to endeavour to supply the place of the parents. When the child is within the jurisdiction of the court it can weigh all the factors—the welfare of the child, the rights and feelings of the mother, and the claims of the father—and secure the best arrangement that can be made in the circumstances. In this case, the mother's application was to take the child out of the court's jurisdiction.

[1]Article 42, section 5, reads as follows: "In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State, as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child."

INFANTS—*HABEAS CORPUS*—CUSTODY, EDUCATION AND RELIGION—PROTESTANT FATHER AND ROMAN CATHOLIC MOTHER—AGREEMENT BEFORE MARRIAGE THAT CHILDREN OF MARRIAGE SHOULD BE BROUGHT UP AS ROMAN CATHOLICS—VALIDITY OF SUCH ANTE-NUPTIAL AGREEMENT—FATHER PLACING CHILDREN IN PROTESTANT INSTITUTION TO BE BROUGHT UP AS PROTESTANTS—WELFARE OF CHILDREN—WHETHER MOTHER ENTITLED TO CUSTODY OF CHILDREN—WHETHER RIGHT OF FATHER TO DIRECT RELIGIOUS EDUCATION AFFECTED BY CONSTITUTION—CONSTITUTION, 1937, ARTICLES 41, 42 AND 44[1]

TILSON *v.* TILSON

Supreme Court of Justice[2]

5 August 1950

The facts. A Protestant husband signed an undertaking with a Catholic wife prior to the wedding that the issue of the marriage would be brought up as Catholics. The three children were baptised as Catholics, but subsequently the husband took them from the wife and placed them in a Protestant institution. The wife brought *habeas corpus* proceedings for the return of the children.

Held: By the High Court, that the prospective general welfare of the children required that they should be returned to the mother to live with her.

Held: By the Supreme Court, affirming the High Court, that

(1) Under the Irish Constitution parents have a joint power and duty in respect of the religious education of their children and if they together make a decision and put it into practice it is not in the power of either parent to revoke such decision against the will of the other.

(2) An ante-nuptial agreement made by the parties to a marriage, dealing with matters which will arise during the marriage and put into force after the marriage, is effective and of binding force in law.

(3) The former rule that a father has a right to break an ante-nuptial agreement as to the religion in which children of the marriage will be brought up has no place where the power of control over the religious education of the children of the marriage has been exercised; such a power is a joint power and is not revocable by one of the parties alone.

(4) The children should therefore be returned to their mother to be educated by her, if not by both parents, in the manner in which they had been taught pursuant to the ante-nuptial agreement.

[1]See the complete text of these articles in *Yearbook on Human Rights for 1946*, pp. 99–100.

[2]Source: 86 *Irish Law Times Reports*, 49. Summary received through the courtesy of the Embassy of Ireland, Washington.

CONSTITUTION—PERSONAL RIGHTS OF CITIZEN—VALIDITY OF STATUTE RESTRICTING SUCH RIGHT—STATUTORY TRIBUNAL EMPOWERED TO ORDER CITIZEN TO LIVE IN CERTAIN PLACE—VALIDITY OF PROVISIONS CONFERRING SUCH POWER—WHETHER "ABOLITION" OR MERELY "DELIMITATION" OF CITIZEN'S RIGHT—CONSTITUTION OF IRELAND—LAND ACT OF 1946

FOLEY *v.* IRISH LAND COMMISSION

Supreme Court of Justice[1]

19 December 1951

The facts. Foley obtained from the Land Commission in 1937 a parcel of land and signed an agreement for the purchase of the fee simple. In 1946, Foley was ordered by the Land Commission to take up permanent residence in a house which they had built on the land in question. Section 2 of the Land Act, 1946, provides, *inter alia:* "The Land Commission may, whenever and so often as they think fit, give a direction to the purchaser to reside continuously to their satisfaction in the dwelling-house, as on and from such date (not being less than three months after the date of the direction) as the Land Commission think fit and specify in the direction until the holding or parcel is vested in him." Foley contended (1) that this section was repugnant to the Constitution inasmuch as the Land Commission purported to exercise the judicial power which is reserved by the Constitution exclusively to the courts of justice, and (2) claimed that the proceedings by the Land Commission were not justifiable since they had not acted in accordance with the rules of natural justice.

Held, as to the first contention: That Section 2 of the Land Act, 1946, was not repugnant to the Constitution as the power exercised thereunder was clearly of the limited nature permitted by article 37 of the Constitution of Ireland.[2]

As to the second contention, however, the court said that since Foley was not informed that the Land Commission intended to determine his case as to whether he had complied with the direction to reside in the land and had thus no opportunity of stating his case, the Commission had failed to act judicially in that they had not acted in accordance with the rules of natural justice, and their determination was therefore null and void.

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[1]Source: 86 *Irish Law Times Reports*, 44. Summary received through the courtesy of the Embassy of Ireland in Washington.

[2]Article 37 of the Constitution reads as follows: "Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorized by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution."

CRIMINAL LAW—EVIDENCE—ADMISSIBILITY—EVIDENCE OF OFFENCE OTHER THAN THAT BEING TRIED—IMPUTATIONS AGAINST CHARACTER OF PROSECUTION WITNESSES—EVIDENCE OF ACCUSED'S BAD CHARACTER—WHEN ADMISSIBLE—CRIMINAL JUSTICE (EVIDENCE) ACT, 1924

THE PEOPLE *v.* HAVELIN

Court of Criminal Appeal[1]

17 July 1952

The facts. In this case, on a trial for conspiracy, housebreaking and larceny, the trial judge admitted evidence tending to show that the accused was guilty of another offence and, despite the application of counsel for the defence, refused to discharge the jury. The accused was found guilty.

On appeal to the Court of Criminal Appeal,

Held: 1. Evidence tending to show that an accused person is suspected by the police of an offence involving dishonesty other than the offence charged is inadmissible as irrelevant to the issues being tried by the jury, except in special circumstances such as, where the *actus reus* is admitted, to prove *mens rea;* or to rebut a defence raised by the accused.

2. The accused by the conduct of his defence having attacked the character of a witness for the prosecution, became liable to be cross-examined by counsel for the prosecution as to his character, in accordance with the Criminal Justice (Evidence) Act, 1924, S. I (f) (ii). This section, however, does not render admissible evidence other than that of the accused himself as to his bad character. As, however, inadmissible evidence of this kind was heard by the jury, and the court was unable to say that if that evidence had been omitted, a reasonable jury, properly instructed, must have convicted the accused on the remainder of the evidence, the conviction was reversed and a re-trial ordered.

[1]Source: 86 *Irish Law Times Reports*, 168. Summary received through the courtesy of the Embassy of Ireland, Washington.

ISRAEL

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

The principal development in the sphere of human rights which took place in Israel during the year 1952 was the enactment of the Nationality Act,[2] an event which made possible also the enactment of related legislation including the Entry into Israel Act and the Passports Act. These enactments relate to the principles contained in articles 13, 14 and 15 of the Universal Declaration of Human Rights. As a consequence of their passage the mandatory legislation which previously regulated these topics, briefly described in earlier issues of this *Yearbook*, has now been replaced by indigenous legislation suited to the sociological and political conditions of the independent State. A further advantage of this new legislation is that a number of serious ambiguities and hiatuses which had come to light since 1948 have now been dealt with, a step which in the long run may well simplify not only the administration of this group of laws, but also the application of judicial controls.

It is not necessary to give here a detailed description of these laws—a task which would require giving attention to a number of technical details.[3] However, a brief general description would be useful. Because Israel is a Jewish State, the provisions of the Nationality Law relating to the original modes of acquiring Israel nationality distinguish between the acquisition of the nationality by Jews and the acquisition of nationality by non-Jews. In so far as Jews are concerned the Nationality Act is linked to the Law of Return which was described on pp. 161 and 163 of the *Yearbook on Human Rights for 1950*. Jewish immigrants, under that law, acquire Israel nationality immediately upon their arrival in Israel unless, possessing the nationality of a foreign State, they declare in the prescribed manner their unwillingness to acquire Israel nationality in that way. Jews who were resident in Israel before the passing of the Law of Return are in this matter assimilated to Jewish immigrants and consequently acquire Israel nationality under the same conditions as from the date of the coming into force of the Nationality Act. These provisions have been drafted in such a way in order to provide a specific remedy to the problem of statelessness which weighs so heavily upon Jewish immigrants from abroad. In so far as non-Jews who were resident in the country on the date of the coming into force of the Nationality Act are concerned, such persons will automatically acquire Israel nationality if at the end of the mandate they had been Palestinian citizens and their entry or subsequent re-entry into Israel was legal in accordance with the laws in force. It may be pointed out that the acquisition of Israel nationality under these provisions is by operation of law, and no element of discretion is granted to the administration. This means that the question of whether a person is or is not an Israel national is to be answered by the law and not by the administration: it is therefore within the jurisdiction of the courts. The Nationality Act also contains provisions regarding naturalization and ancillary matters. These do not call for any particular comment.

The Entry into Israel Act takes the place of the Mandatory Immigration Ordinance and prescribes the procedure for entry of foreigners into Israel and their residence. The Passports Act makes provision for the issue of an Israel passport or *laissez-passer*. A passport is normally granted to an Israel national, whereas a *laissez-passer* is normally granted to a person who is not an Israel national or one whose nationality is undefined or doubtful, but in special cases it may also be granted to an Israel national.

The process of adapting the domestic legislation of Israel to internationally agreed standards as embodied in international conventions to which Israel is a party has been continued along the lines previously discussed. In addition to legislation regarding the implementation of a number of international labour conventions which was passed during the year 1952, steps have also been taken to implement the Geneva Conventions of 1949 concerning the amelioration of the condition of various war victims. This itself is largely a question of education, particularly in the armed forces, and has not required much in the way of new legislation. The implementation of the International Convention on the Declaration of Death of Missing Persons, of 1950, is proceeding in accordance with specially enacted domestic provisions and is bringing useful relief to cases of hardship particularly prevalent amongst

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[1] Note prepared by Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs of Israel. For previous surveys see *Yearbook on Human Rights for 1948*, p. 117; for 1949, p. 122, for 1950, p. 161, and for 1951, p. 182.

[2] See the complete text of this Act in *Laws concerning nationality*, (published by the United Nations, Legislative Series) 1954.

[3] A commentary on the Nationality Act by the present writer has been published in *Journal du Droit international* (Clunet, January 1954).

Jews of Israel in consequence of the destruction of European Jewry during the Second World War.

In the sphere of public law, two laws that have been passed are of interest. The Civil Wrongs (Liability of the State) Act, 1952, amends the Mandatory Civil Wrongs Ordinance of 1944 by abolishing the previous privileged position of the State in the matter of civil wrongs.[1] The Penal Law Revision (Bribery) Act[1] extends the notion of bribery as a criminal offence which is now extended to include not only the taking of a bribe, but also the giving of a bribe. The various public bodies intended to be protected by this law include not only the State itself, but also the Zionist Organization, Jewish Agency for Palestine, Jewish National Funds, General Labour Exchange and the Religious Councils.

The legislative stipulations regarding parliamentary government have been further strengthened by the Knesseth Buildings Immunity Act which supplements the Knesseth Immunity, Rights and Duties Act of 1951 which was described in the previous issue of this *Yearbook*.[2] The new law makes provisions for the preservation of order within the Knesseth precincts, regulates entry into the Knesseth building and also contains provisions regarding meetings and processions in relation to the Knesseth. Criminal proceedings may be instituted against a person who has committed an offence under the law in the Knesseth buildings, only upon the direction of the Chairman of the Knesseth, and this means in the last resort that it can be made subject to a decision of the House itself.

The role of the Knesseth—by means of parliamentary question time and other forms of parliamentary debate—in the administration and political protection of human rights, on the one hand, and that of the courts, on the other, to ensure legal protection of the citizen have continued and do not call for any particular comment. Three juridical decisions of the Supreme Court of Israel are reproduced in the present *Yearbook*.

[1]Reproduced in this *Yearbook*.

[2]See *Yearbook on Human Rights for 1951*, p. 183. English translation of the new Act in *Government Yearbook* 5713 (1952), p. 224; Original in *Sefer baHukkim* No. 94, of 8 Nissan 5712 (3 April 1952), p. 140.

LEGISLATION

PENAL LAW REVISION (BRIBERY) ACT, 1952[1]

1. (*a*) A person taking a bribe for an act connected with a function performed by him on behalf of the State, a local authority or a body or corporation specified in the schedule to this law[2] is liable to imprisonment for a term not exceeding three years, or to imprisonment for a term not exceeding three years and a fine not exceeding 5,000 Israeli pounds.

(*b*) Where the bribe is taken for an act which the person performing the function is bound to do by virtue thereof, and not for a deviation from his proper performance of such function, he is liable to imprisonment for a term not exceeding six months or to a fine not exceeding 500 Israeli pounds or to both such penalties.

2. A person taking a bribe for an act connected with his function as a judge or arbitrator, or with some other judicial function, is liable to imprisonment for a term not exceeding five years or to imprisonment for a term not exceeding five years and a fine not exceeding 10,000 Israeli pounds.

3. A person giving a bribe shall be treated in the same way as the person taking it, provided that the penalty to which he is liable shall be half the penalty specified in sections 1 and 2.

4. In regard to a bribe, it shall be immaterial

(*a*) Whether it consists of money, money's worth, a service or any other benefit;

(*b*) Whether it is given for doing or not doing, or for delaying, speeding up or slowing down anything, or for discrimination in favour of or against any person;

(*c*) Whether it is given for a specific act or to secure preferential treatment generally;

(*d*) Whether it is given for an act of the person taking it or for his influence on the act of another person;

(*e*) Whether the person giving it delivers it personally or through another person; whether it is given directly to the person taking it or to another person for him; whether it is given in advance or *ex post facto*, or whether it is enjoyed by the person taking it or by another person;

[1]Hebrew text in *Sefer baHukkim* No. 92 of 9 Adar 5712 (6 March 1952), p. 126. English translation received through the courtesy of Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs. The law was adopted by the Knesseth (Parliament) on 29 Shevat 5712 (25 February 1952). The bill and an explanatory note were published in *Hatza'oth Hok* No. 60, of 16 Teveth, 5711 (25 December 1950), p. 62.

[2]The following is the schedule: the Zionist Organization, the Jewish Agency for Palestine, the Keren Kayemeth Leisrael, Ltd., The Keren Hayssod Ltd., the Religious Councils, the General Labour Exchanges.

(*f*) Whether the function of the person taking it is one of authority or service, permanent or temporary, general or specific, or whether it is performed with or without remuneration, voluntarily or in discharge of a duty.

5. (*a*) A person who solicits or stipulates a bribe shall, even if he meets with no response, be considered as a person taking a bribe.

(*b*) A person who offers or promises a bribe shall, even if he meets with a refusal, be considered as a person giving a bribe.

(*c*) A person who is a candidate for any function, although it has not yet been assigned to him, or to whom any function has been assigned, although he has not yet begun to perform it, shall be considered as a person performing such function.

(*d*) In an action for bribery, the court shall not entertain the plea

(1) That there was a defect or invalidating circumstance in the assignment of the function to, or the appointment or election of, the person who took the bribe;

(2) That the person who took the bribe did not do, or did not even contemplate doing, the act, or that he was not competent or authorized to do it.

6. (*a*) A person who receives money, money's worth, a service or some other benefit in order that he may give a bribe to a person performing any of the functions specified in sections 1 and 2, or induce such a person to accord preferential treatment or to practise discrimination, shall be treated as if he were a person taking a bribe as specified in the said sections.

(*b*) A person who gives anything to another person as specified in sub-section (*a*) shall be treated as if he were a person giving a bribe.

7. In an action for an offence under this law, the Court may convict on the strength of a single testimony, even if it be that of an accomplice to the offence.

8. (*a*) Where a person has been convicted of an offence under this law, the court may, in addition to the penalty imposed,

(1) Confiscate that which was given as a bribe and whatever may have taken its place:

(2) Require the person who took the bribe to pay to the Treasury the value accrued to him from the bribe.

(*b*) This section does not preclude a civil claim.

9. The Minister of Justice may, with the approval of the Constitution, Legislation and Law Committee of the Knesseth, alter the schedule to this law by adding or deleting the names of bodies or corporations.

10. Sections 106 to 109A of the Criminal Code Ordinance, 1936, are hereby repealed.

CIVIL WRONGS (LIABILITY OF THE STATE) ACT, 1952[1]

1. In this Act,

"The Ordinance" means the Civil Wrongs Ordinance, 1944;[2]

"Act" includes omission;

"Civil liability" means liability under the Ordinance for an act done after the coming into force of this Act;

Other terms have the same meaning as in the Ordinance.

2. For the purposes of civil liability, the State shall, save as hereinafter provided, be regarded as a corporate body.

3. The State is not civilly liable for an act done within the scope of lawful authority, or *bona fide* in the purported exercise of lawful authority; but it is liable for negligence in connexion with such an act.

4. The State is not civilly liable for defamation.

5. The State is not civilly liable for an act done in the course of a war operation of the Defence Army of Israel.

6. (*a*) The State is not civilly liable for injury sustained by a person during and in consequence of his military service.

(*b*) In this section, "military service" has the same meaning as in the Invalids (Pensions and Rehabilitation) Act, 5709–1949.[3]

7. (*a*) The State is not civilly liable for the death of a person resulting from injury sustained by him during and in consequence of his military service.

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[1] Hebrew text in *Sefer haHukkim* No. 109 of 10 Elul, 5712 (31 August 1952), p. 339. English translation received through the courtesy of Mr. Yehoshoua Barkai, Assistant to the Attorney-General of the State of Israel. The bill and an explanatory note were published in *Hatza'ot Hok* No. 108 of 15 Adar, 5712 (13 March 1952), p. 166. The Act was adopted by the Knesseth on 5 Elul, 5712 (26 August 1952).

[2] *Palestine Gazette* No. 1380, of 28 December 1944, supplement I, p. 129 (English edition).

[3] *Sefer haHukkim* No. 25 of 21 Elul, 5709 (15 September 1949), p. 278; *Sefer haHukkim* No. 53 of 12 Av, 5710 (26 July 1950), p. 180.

(*b*) In this section, "military service" has the same meaning as in the Fallen Soldiers' Families (Allowances and Rehabilitation) Act, 5710–1950.[1]

8. The State is not civilly liable as the owner of property vested in it solely by operation of law, so long as it has not taken possession thereof.

9. Nothing in this Act shall affect any provision of any of the following enactments which establishes, limits or negates the liability of the State or of its institutions:

(1) The Land (Settlement of Title) Ordinance;[2]

(2) The Post Office Ordinance;[3]

(3) The Government Railways Ordinance, 1936;[4]

(4) The Absentees' Property Law, 5710–1950;[5]

(5) The German Property Law, 5710–1950;[6]

(6) The Postal Bank Law, 5711–1951.[7]

10. Section 4(1) of the Ordinance is hereby repealed.

. . .

[1] *Sefer baHukkim* No. 52 of 7 Av, 5710 (21 July 1950) p. 162.

[2] *Laws of Palestine*, vol. II, cap. 80, p. 853 (English edition).

[3] *Laws of Palestine*, vol. II, cap. 115, p. 1176 (English edition).

[4] *Palestine Gazette*, No. 593 of 14 May 1936, Supplement I, p. 179 (English edition).

[5] *Sefer baHukkim* No. 37 of 2 Nisan, 5710 (20 March 1950).

[6] *Sefer baHukkim* No. 56 of 20 Av, 5710 (3 August 1950).

[7] *Sefer baHukkim* No. 79 of 24 Sivan, 5711 (28 June 1951), p. 219; *LSI* Vol. V, p. 138.

JUDICIAL DECISIONS

"JUSTICE MUST NOT ONLY BE DONE, BUT MUST MANIFESTLY BE SEEN TO BE DONE"—REASONS AND SCOPE OF THE RULE—CRIMINAL TRIAL—DUTY OF COUNSEL—RIGHT OF ACCUSED TO BE PRESENT DURING EVERY STAGE OF THE TRIAL

TRIFUS AND ANOTHER *v.* THE ATTORNEY-GENERAL OF ISRAEL

Supreme Court of Israel sitting as the Court of Criminal Appeals[1]

11 January 1952

The facts. This was an appeal from a decision of the district court in which the appellant had been convicted and sentenced to a term of imprisonment. During the trial in the lower court, certain dictaphone records had been produced as evidence. After the hearings in the lower court had been completed, but before judgement had been given, the judge expressed a desire to hear again some of these dictaphone recordings. Some difficulty was found in obtaining the services of a competent dictaphone mechanic, but in due course a Mr. S., an acquaintance of the appellant, was instructed in the operation of the machine and he proceeded to the house of the trial judge to operate it. After he had played over the record, he had a conversation with the judge regarding the trial, during the course of which he had from time to time also been present in open court. These facts had come to light after conviction in the lower court. The appellant appealed on the ground of mis-trial and miscarriage of justice.

Held: The appeal was granted and the case was remitted for re-trial in a different lower court. The court said:

". . . the courts of law exist to administer justice in matters which the parties bring before them for decision, and for this purpose the judge has to comport himself in accordance with certain principles, such as: first, he must conduct the legal proceedings between the parties—whether in civil or in criminal cases—in public; second, so long as the case is pending, the judge must conduct himself in all matters directly or indirectly having a bearing on the result of the trial openly and in a manner that will make it impossible for the litigants to feel any reasonable doubts as to the possibility of the final decision's being rendered on the basis of preconceived influence or on the basis of any evidence not produced to the judge during the proceedings. 'Justice must not only be done, but must manifestly be seen to be

[1] Report: *Pitkei-Din* (Official Law Reports) vol. 6, 1952, p. 17. Summary prepared by Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

done.' Thirdly, each of the litigants has the right to be present (together with his legal advisers, if such there be) throughout all stages of the procedure. In particular, the judge must ensure the observance of this rule in so far as it concerns the accused person, whose presence throughout a criminal trial is, save in exceptional circumstances, essential.

"The object of these three rules is twofold: (1) to place the act of administering justice in every trial squarely in the public view, a step which in itself is calculated to remove any possibility of biased and preconceived justice; (2) to give the public, including particularly the litigants, the confidence that justice really is administered on the basis of arguments and evidence produced in the course of a public trial, and not as a reaction to any possible external influence.

"It may be said that all these things are simple and elementary and their repetition is a redundance. But, having regard to the circumstances of this case, we think it proper and essential to stress these axioms once again, for theoretical knowledge of them is one thing and their continual accomplishment in practice another."

The court here examined a number of common law precedents in order to demonstrate how the courts are scrupulous in observing these principles, and continued:

"In the case before us, the learned president [of the lower court] went beyond the bounds of the permissible. The very fact that this long conversation took place—a conversation directly concerned with the subject matter of the case—in private and in the absence of the accused and their counsel—constitutes a serious departure from the rule about the public administration of justice. It is immaterial that he was acting—and we cast no doubt on that—in good faith and with proper motives, because the existence of such good faith and motive does not lessen in any way the infringement of the accused's right that every trial should be conducted in public and in full view of both parties. We do not attach any importance to the argument of the State Attorney to the effect that in that conversation the principal spokesman, Mr. S., was a layman—that is to say, a person who was not a lawyer and who therefore would not be competent to influence the mind of a judge so experienced as the learned president. What is important is that there was here an infringement of the right of the accused to be present throughout all and every discussion that takes place before the judge and which is likely to influence the result of the trial, so that they or their representatives may be able to reply and to give any explanation that may be required about anything which might be said in that discussion, before the judge should determine finally his own attitude. The State Attorney argued that everything which was said in that conversation was likely to be in a direction favourable to the defence and that no injustice was caused. We cannot attach value to this argument. In the first place, we have no evidence that Mr. S. was acting on behalf of the defence when he entered upon his conversation with the president. Secondly, one of the matters discussed in that conversation—we are referring to an agreement between the parties regarding the examination of one of the defence witnesses—was a matter which the accused would have been entitled logically to conclude was one likely to influence the president's opinion to their disadvantage, and it is quite unimportant whether in fact that part of the conversation had any influence on the judge or not. Even now we can find no objective method of determining whether this incident did have any effect on the process whereby the judge decided as to the credibility of the defence witnesses. Therefore, even though we do not wish it to be inferred that we find any moral blame in the conduct of the judge—and we repeat and stress this—it is clear that he did put himself in a position in which he cannot be seen to have administered justice, despite the fact that he certainly intended to administer true justice. In sum, by listening, not in the course of the public trial and not in the presence of the accused and their counsel, to the long conversation which Mr. S. opened with him, and which was likely to influence the result of the trial, the learned president departed in a very marked fashion from the important rules of trial previously described and which are valid for every criminal trial.

"For these reasons, we are unable to confirm the conviction and the sentence. It is perhaps a matter for regret that after so long a trial in the lower court—the record consists of 197 pages—and after such a painstaking judgement has been given—we are forced to this conclusion. But we see no other alternative if we are not to negative entirely the value of the guarantees for the proper administration of justice, which are incorporated in the rules quoted above.

"The State Attorney has stressed that in this case the appellants and their legal advisers were aware of the circumstances several days before judgement was delivered in the lower court, and nevertheless refrained from taking any steps then in order to challenge the qualification of the president to render judgement. Counsel for the appellants before us, who did not represent them in the lower court, has stated that counsel found themselves in a somewhat embarrassing position and that after they had talked the matter over with a more senior professional colleague, they decided not to raise this matter before the president himself. Here they erred. It was their duty—and we hope that our words will constitute a directive for the future—to come at once with their complaints before the president. Had they done so, and had their argument been accepted, there would have been no

need for an appeal, and a new trial could have been commenced immediately. On the other hand, had their argument been rejected, they would have lost nothing thereby, because they could always have brought an appeal. At the same time, we appreciate the embarrassment of these advocates, especially as the matter here is one of considerable public importance, constituting, as it does, a serious departure from the proper conduct of a criminal trial. Consequently, we do not find it proper to deprive the appellants of the right to raise their arguments here simply because of the silence of their counsel in the lower court."

LEGISLATIVE AND EXECUTIVE AUTHORITIES OF THE STATE—LEGISLATIVE AND JUDICIAL NATURE OF TASK OF "COMPETENT AUTHORITY" TO WHOM IS GRANTED POWER TO ISSUE LICENCES—NECESSITY FOR OBSERVANCE OF FUNDAMENTAL PRINCIPLES OF JUSTICE

SACHS *v.* THE MINISTER OF TRADE AND INDUSTRY

Supreme Court of Israel sitting as the High Court of Justice[1]

17 July 1952

In the course of an application for a writ of *mandamus* against the respondent to show cause why a certain licence should not be granted, Judge Olshan made the following remarks: "We should not ignore the heavy responsibility which lies upon the shoulders of the authority which is empowered to issue licences. A competent authority to issue licences in fact has tasks which are partly legislative and partly judicial. The legislative character of these tasks derives from the principle of the 'rule of law' according to which, strictly speaking, the legislature ought to prescribe in the law the detail of the cases in which a licence should be granted or refused, so that the executive authority should be left only with the task of executing the provisions of the law. In accordance with this principle, legislation should be drafted in such a way that the citizen can find, in the text of the law itself, the answer to the question of what is forbidden and what is permitted to him; and he should not, in this respect, be dependent upon the discretion of the executive authority. But, following the changes in the legal habits of our generation and the increasing intervention of the State in all branches of activity—a phenomenon not confined only to the State of Israel—it is quite impossible for the legislature to foresee each and every eventuality, and to lay down in detail in a law specific provisions for every likelihood. Therefore, the legislature contents itself with establishing general principles in the law (and even this is not always done); but in regard to details and the manner of using these general principles in any particular case—these are left to the discretion of the competent authority. That is to say, the legislature confers upon the competent authority the power to supplement that which the legislator omitted. It is true that the decision of the competent authority, in form and in substance, is not law. But in practice, in so far as it concerns the citizen and its influence on his private life and his business, it is virtually indistinguishable from duly enacted law. What is more, in one respect the competence of a competent authority is less restricted than that of the legislature. For the legislature reaches its decisions after debate, exchange of views and votes, while the competent authority decides matters on the basis of its own discretion alone.

"As for the judicial character of the tasks of the competent authority, since the activities of the individual citizen in the economic sphere are dependent upon all kinds of licences granted by the authorities, what the citizen really does who applies for a licence is to argue that, in accordance with the general principles laid down in the law, he is entitled to the licence, and from this it follows that the application for a licence can be regarded as a sort of claim against the State, a claim the exclusive jurisdiction over which is vested in the competent authority. That being so, the decision of the competent authority is, as it were, a judgement. Furthermore, generally speaking, the hands of the competent authority are not tied by procedural rules or by any duty to motivate its 'judgement' by reasons, and there is no appeal against such a decision.

"I am not convinced that all the members of the Civil Service of our State in whom are vested the powers of a 'competent authority' always appreciate the nature of the task which is conferred upon them, and its importance and the precise nature of their powers. Only if they are fully aware of these tasks will they be able to assess properly the full weight of their responsibility and understand that they have

[1]Report: *Piskei-Din* (Official Law Reports), vol. 6, 1952, 696 p. 701. Summary prepared by Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

to act in accordance with certain principles which are really in the nature of axioms, such as: every citizen is presumed innocent so long as the contrary has not been proved, justice must not only be done, but must manifestly be seen to be done, etc. Scrupulous observance of these principles is essential if we want to see established an attitude of trust and respect between the citizen and those servants of the State in whose hands have been vested, as we have said, functions which are partly legislative and at the same time partly judicial without appeal. If considerations such as these ought to be present in the minds of the competent authority when it is called upon to grant a licence or not, even more so should they be present when there arises a question of cancelling an already existing licence . . . even if we do not ask that the competent authority should deal with these matters in exactly the same way as a court of law would deal with them. Nevertheless elementary justice requires that, before disposing of the rights of the citizen, he should be granted an opportunity to explain the state of affairs and to remove any cause for suspicion. We have reached the conclusion that in the present case the man who was empowered to decide on the cancellation of the licence did not do this."

LEGALITY OF ADMINISTRATIVE ACTION—PRESS ORDINANCE—FREEDOM OF THE PRESS—LAW OF ISRAEL

STEIN *v.* THE MINISTER OF THE INTERIOR AND OTHERS

Supreme Court of Israel sitting as the High Court of Justice[1]

31 October 1952

The facts. Before the termination of the mandate, a licence was given, under the Press Ordinance, for the publication of a newspaper entitled *The Democratic Newspaper*. After the establishment of the State of Israel, the licence holder was asked to hand in his old licence and to receive in lieu a new one. It was given him on 26 July 1951. The licence was for the publication of a daily newspaper under the above name. However, the newspaper was in fact published once a week and it was established in evidence that during the period from December 1951 to June 1952 eight issues appeared. Various provisions in the Press Ordinance were not observed by the applicant. In July 1952 the second respondent decided to cancel the licence and so informed the applicant, who thereupon instituted proceedings for an order *nisi*, and also for an interim injunction continuing in force the licence pending the determination of these proceedings.

Held: That the application should be rejected and the order *nisi* vacated. Judgement was delivered by Judge Olshan. He said:

"From the facts as above described we see that in cancelling the licence the second respondent was acting in conformity with powers conferred upon him by law. Nevertheless the applicant argued that the second respondent was acting contrary to the law and he asked us to forbid him to use certain powers conferred upon him by the Press Ordinance. The applicant based his argument on the following grounds:

"The applicant argues that when he applied for the new licence in 1951 he stated that so long as he had not succeeded in raising the necessary financial resources and in finding the necessary skilled labour for the production of a daily newspaper, it would appear only once a week. This is denied by the second respondent, who states that had he known this in July 1951 he would not have issued a licence for a daily newspaper . . . In support of his statement, the applicant points out that after the licence had been given in July 1951, the Ministry of Trade and Industry allocated to him a quota of newsprint for the publication of a newspaper once a week, and in doing so was acting upon the recommendation of a senior official of the Ministry of the Interior.

"The allocation of newsprint is within the competence of the Ministry of Trade and Industry, which apparently will not usually make an allocation unless the application therefore is supported by the Ministry of the Interior. We do not think that there can be read into any such recommendation anything to support the view that the second respondent, who had the legal right to cancel the licence, promised not to apply or not to use the provisions of the law in regard to the applicant's newspaper."

The applicant's second argument was that the second respondent was not acting on the basis of his own discretion, but on the basis of instructions given by the first respondent. This was a question of fact, and the court here found that the argument

[1] Report: *Piskei-Din* (Official Law Reports) vol. 6, 1952, p. 867. Summary prepared by Mr. Shabtai Rosenne, Legal Adviser, Ministry for Foreign Affairs.

was not proved. It then went on to deal with the argument that the second respondent ought to have paid attention to the reasons why the applicant had not been able to issue the newspaper daily.

"This argument, to the extent that it is used to found the application for an order absolute against the second respondent, seems peculiar to us. The applicant does not dispute the fact that the newspaper did not appear with the required minimum frequency —that is to say, objectively speaking, the applicant can only admit that the non-use of the licence for the publication of a daily newspaper for so long a period is not in accordance with the law, a fact which, in its turn, entitled the second respondent to make use of powers conferred upon him by the law. It follows that what he is really asking is that the second respondent should turn a blind eye to certain deficiencies and should refrain from using certain powers which are conferred upon him, and when this request is not met the applicant comes to us and asks this court to order the second respondent to turn a blind eye to these deficiencies and forbid him to use powers. Generally speaking, this court is authorized to intervene when a certain action has been performed by the executive contrary to the law or without legal authority; but we have never heard that this court is empowered to tell the authorities when they must use the powers conferred on them by law and when not, when they are to conduct themselves in accordance with strict law and when they are to be guided by purely equitable considerations. No authority has been cited to us showing that this court can come to an official and say: 'True, what you are doing is legal. According to the law you are entitled to cancel the licence, but in the circumstances of this case there are certain elements which lead us to think that it would be more equitable for you not to act in accordance with the strict law; and as the law does not impose upon you the duty to cancel the licence, but only gives you the power to do so, therefore we order you to act as the applicant thinks you ought to, and not be strict in this particular case and not to use the powers given you by the law.'"

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATIVE PROVISIONS RELATING TO HUMAN RIGHTS

The year 1952 marked the large-scale implementation of the basic laws enacted between 1948 and 1951 to effect land reform, encourage construction and reduce unemployment—in other words, to promote the country's economic development through the more rational and intensive use of its resources, the ultimate object of which is to secure a higher standard of living for the Italian people. These measures are based directly upon the principles set forth in article 44 of the Constitution.[2]

Hundreds of expropriation decrees were issued in December 1952, affecting 585,000 hectares of land on the Italian mainland; in addition, 16,000 hectares had been expropriated earlier; approximately 50,000 will soon be expropriated in Sicily; 33,000 were obtained from the former Office for the Settlement of Sardinia (now abolished); and 5,000 were obtained by transfer or purchase. Under the present land reform, therefore, approximately 700,000 hectares are ready for distribution, or have already been distributed, to persons who actually cultivate the land.

The distribution of land is accompanied, in gradual stages, by the construction of rural housing (in some cases an entire village, provided with all the necessary economic, social, religious and other facilities) and new roads and the distribution, although still on a small scale, of livestock and agricultural machinery.

The Italian Government also adopted new legislative measures in 1952 for the country's economic development, to supplement previous measures.

Chief of these was Act No. 949 of 25 July 1952, entitled "Measures to promote economic development and increase employment" (*Gazzetta Ufficiale* No. 174, of 29 July 1952), supplemented by decree No. 1317, of 17 October 1952, which contains the "Regulations for the application of the provisions of chapter III . . ." of that Act. (*G.U.* No. 249 of 25 October 1952.)

The Act of 25 July 1952 provides, *inter alia*, for a twelve-year plan for the development of Italian agriculture.

Article 1, superseding article 1 of Act No. 646, of 10 August 1950, which had established the Cassa del Mezzogiorno[3] (Southern Italy Fund), provides that the competent Ministers shall "prepare a comprehensive plan for the execution of special public works, over the twelve-year period from 1950 to 1962, specifically designed to promote the economic and social progress of southern Italy in co-ordination with the public works programmes planned by the public authorities.

"The said plan shall provide for a network of interrelated public works for the regulation of catchment areas and water courses, land reclamation, irrigation, agrarian conversion under the land reform programmes, local road building, plants for the processing of agricultural products, projects likely to attract tourist trade, the installation of water mains and drains, and special plans for the improvement of major railway lines."

Chapter III of the Act, "Credit for agricultural machinery, irrigation works and rural construction" (articles 5–15), is of particular importance, for it contains the Twelve-Year Plan for the Development of Italian Agriculture which was approved by the Council of Ministers on 21 January 1952 and has subsequently been amended by the legislative body. Article 5 states: "A revolving fund shall be established at the Ministry of Agriculture and Forests to supply funds to credit institutions and to authorized agricultural credit institutions, preferably on the same terms, for loans to farmers, or to associations of farmers, particularly those with small or medium-sized holdings, and to co-operatives, for the purchase of agricultural machinery of Italian manufacture, and to provide loans and advances for the construction of irrigation works and rural homes, barns and buildings for the storage, handling and processing of agricultural products.

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[1] Note prepared by Dr. Maria R. Vismara, chief editor of *La Communità Internazionale*, a publication of the Italian Association for the United Nations. English translation from the Italian text by the United Nations Secretariat.

[2] Italian Constitution, article 44: "In order to ensure the rational use of the soil and to establish equal social conditions, the law shall impose obligations and restrictions on private landed property, shall limit its expansion, in particular agrarian regions and zones, shall promote and enforce land improvement, the conversion of large estates [latifundia] and the reconstitution of productive units; it shall assist small and medium-sized holdings.

"Legislation shall be enacted in favour of the people of mountainous regions."

[3] See *Yearbook on Human Rights for 1951*, p. 193.

"Such loans and advances may also be granted to syndicates, organizations and companies which propose to build and operate installations for the supply of water for irrigation purposes in areas where the land owners are unable or unwilling to provide such installations themselves." The novel feature of the second paragraph is of particular importance, for by making syndicates, organizations and companies also eligible for loans and advances it makes irrigation possible in areas which the farmers themselves would be unable to irrigate because of lack of funds. This part of the plan (article 6) is to be financed by an initial fund of 125,000 million lire, to be used for loans for the following three purposes: the purchase of machinery, irrigation, and the construction of farm buildings. Until 30 June 1964 the revolving fund will be augmented by amortization and interest payments made by borrowers, subject to the deduction of the amount set aside as compensation to the organizations concerned for their services. Article 7 describes how the available funds are to be apportioned among the various credit institutions and contains rules governing their use of such funds. Article 9 provides, as an exception to the rules governing the accounting procedure of the State, that any sums not used in a particular fiscal year may be carried forward to later years. Article 11 fixes the rate of amortization, which will be calculated as follows: loans for the purchase of machinery will be repaid over a period of five years; loans for irrigation works over six years and loans for the construction of farm buildings over twelve years. Loans and advances (mortgage loans) are subject to 3 per cent annual interest, which, as a noteworthy new feature, includes the amount due to the institutions concerned to cover their administrative expenses, risks, taxes and other costs. The institutions, after deducting the agreed amount, will pay the yearly amortization and interest payments into the revolving fund. Article 12 provides that no other State contribution, subsidy or assistance may be received in respect of works and purchaises financed in pursuance of article 5. The facilities at present granted in respect of agricultural loans—i.e., fixed registration tax and reduced notarial fees—will also apply to credit operations, instruments and formalities under the plan.

The application of the plan will result in a number of benefits: it will increase the production of agricultural machinery and so stimulate that industry; it will increase employment, stimulate agriculture in general, while reducing the toil of the farmer, improve farm housing, thereby benefiting family and social life, increase production and reduce costs, with a consequent increase in income.

Chapter IV, "Land reclamation and improvement" (article 16), authorizes the expenditure of 13,000 million lire for public reclamation works, subsidies for land improvement projects, the repair of public reclamation works damaged by the hostilities and charges arising out of the revision of the costs of completed public reclamation works.

Chapter V, "Medium-term loans for small and medium-sized industries" (articles 17–32), establishes the Central Institute for Medium-term Credit for Medium-sized and Small Industries to finance institutions and undertakings authorized to provide medium-term credit (referred to in article 19), in order to make funds available for the granting of loans to medium-sized and small industries for the replacement, expansion and construction of industrial plants. The Institute is endowed with a fund of 60,000 million lire and is empowered to use the proceeds of foreign loans, which it is authorized to contract directly, and for which the State may guarantee the payment of capital and interest. The Institute is granted certain fiscal reliefs in respect of its operations, in addition to other facilities in respect of the turnover tax and moveable property tax; the articles of incorporation of the regional Institutes for the Financing of Medium-sized and Small Industries are also registered at a fixed rate and are subject to reduced notarial fees.

Chapter VI, "Credit for Artisans" (articles 33–52). The Artisan Credit Fund, established by decree No. 1418 of 15 December 1947, is designed to provide funds for the credit institutions and undertakings specified in the Act (article 35), to finance direct loans for equipment and for expanding and modernizing laboratories and the purchase of machinery and tools by artisan undertakings. The fund's endowment has been increased to 5,500 million lire; the State contributes up to 3 per cent, through an account opened with the Fund, towards the payment of interest on loans to artisan undertakings. The Fund is also authorized to contract foreign loans directly, for which the State may guarantee the payment of capital and interest. The Fund may also be authorized to issue bonds. Fiscal relief and reductions of various fees are granted in respect of operations conducted by credit institutions and organizations under the terms of the Act.

Chapter VII, "Construction of gas pipelines and exploration of hydrocarbon deposits" (articles 53 and 54), authorizes the expenditure of 20,000 million lire to finance the construction of gas pipelines for the transport of products extracted from deposits located by prospecting carried out under the terms of legislation in force, and to finance the exploration of hydrocarbon deposits.

Chapter VIII, "Shipbuilding for the merchant marine" (articles 55–71), provides in article 55 for the extension of the benefits referred to in Act No. 75, of 8 March 1949,[1] to liquid cargo merchant vessels

[1] Act No. 75 of 8 March 1949: "Measures to assist the shipbuilding and fitting industry", provides for duty-free imports and exemption from licence fees (art. 7), fiscal exemptions (art. 8), exemption from the movable property tax (art. 9), and exemption from requisition and compulsory carriage (art. 10).

of not less than 10,000 gross tons having a test speed under half-load of at least 15 knots, which are constructed in Italian shipyards for Italian nationals.

A subsidy not exceeding 45,000 lire per gross ton may also be granted in respect of such vessels. The Act lays down the conditions governing eligibility for the subsidy and for the other benefits provided for in the Act. A sum of 12,000 million lire was appropriated for the purposes stated in this chapter; a suitable part of this sum will be spent in the south. Of this appropriation, a portion not exceeding 600 million lire is earmarked for the construction, for Italian nationals, of metal-hull vessels of 500 to 2,000 gross tons, for dry or liquid cargo, and tugboats, by small and medium-sized shipyards equipped to build metal ships and shipyards other than those commissioned to build the tankers referred to in this Act. In addition to the benefits under article 55(1), a subsidy of 130,000 lire per gross ton may also be granted in respect of such vessels. The benefits referred to in this chapter apply in part to tankers not eligible for the benefits provided for in article 55 and to vessels of all other types, including tankers of lower tonnage than that stipulated in the said article, which are ordered from Italian shipyards by Italian nationals.

Chapter IX, "Training and utilization of unemployed labour" (articles 72–73), authorizes a special allocation of 36,000 million lire to the fund for the vocational training of workers, in pursuance of article 62 of Act No. 264, of 29 April 1949,[1] concerning the placement of and assistance to involuntarily unemployed workers.

Chapter X, "Workers' housing" (article 74), provides that the State may guarantee bonds issued by the National Insurance Institute Housing Board (*INA-Casa*) in pursuance of Act No. 43, of 28 February 1949,[2] to finance the housing programme.

Chapter XI, "Special temporary levy for investments designed to prevent unemployment" (articles 75–80), provides that a special levy, in effect from 1 March 1952 to 31 December 1953, is to be payable by certain categories of persons engaged in productive activity. Employers who fail to pay the levy, or who pay less than the prescribed amount, are liable to fines.

Other measures for agricultural development include: Act No. 2362, of 11 December 1952 (*G.U.* No. 298, of 24 December 1952), enacting provisions for the assistance of small rural holdings.[3] This Act extends for three years the tax reliefs granted by decree No. 114, of 24 February 1948, in respect of contracts of purchase and sale and long-term leases of agricultural land; provides for additional tax reliefs and at the same time extends the application of the benefits provided for in the decree of 1948; it increases the yearly appropriations provided for in the said decree, for the fund out of which a share of the interest on loans for land improvement is paid and subsidies for land improvement work granted; it provides that uncultivated land within the meaning of certain legislative provisions may also be expropriated, and vested in the Fund for the formation of small rural holdings; the land so acquired must then be re-sold in small units by the Funds.

Act No. 2377, of 20 December 1952 (*G.U.* No. 299, of 27 December 1952) making special regulations relative to land reform extends the exemption from expropriation, provided for in article 10 of Act No. 841, of 21 October 1950,[4] to intensively cultivated land forming co-ordinated and efficient agricultural enterprises which are wholly or predominantly engaged in livestock breeding, even if they do not fulfil the conditions of joint management in association with the workers, provided that they satisfy certain other conditions.

Act No. 1090, of 31 July 1952 (*G.U.* No. 195, of 23 August 1952), concerns measures concerning State participation in land improvement work.

Important measures were adopted in 1952 concerning mountainous regions which have suffered particularly from deforestation, with serious consequences to the water supply.

Act No. 991, of 25 July 1952 (*G.U.* No. 176, of 31 July 1952), supplemented by the relevant regulations contained in decree No. 1979 of 16 November 1952 (*G.U.* No. 291, of 16 December 1952), contains provisions for the granting of improvement loans or loans to assist artisans in mountainous regions (article 2); State subsides and assistance for land improvement (article 3); contributions for the management of forest and pasture land belonging to communities and other entities and for modernization and technical assistance (article 4); studies by competent agencies with a view to planning a more rational utilization of the agricultural resources and forest and pasture land of mountainous regions (article 5); authorizing the State Forests Board to acquire, over a ten-year period, scrub land suitable for reafforestation and for conversion into fields and pasture (article 6); and fiscal relief for mountainous regions similar to that provided for agriculture (article 8). Special organizations and societies for the management of the forests and pasture lands of public and collective entities may be set up for the purposes of the Act (articles 9–13). Mountainous regions which, owing to unfavourable physical or economic conditions, cannot be cultivated profitably without the collective effort of individuals, in conjunction with State operations, may be divided into areas to be known as mountainous region improvement districts (article 14).

[1] See *Yearbook on Human Rights for 1951*, p. 193.

[2] *Ibid.*, p. 192.

[3] *Ibid.*, p. 193.

[4] *Ibid.*, p. 204.

Land improvement associations composed of interested owners may be organized in such districts by such persons, interested public organizations, or the authorities (article 16). A general plan for land improvement is to be drawn up for each district (article 17). Chapter III of the Act establishes the respective competence of the State and private enterprise in the matter of improvement projects. Public and private works to be carried out in mountainous regions are, for the purposes of this Act, declared to be in the public interest, urgent and of absolute priority for all purposes of the law (article 21). If a land-owner fails to perform his obligations under an improvement scheme, all or part of his land may be expropriated (article 24). The Act also specifies the authorities responsible for the maintenance of the public works to which it relates (article 27). An appropriation of not less than 7,000 million lire per annum for a period of ten years is provided for the execution of the works envisaged in the Act (article 31).

The following enactments relate to works beneficial to the public interest and to industry:

Act No. 10, of 2 January 1952 (*G.U.* No. 19, of 23 January 1952), entitled "Measures supplementing Act No. 647 of 10 August 1950, concerning special public works in Northern and Central Italy"[1] provides for advances to local authorities for the execution of road building projects eligible for State assistance under the Act of 1950; the Act also provides for the construction, exclusively at the State expense, of roads serving certain categories of mountain communities.

Act No. 763, of 30 June 1952 (*G.U.* No. 160, of 12 July 1952), provides for an appropriation of 10,000 million lire for the industrial development of southern Italy and the Italian islands in pursuance of decree No. 1598, of 14 December 1947. This Act provides for a number of financial facilities, fiscal reliefs and the like to promote the construction and introduction of new industrial establishments in the south and in the islands.

The Government has enacted special building legislation to relieve the intolerable housing conditions of some of the inhabitants of Lucania, who live in makeshift rock dwellings.

Act No. 619, of 17 March 1952 (*G.U.* No. 139, of 18 June 1952) entitled "Reclamation of the 'Sassi' quarters of the commune of Matera" provides in article 1 for (*a*) the re-settlement of persons living in those parts of the quarters in question which are condemned as uninhabitable; (*b*) the improvement of those parts which are suitable for housing units and the construction of the necessary public sanitation installations; (*c*) the construction of rural settlements. The State will bear the entire cost (article 5) of: (*a*) the public works necessary for carrying out the re-settlement scheme, including the construction of water mains and drains, a parish church, and premises for the municipal authorities; (*b*) permanent works to close off the parts of the "Sassi" quarters condemned as uninhabitable; (*c*) works serving the general public in the rural settlements. Every head of family who receives a notice of eviction is entitled to accommodation in the "people's houses" constructed in pursuance of this Act (article 7). A committee for the allocation of dwellings has been established, which will determine in each case whether the applicant fulfils the requirements prescribed by the Act (article 10). Persons to whom housing space is allotted forfeit their rights unless they occupy the dwelling personally not later than one month from the date of allocation. They may not sublet or in any way transfer any part of the allotted dwelling (article 11). The tenant will be charged an annual rent based on certain specified factors to be fixed by the Ministry of Public Works (article 13). If a tenant wishes to buy his dwelling, the price, based on the construction cost, may be paid in 35 annual instalments without interest (article 14). As an exception to the usual rules relating to State accounts, this Act authorizes funds not used in a given fiscal year to be used in later years. Instruments and contracts executed or entered into in pursuance of this Act are exempt from stamp duty, Government fees and land registration tax.

Another Act concerning housing is Act No. 200, of 28 March 1952 (*G.U.* No. 86, of 10 April 1952), which authorizes the expenditure of 6,000 million lire for the construction of low-cost "people's houses" in Naples.

In addition, Act No. 230, of 29 March 1952 (*G.U.* No. 92, of 18 April 1952) provides for the granting of loans to the Sicilian association Case per i lavoratori (Workers' Houses) by deposit and loan funds for the construction of "people's houses".

Act No. 962, of 5 July 1952 (*G.U.* No. 175, of 30 July 1952), appropriates the funds needed for completing the construction of houses for homeless persons and ex-servicemen. This Act is based on Act No. 409, of 25 June 1949, which is referred to in the *Yearbook* for 1951.[2]

In 1952, further legislation was also enacted to deal with the pressing problem of unemployment; some of the legislation is intended to forestall or alleviate unemployment, while other enactments relate to particular conditions of employment and to wages.

Act No. 621, of 17 May 1952 (*G.U.* No. 139, of 18 June 1952) confirms legislative decree No. 929, of 16 September 1947, which contains rules respecting

[1] See the Act of 1950 in *Yearbook on Human Rights for 1951*, p. 193.

[2] P. 193.

maximum hours of work for agricultural workers. The Act authorizes prefects to make it compulsory for persons who operate, in any capacity whatsoever, agricultural and forestry undertakings to hire such labour as is required throughout the agricultural year or season for the cultivation and maintenance of land, the maintenance of approach roads and plantations and for cattle-raising. The Act also provides for the establishment of provincial and communal committees to lay down the maximum hours of work in agriculture.

Act No. 63, of 11 February 1952 (*G.U.* No. 48, of 25 February 1952), to amend Act No. 105, of 22 March 1908, concerning the abolition of night work for bakers provides that only persons over the age of eighteen years may be employed during the three hours of night work which—as an exception to the general rule of the Act—is permitted on Saturdays; in addition it increases the fines applicable to offenders under the Act of 1908.

Act No. 54, of 2 February 1952 (*G.U.* No. 43, of 19 February 1952), increases the amount of pecuniary benefit of workers in instructional work centres (*cantieri scuola*).

Act No. 62, of 11 February 1952 (*G.U.* No. 48, of 25 February 1952), grants certain benefits to janitors and cleaners employed in urban buildings owned by State-aided housing co-operatives or by autonomous "people's housing" agencies.

Act No. 472, of 23 April 1952 (*G.U.* No. 119, of 23 May 1952), entitled "Annual Report to Parliament concerning employment, unemployment, emigration and welfare" is particularly important both by reason of its implications for the future and as evidence of the constant concern with which the responsible authorities in Italy view the country's serious economic and social problems. This report, which is mandatory under Act No. 639 of 21 August 1949, is required to contain statistical and analytical data showing the fluctuations in the supply and demand of labour in Italy, with special reference to movements as between different types of occupation and to unemployment and emigration. It is also required to contain information concerning conditions in the labour market during the preceding twelve months, an estimate of probable economic conditions in the following year and a statistical and financial survey of the welfare activities conducted by the State. (The 1949 Act, referred to in the 1952 Act, actually merely provided that a general report on the country's economic situation should be submitted annually to Parliament by the Minister of the Treasury.)

In order to broaden the scope and improve the conditions of social insurance, new provisions have also been enacted which grant benefits to certain categories of workers. The following may be cited:

Act No. 35, of 18 January 1952 (*G.U.* No. 32, of 7 February 1952), to extend (subject to certain restrictions) the sickness insurance provided under Act No. 138, of 11 January 1943, to domestic servants;

Act No. 6, of 8 January 1952 (*G.U.* No. 16, of 19 January 1952) which set up the National Provident and Assistance Fund for lawyers and attorneys, with the object of providing treatment and assistance;

Act No. 1015, of 20 July 1952 (*G.U.* No. 181, of 6 August 1952), to grant revised pecuniary benefits and to extend social insurance to temporary workers in employment agencies;

Act No. 33, of 11 January 1952 (*G.U.* No. 31, of 6 February 1952), to increase the pecuniary benefits for industrial accidents and occupational diseases (increase in monthly contributions);

The decree of 23 February 1952 (*G.U.* No. 58, of 7 March 1952), concerning the average contractual daily wage for porters and stevedores employed in loading and unloading ships at all the ports of the national territory, for the purposes of the compulsory insurance against industrial accidents.

The disastrous floods which affected many regions of Italy during the summer and autumn of 1951 led to the enactment of a series of emergency provisions, the first being enacted as early as November 1951, by means of which the Government sought to alleviate the sufferings and to meet the needs of the stricken population. Reference is made below to the principal provisions, which were later supplemented by numerous other regulations concerning the reconstruction of dwellings and, in cases where premises were threatened with collapse, the immediate resettlement of the inhabitants.

The most important provisions were:

Act No. 7, of 8 January 1952 (*G.U.* No. 16, of 19 January 1952), confirming, with several amendments and additions, Legislative Decree No. 1184, of 20 November 1951, concerning relief measures for the victims of the recent floods.[1]

Act No. 3, of 10 January 1952 (*G.U.* No. 11, of 14 January 1952), provides for assistance to agricultural undertakings damaged by the floods and high tides during the summer and autumn of 1951.

Act No. 9, of 10 January 1952 (*G.U.* No. 16, of 19 January 1952), makes provision for assistance to areas in eleven regions ravaged by the floods and high tides during the summer and autumn of 1951. The measures contemplated in the Act include: prompt relief, the repair of damage to public works, the restoration of hydraulic plants and sanitary

[1] See the Legislative Decree of 1951 in *Yearbook on Human Rights for 1951*, p. 194.

installations, the construction of low-cost housing for persons with insufficient means who are homeless, the reconstruction of hospitals and other charitable institutions, the repair of roads, and the grant of subsidies for the re-building of other public and cultural buildings and of private residential or semi-industrial property.

By Act No. 137, of 4 March 1952 (*G.U.* No. 71, of 24 March 1952), the Government introduced substantial provisions for the benefit of refugees of Italian nationality. The categories of refugees who are eligible (subject to proof of need) for assistance under this Act include, according to article 1, refugees from Libya, Eritrea, Ethiopia and Somaliland; refugees from territories which, by virtue of the peace treaty, have ceased to be subject to the sovereignty of the Italian State; refugees from foreign countries; and refugees from war-devastated areas of the national territory.

The assistance given under the Act can take the following forms: a temporary grant to the head of the family, calculated on the same daily rate as that applicable to unemployed persons under current regulations, plus an additional allowance of 100 lire per day for each dependent member of the family; a single non-recurring grant of 12,000 lire, plus 5,000 lire for each dependent member of the family, in addition to the above; reimbursement of the cost of transport of the persons in question and their belongings from the frontier or port of entry to the reception centre or selected commune. This assistance is discontinued if the state of need ceases to exist; if the refugee refuses to accept suitable employment; if the refugee (being a woman) marries; or if an order is made whereby the person in question is declared to have lost refugee status. Needy refugees are also granted medical, clinical and pharmaceutical assistance. Refugees who cannot find accommodation may be housed in reception centres for a maximum period of eighteen months and will be eligible for the cash equivalent of food rations; in cases of proved need they may be allowed to stay in these centres for longer than eighteen months. An installation grant of 50,000 lire and, for a period of six months, a daily allowance is paid to refugees admitted to reception centres who leave voluntarily within a given time limit.

Refugees entitled to assistance under the Act must be entered in the registers of unemployed, workers and employees. For a period of four years after the entry into force of the Act, the autonomous bodies responsible for "people's houses" and UNRRA houses are required to set aside for refugees a quota of 15 per cent of the dwellings which will be constructed and become habitable as from 1 January 1952. Similarly, the National Housing Institute for state employees must set aside, also for a four-year period, a 15 per cent quota for state-employed refugees who can prove by documentary evidence that they qualify for housing built by the said Institute. During the three years between 1951 and 1954 the construction, at state expense, of low-cost housing is authorized for the purpose of providing refugees accommodated in government reception centres with regular dwellings. Any dwellings which may remain unoccupied after the refugees in the above category have been re-settled in this way are to be allotted to refugees who have not been accommodated in reception centres or who are in need of housing. Persons to whom housing has been allotted will pay the bodies operating the buildings in question a monthly rent to defray the general expenses of management and upkeep.

Refugees who intend to continue the same artisan, commercial, industrial or professional occupation as that which they carried on in their former places of residence are entitled to receive permission to exercise their profession or trade or to be duly listed in professional registers, this concession being an exception to the regulations. Refugees who fulfil all the conditions governing emigration are entitled to preference for the purpose of the emigration quota, subject to the proviso that they may not in the aggregate account for more than 30 per cent of that quota. Although they may have received payment of the installation allowance, all persons recognized to possess refugee status are entitled to the other benefits described in the Act—i.e., medical, clinical and pharmaceutical assistance, guidance in obtaining employment and engaging in artisan, industrial and professional occupations, the right to housing, and preference in emigration. Furthermore, in cases of particular need, additional assistance may be granted to such refugees within the limits of the funds available. The facilities granted by statute to ex-servicemen are also applicable to refugees within the meaning of the Act for the purpose of examinations to be announced after the Act's entry into force.

In the educational field, two provisions may be mentioned:

Act No. 1127, of 25 July 1952 (*G.U.* No. 206, of 5 September 1952), establishing the Italian centre for educational visits by secondary school students. Its object is to encourage and organize educational visits for Italian students at home and abroad and for foreign students in Italy, and also to facilitate contact between Italian and foreign teachers and students.

By decree No. 181, of 11 February 1952 (*G.U.* No. 82, of 5 April 1952), the "National Union for the Campaign against Illiteracy" was incorporated, with headquarters in Rome. The Union's object is to foster popular and adult education; it is a social body operating on strictly non-partisan lines. In keeping with its objects, the Union organizes (*a*) evening and holiday courses for illiterate adults; (*b*) permanent bodies for popular and adult education known as Centres of Popular Culture (Centridi Cultura Popolare); (*c*) research studies in areas where

illiteracy is most prevalent; (*d*) campaigns to promote increased attendance at day schools by children and at night schools by adults; (*e*) the publication of books and periodicals, and, generally, arranges any other activities likely to further its objects, directly or indirectly.

In carrying on these multifarious activities, the Union endeavours to foster the spirit of social collaboration and international understanding and encourages with every means in its power private initiative in the field of labour, especially in handicrafts.

With regard to minorities, further provisions have been enacted for the gradual implementation of the special statute for the Trentino and the Alto Adige.

Thus Act No. 1008, of 20 July 1952 (*G.U.* No. 180, of 5 August 1952), contains provisions for the benefit of inhabitants of the Alto Adige opting for the restoration of Italian citizenship. It regulates the re-employment by Government or semi-governmental bodies of inhabitants of the Alto Adige who had been employed by these bodies before opting for German citizenship.

Two decrees—No. 2592, of 15 November 1952 (*G.U.* No. 7, of 10 January 1953), and No. 1064, of 17 July 1952 (*G.U.* No. 190, of 18 August 1952)—contain provisions for the implementation of the statute for the Trentino and the Alto Adige, respectively, in the matter of credits and savings and of civic usages.

Decree No. 3599, of 15 November 1952 (*G.U.* No. 15, of 20 January 1953), provides for the transfer of State undertakings to the regions concerned, while decree No. 354, of 27 March 1952 (*G.U.* No. 99, of 28 April 1952), contains provisions concerning the tourist and hotel industries of the Trentino and the Alto Adige.

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS WHICH BECAME OPERATIVE IN 1952

Convention on the Prevention and Punishment of the Crime of Genocide, approved by the United Nations General Assembly (9 December 1948).

Italy acceded to the Convention by Act No. 153, of 11 March 1952 (*G.U.* No. 74, of 27 March 1952), which states that the Convention is to be fully operative in Italy from the date of the entry into force of the legislation to be enacted in pursuance of article V of the Convention.

Agreement between Italy and France concerning Industrial Property and Proprietary Designations, executed in Paris, 26 September 1949; became operative in Italy by Act No. 530, of 9 April 1952 (*G.U.* No. 124, of 29 May 1952).

Supplementary agreement between the Italian Government and the International Refugee Organization concerning the operations of the International Refugee Organization in Italy during the supplementary period 1950–51, executed in Rome, 14 November 1950; became operative by Act No. 907 of 25 June 1952 (*G.U.* No. 171, of 25 July 1952).

Agreement between Italy, France and Belgium concerning Social Insurance, signed in Paris, 19 January 1951; ratified and put into effect by Act No. 1088, of 14 July 1952 (*G.U.* No. 195, of 23 August 1952).

Convention 88 concerning the Organization of the Employment Service, adopted at San Francisco by the General Conference of the International Labour Organisation on 9 July 1948; ratified and put into effect by Act No. 1089, of 30 July 1952 (*G.U.* No. 195, of 23 August 1952).

Convention between Italy and Switzerland concerning Social Insurance, with Final Protocol, executed in Rome on 17 October 1951; ratified and put into effect by Act No. 1100, of 30 July 1952 (*G.U.* No. 197, of 26 August 1952).

Protocol signed at Lake Success, New York, on 4 May 1949, amending the Agreement for the Suppression of the Circulation of Obsence Publications signed in Paris on 4 May 1910; put into effect by decree No. 1239, of 26 June 1953 (*G.U.* No. 230, of 3 October 1952).

Protocol signed at Lake Success, New York, on 4 May 1949, amending the International Agreement for the Suppression of the White Slave Traffic, of 18 May 1904, and the International Convention for the Suppression of the White Slave Traffic of 4 May 1910; put into effect by decree No. 1244, of 12 July 1952 (*G.U.* No. 231, of 4 October 1952).

The following Agreements between Italy and France, executed in Rome on 24 March 1951:

(*a*) The Immigration Agreement and relevant annexes;

(*b*) The Protocol of Signature;

(*c*) The Administrative Agreement concerning the Immigration into France of Italian Seasonal Workers;

(*d*) The Agreement concerning the Immigration into France of Italian Beet Harvesters;

(*e*) The Administrative Agreement concerning the Expenses connected with the Immigration of Italian Workers and their Families;

(*f*) Exchange of Notes.

These instruments were approved and put into effect by Act No. 4412, of 9 December 1952 (*G.U.* No. 22, of 28 January 1953).

Twenty-seven international labour conventions were ratified and put into effect by Act No. 1305, of 2 August 1952 (*G.U.* No. 242, of 17 October 1952, Supplement).[1]

III. JUDICIAL DECISIONS

Universal Declaration of Human Rights: Article 23 (1) "Everyone has the right . . . to just and favourable conditions of work".

Introductory note: The decisions reported in this chapter establish two important principles concerning a question which both the authorities and the courts consider of the greatest interest. The first is that personal contracts of employment may not derogate from any applicable collective agreement. Secondly, article 36 of the Italian Constitution[2] is held to be a mandatory provision and not merely a statement of principle (as some have maintained). These decisions recognize the dignity of free labour, and protect the Italian worker against all attempts by concerns or individuals to resort to unfair practices by taking advantage of the special conditions prevailing in Italy, where the numbers seeking employment exceed the demand for labour.

MINIMUM LIVING WAGE—ARTICLE 36 OF THE CONSTITUTION—POST-FASCIST COLLECTIVE AGREEMENTS PREVAIL OVER PERSONAL CONTRACTS

Court of Cassation[3]

21 February 1952

Appeal from a decision of the Naples Court of Appeal of 10 February 1951.

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[1] These conventions are:

(1) Convention 3, concerning the employment of women before and after child-birth. Washington, 29 November 1919.

(2) Convention 13, concerning the use of white lead in painting. Geneva, 19 November 1921.

(3) Convention 39, concerning compulsory widows' and orphans' insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants. Geneva, 29 June 1933.

(4) Convention 40, concerning compulsory widows' and orphans' insurance for persons employed in agricultural undertakings. Geneva, 29 June 1933.

(5) Convention 42, concerning workmen's compensation for occupational diseases. Geneva, 21 June 1934.

(6) Convention 44, ensuring benefit or allowances to the involuntarily unemployed. Geneva, 23 June 1934.

(7) Convention 45, concerning the employment of women on underground work in mines of all kinds. Geneva, 21 June 1935.

(8) Convention 48, concerning the establishment of an international Scheme for the maintenance of rights under invalidity, old-age and widows' and orphans' insurance. Geneva, 22 June 1935.

(9) Convention 52, concerning annual holidays with pay. Geneva, 24 June 1936.

(10) Convention 53, concerning the minimum requirement of professional capacity for masters and officers on board merchant ships. Geneva, 24 October 1936.

(11) Convention 55, concerning the liability of the shipowner in case of sickness, injury or death of seamen. Geneva, 24 October 1936.

(12) Convention 58, fixing the minimum age for the admission of children to employment at sea. Geneva, 24 October 1936.

(13) Convention 59, fixing the minimum age for the admission of children to industrial employment. Geneva, 22 June 1937.

(14) Convention 60, concerning the age for admission of children to non-industrial employment. Geneva, 22 June 1937.

(15) Convention 68, concerning food and catering for crews on board ship. Seattle, 27 June 1946.

(16) Convention 69, concerning the certification of ships' cooks. Seattle, 27 June 1946.

(17) Convention 73, concerning the medical examination of seafarers. Seattle, 29 June 1946.

(18) Convention 77, concerning medical examination for fitness for employment in industry of children and young persons. Montreal, 1 November 1946.

(19) Convention 78, concerning medical examination of children and young persons for fitness for employment in non-industrial occupations. Montreal, 1 November 1946.

(20) Convention 79, concerning the restriction of night work of children and young persons in non-industrial occupations. Montreal, 1 November 1946.

(21) Convention 81, concerning labour inspection in industry and commerce. Geneva, 11 July 1947.

(22) Convention 89, concerning night work of women employed in industry. San Francisco, 9 July 1948.

(23) Convention 90, concerning the night work of young persons employed in industry. San Francisco, 10 July 1948.

(24) Convention 94, concerning labour clauses in public contracts. Geneva, 29 June 1949.

(25) Convention 95, concerning the protection of wages. Geneva, 1 July 1949.

(26) Convention 96, concerning fee-charging employment agencies. Geneva, 1 July 1949.

(27) Convention 97, concerning migration for employment. Geneva, 1 July 1949.

[2] Article 36 of the Constitution reads as follows:

"Workers are entitled to payment commensurate with the quantity and quality of their work and sufficient in all cases to provide them and their families with an independent and decent livelihood.

"The maximum duration of the working day shall be defined by law.

"Workers are entitled to a holiday once a week and to be paid annual holidays; they may not renounce these rights."

[3] Decision No. 461. See *Il Foro Italiano*, 1952, I. 718.

Principles. The private law character of the post-Fascist collective agreements is not inconsistent with the principle, laid down in article 2077 of the Civil Code,[1] of the predominance of such agreements over personal contracts, for the basis and justification of the principle (without scope, of course, of the agency vested in the association on the members' behalf) is the fact that the contractual freedom exercisable by the individual cannot derogate from a collective agreement binding on the same contracting parties, by reason of the agency powers vested in the negotiating association.

Article 36 of the Constitution is a provision of immediate application, which vests in the worker and employee a personal right to payment commensurate with the quantity and quality of his effort, and sufficient to provide him and his family with an independent and decent livelihood.

Consequently, any personal agreement which purports to infringe that right is of no effect, and its invalidity brings into operation article 2099 of the Civil Code which empowers the judge to make an equitable assessment of the payment due, taking into account the minimum wages specified in collective agreements.

Decision. "The honourable court held that the principle that the members of the bargaining associations may not contract out of collective agreements, in so far as it cannot be inferred from article 2077 of the Civil Code, can nevertheless be inferred from the legal relationship created between the association and the member. Indeed, the Court of Appeal ruled that an individual's duty to abide by the contract entered into by an association representing him implies that automatically any provisions in his personal contract which are incompatible with those of the collective agreement are superseded by the latter. Moreover, the individual was held unable to regulate the relationship in any other manner, since the rights deriving from the collective agreement are no longer in his disposal, and the resulting position is analogous to that arising under a collective power-of-attorney, which, under article 1276 of the Civil Code, is irrevocable. The court furthermore held that no distinction could be drawn between direct and indirect representation, and that it was incorrect to assert that only the association may demand compliance with the obligations assumed, for, since it is a condition of the bargain that the collective agreement prevails, all the interested parties have a claim to a remedy against any breach of these obligations.

"The decision of the Naples Court of Appeal has been challenged by the appellant company on three grounds, each representing a different aspect of the same basic contention. The appellant, relying on the private law nature of modern collective agreements, argues that such agreements may be varied by mutual consent by virtue of the principle of contractual freedom, and that the relevant waivers are perfectly valid since the rights waived derive not from any unalterable statutory provisions but from contracts of a private character.

"These arguments by the appellant are devoid of any legal substance, and were indeed fully disposed of by the very decision appealed against, the conclusions of which, even though based on different reasons, substantially agree with the principles affirmed by this Supreme Court, in the matter of the prevailing force of modern collective agreements, in its earlier decisions No. 1184 (*Foro Italiano* 1951, I, 691) and No. 1266 (id. *Massimario* 307), respectively dated 12 and 21 May 1951.

"The private-law character of collective agreements, in the period of legislative transition through which we are passing, is not inconsistent with the principle of the predominance of collective over personal contracts, for the basis and justification of the principle is the fact that the contractual freedom exercisable by the individual cannot derogate from a collective agreement binding on the same contracting parties, by reason of the agency powers vested in the negotiating association. In the matter of the settlement of terms of employment, contractual freedom is in any case observed at the collective bargaining stage, and it would be absurd in law that this freedom should be capable of being superseded by personal negotiations, for it is the express and essential object of collective agreements—something quite distinct from the public or private character of the bargaining associations—to bind the persons represented by the associations to common rules governing the employment of each and hence to remove the question of the settlement of these rules from the free determination of the individuals.

"Viewed from this aspect, the principles of article 2077 respecting the effect of a collective agreement on a personal contract, although restricted by the scope of the agency powers vested in the association, are entirely compatible with the present transitional stage of the law, since they spring from the intrinsic essence and structure of collective negotiation, wherein

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[1] Civil Code, Art. 2077.
(*Effect of a collective agreement on a personal contract*)
Where any parties belonging to the categories covered by a collective agreement enter into a personal contract of employment, such contract shall conform to the provisions of the collective agreement.
The provisions of a collective agreement shall prevail over any inconsistent provisions in the personal contract, whether executed before or after the collective agreement, save in so far as the personal contract contains terms more advantageous to the employee.

the process of evolution begun decades ago is still continuing; and, quite apart from the public character of the negotiating associations, these principles also conform with the new policy respecting trade unions embodied in article 39 of the Constitution, which provides that the new collective agreements of employment are binding *erga omnes* and, consequently, cannot be overridden by personal contracts. To that extent the contrary conclusion in the decision appealed against, concerning the present inapplicability of article 2077, must be deemed overruled.

"Nor is there any greater substance in the second contention argued by the appellant—to wit, that waivers of rights arising out of existing collective agreements are valid on the grounds that these waivers are purportedly governed by private law. The principle of a minimum living wage, which is regarded for economic and social purposes as an absolute personal right, is embodied in article 36 of the Constitution, a provision of a mandatory nature and of immediate application.

"The right to remuneration, furthermore, cannot, pursuant to article 2113 of the Civil Code, be set aside, the reason being not only that it is an absolute right in itself, but also that it is based on article 36 of the Constitution, which states expressly that a worker has a personal right to a minimum living wage, or, in the words of the Constitution itself, 'to payment commensurate with the quantity and quality of his work and sufficient in all cases to provide him and his family with an independent and decent livelihood'.

"Any bargain inconsistent with this principle would inevitably be held void, and the judge would be called upon to determine the fair remuneration on the facts of the case, as happens in cases where there is no agreement between the parties within the meaning of article 2099.

"To conclude, therefore, it may be said that, even in the absence, for the time being, of social legislation, the principle of 'no contracting out' applies nevertheless to collective agreements which are of a private law nature, so far as the members of the negotiating associations are concerned, especially since this principle, already an established feature of the law governing employment, is fully consonant with the trend of social policy evidenced by the new provisions respecting trade unions (article 39 of the Constitution) which have been part of the general law system of the State since 1 January 1948."

The Italian courts have recently given similar rulings in certain other cases, and two further relevant decisions are quoted below; only the most significant passages which support the principles in question are reproduced.

POST-FASCIST COLLECTIVE AGREEMENT—TERMS OF EMPLOYMENT GOVERNING THE CONTRACTING PARTIES—STATUTORY MINIMUM WAGE PAYABLE TO WORKER PURSUANT TO ARTICLE 36 OF THE CONSTITUTION

Court of Cassation[1]

6 December 1952

". . . on the point concerning the remuneration due to a worker, this Court finds . . . that, lest the state of need among the unemployed be used as an easy pretext for the adoption of terms less favourable than those prevailing on the market, the legislator intended the market rate to be authoritative and binding, this rate to be inferred from the wage-scales and collective agreements in force in the locality, and in the type of occupation, where the new labour relationship arises.

"As has repeatedly been ruled by this court, the rates determined by the trade union bodies . . . are to be . . . considered . . . as concrete evidence of the statutory remuneration due to a worker; if the remuneration is lower than these rates, the payment becomes economically and legally inadequate for the purposes of the mandatory principles set forth in article 36 of the Constitution,[2] which requires a worker to be remunerated in an amount not only commensurate with the quantity and quality of his work, but also in all cases sufficient to provide him and his family with an independent and decent livelihood . . ."

DECISION AFFIRMING THE MANDATORY FORCE OF ARTICLE 36 OF THE CONSTITUTION AND SPECIFYING THE MANNER OF DETERMINING THE MINIMUM LIVING WAGE

Court of Bari[3]

11 November 1952

". . . in proclaiming the relationship between work and remuneration, the constitutional provision has not created any new right; it simply presumes and specifically confirms one of the absolute personal rights arising from the legal system already in existence and consonant with the structure of an organized modern State, which looks upon work as something far removed from a menial function and does not regard labour as a mere commodity . . ."

". . . it has to be recognized that article 36 of the Constitution, instead of creating a new personal right or, rather, solemnly reaffirming a pre-existing right,

[1] Decision No. 3131. See: *Rivista Giuridica del Lavoro*, Anno IV, 1953, No. 2.

[2] See p. 159, footnote 1.

[3] See: *Rivista Giuridica del Lavoro*, Anno IV, 1953, No. 1.

in fact provides an interpretation of that right supported by the full authority of the supreme constituent organ. According to the authors of the Constitution, the right to remuneration implies that such remuneration shall be commensurate with the quality and quantity of the work done, and shall at least ensure for the worker and his family an independent and decent livelihood. This is the expression in legal form of the ethical contention that it would be intolerable that an individual who devotes his life to work should be unable to derive from his work the wherewithal for sustaining life itself . . ."

Universal Declaration, article 2, first paragraph: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, etc. *Italian Constitution*, article 3.[1]

JEWS—TAX EXEMPTIONS UNDER THE LEGISLATION RELATING TO THE RESTORATION OF PROPERTY RIGHTS—PROPERTY OBTAINED BY CITIZENS REGARDED AS OF JEWISH RACE BY MEANS OF FICTITIOUS TRANSACTIONS—RESTORATION—APPLICABILITY OF EXEMPTION

In re DI SEGNI

Court of Cassation[2]

18 January 1952

(Appeal from a decision of the Rome Court of Appeal of 8 August 1949)

Principles. The tax exemptions laid down in article 4 of legislative decree No. 222, of 12 April 1945 apply not only to instruments whereby Jews recover property of which they are shown to have been deprived and whereby the confiscatory effects of the racial legislation are removed, but also to instruments the object of which is to vest in Jews the ownership of property acquired by them while the racial legislation was in force by means of fictitious transactions (involving the use of third parties) entered into for the purpose of evading the restrictive provisions of the legislation relating to Jewish-owned property.

Decision. ". . . In rejecting Mr. Di Segni's application, the lower court and the Appeal Court held that the tax exemptions referred to in article 4 of the legislative decree No. 222, of 12 April 1945,[3] applied to instruments whereby Jews recover property of which they are shown to have been deprived and whereby the confiscatory effects of the racial legislation are removed, but not to instruments the object of which is, as in the case in point, to vest in Jews the ownership of property acquired by them, at the time of the racial persecutions, by means of transactions involving the use of third parties . . .

"The appellant challenges that interpretation on the grounds that it is contrary to both the letter and the spirit of the legislation enacted to secure reparation for the damage suffered by citizens of the Jewish race by reason of racial persecution, and that it would perpetuate an inequity not intended by the legislature.

"There can be no doubt that this is a case involving a fictitious instrument within the meaning of article 4 of decree No. 222, of 12 April 1945. It has in fact been established by a judicial decision that the landed property at Acquapendente, which according to the deed executed before the notary Mr. Clementi on 27 October 1942 was apparently in its entirety acquired by Mr. Umberto Gianni, 'was paid for in equal shares by Gianni and Pacifico Di Segni; the latter, being of the Jewish race, could not, for obvious reasons connected with the racial persecution being carried on at the time of the transaction, appear as a party to the deed'. (This is the material passage in the statement made by Mr. Gianni to Mr. Di Segni, on which the lower court relied in ruling that half the property is owned by Mr. Di Segni.) That is why only Mr. Gianni was mentioned in the deed, ostensibly as the sole purchaser of the entire property, whereas in fact a half-interest was acquired by Mr. Di Segni, who did not wish to be mentioned in the deed on account of the racial legislation then in force under which Jews were not allowed to own land in excess of a certain value for tax purposes.

[1] Article 3 of the Constitution reads as follows:

"All citizens are of equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions or personal or social status.

"It is the duty of the Republic to remove any economic and social obstacles which, by actually restricting the liberty and equality of citizens, impede the full development of the human personality and the effective participation of all workers in the political, economic and social organization of the country."

[2] Decision No. 139. See: *La Giurisprudenza Italiana*, 1952, I, 1-163.

[3] Article 4 of this legislative decree reads as follows:

"The provisions of the Civil Code regarding fictitious contracts shall apply to instruments of transfer, whether executed for valuable consideration or otherwise, relating to immovable and movable property, securities, leases and to any other fictitious instrument executed for the purpose of evading racial persecutions by the persons mentioned in article 8 of royal legislative decree No. 1728, of 17 November 1938, which subsequently became Act No. 274, of 5 February 1942. Evidence by witnesses shall be admitted without restrictions as to value.

"In all the aforesaid cases, article 15 of royal legislative decree No. 26, of 20 January 1944 shall apply.

"The instruments referred to in the first paragraph may be produced or submitted for the purpose of obtaining a declaration or recognition of their invalidity without the necessity of evidence showing that the formalities have been complied with and that any tax chargeable thereon at the time has been paid; nor shall any statements or certificates be required for the purpose of such proceedings, except in proceedings for the reimbursement of the taxes and dues paid in the circumstances described in the second paragraph of the said article 15 of royal legislative decree No. 26, of 20 January 1944."

"Quite clearly, then, this was a fictitious transaction, the reason for resorting to the fiction being, not some ordinary circumstance, but a very particular situation. In effect, Mr. Di Segni was forced to make Mr. Gianni appear as the owner of the entire property in order to evade the legislation in force at the time under which he (Di Segni) could not himself, as a citizen of Jewish race (the fact that he is Jewish has been established by the evidence of the Rome community), acquire the property. But for the existence of such legislation, Mr. Di Segni could have acquired a half interest in the property in his own name *ab initio* and so have avoided all the perils of the device of employing a third party.

"The matter therefore clearly comes within the scope of the measures relating to the restoration of property rights enacted by the democratic legislature for the benefit of citizens of the Jewish race, in particular of article 4 of the said decree No. 222, which refers specifically to the circumstances in which a Jew may have had to resort to a fictitious transaction for the purpose of evading the discriminatory racial legislation.

". . . the contention that the provisions relating to the restoration of property rights were meant only to cover transactions which citizens of the ewish race w ere forced to enter into as passive partners as it were (e.g., alienation of property under compulsion), is refuted by the manifest intention of the legislature to restore to Jews the full enjoyment of their property rights on equal terms with all other citizens; and it is one of the fundamental rights of the citizen to add to his property. And the other contention that this is not a fictitious transaction because (it is argued) the 'parties' to the deed of purchase were the vendor, Mr. Sadun, and Mr. Gianni, and Mr. Sadun was unconnected with the judgement which declared Mr. Di Segni to be the owner of half the land, is disposed of by the judicial decision whereby Mr. Di Segni was declared to be the owner of half the land and whereby it was held, with reference to the said half-interest, that the deed of transfer (to which Mr. Di Segni, being a Jew, was not a party) was in effect a fictitious instrument. The fact that the court has held that this was in effect a fictitious transaction is sufficient for the purposes of the application of article 4 of the aforesaid decree No. 222 of 1945.

"Since the deed executed on 27 October 1942 constitutes . . . a fictitious instrument within the meaning of the said article 4 of decree No. 222, the provisions of article 15 of decree No. 26 of 15 January 1944 apply. Under these provisions, no stamp duty, registration fee, mortgage fee or other fiscal charge is payable in respect of instruments executed for the purpose of giving effect to the new legal conditions which arise out of the measures relating to the restoration of property rights; and the instrument in question in this case is that which vests a half interest in the particular property in the name of Mr. Di Segni. Since the decision appealed against is in error on this point, that decision is hereby overruled."

This decision, for which there are no precedents in published law reports, is of special importance, not so much by reason of the material implications of its effects, as by reason of the affirmation of the principle of non-discrimination set forth in article 2 of the Universal Declaration of Human Rights and article 3 of the Italian Constitution. The Court of Cassation was guided by considerations of equity rather than of pure law, and in its interpretation gave prominence to the spirit of the law.

That this is so is confirmed by the following passage in the judgement itself:

"Accordingly, [the Court] supports the spirit of the law. Decree No. 222 of 1945 was not of a fiscal nature; its purpose was not to secure fresh sources of income for the State's finances, or to make provision for tax revenue in any form. It represented one of a series of legislative provisions enacted for the purpose of making amends to citizens of Jewish race for all the sacrifices and injuries which they had had to endure as the result of the racial measures of the late régime. It follows that its provisions were intended to *favour* those citizens, and, as the wording of the decree makes clear, were intended to form 'additional rules to supplement and give effect to legislative decree No. 26, of 20 January 1944', which lays down the fundamental rules governing the restoration of property rights to these citizens."

Universal Declaration, article 14 (1): Everyone has the right to seek and to enjoy in other countries asylum from persecution.

EXTRADITION—PEACE TREATY, ARTICLE 45—INTERPRETATION—EXTRADITION OF CONVICTED PERSONS—INADMISSIBILITY—UNCONSTITUTIONALITY OF DECREE NO. 363 OF 26 FEBRUARY 1948—ARTICLE 10 OF THE ITALIAN CONSTITUTION

In re JOSEPH COURT

Court of Cassation[1]

16 February 1952

(Appeal from a decision of the Examining Chamber of the Rome Court of Appeal of 2 May 1951)

Principles. Article 45 of the peace treaty concluded between the Allied and Associated Powers and Italy lays upon the Italian State the obligation to surrender persons specified therein who have not yet been tried,

[1] See *Il Foro Italiano*, 1952, II, 113.

but not persons who have already been finally convicted.

By placing convicted persons on the same footing as untried persons, for the purposes of the extradition of so-called war criminals, the provisions of article 3 of decree No. 363 of 26 February 1948 are unconstitutional, in that they exceed the limits of the powers delegated to the Government to implement the Peace Treaty, and are in conflict with the constitutional rule against extradition for political offences (article 10).[1]

Decision. "The fundamental problem raised by the Investigatory Section of the Rome Court of Appeal through its decision that the extradition of the above-mentioned French citizen, Joseph Court, should not be granted concerns the interpretation and juridical implications of article 45 of the peace treaty between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947 . . .

"This article 45 provides that 'Italy shall take all necessary steps to ensure the apprehension and surrender for trial of: (*a*) persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity; (*b*) nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the War' (paragraph 1). Paragraph 2 adds: 'At the request of the United Nations Government concerned, Italy shall likewise make available at witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this article'.

"This clause, which restricts the sovereignty of the Italian State in that it allows—indeed, requires—the extradition of persons accused of what are undoubtedly political offences, and in this respect forms an exception to the international agreements freely entered into prior to 1947, was correctly interpreted in the decision appealed against.

"Pursuant to article 12 of the provisions concerning statute law generally, set forth in the Civil Code of 1942 . . . in the application of the law (and the Peace Treaty has become part of the internal law of the State) no meaning may be attributed to the law other than that clearly conveyed by the actual words as properly understood in their context and in the light of the intention of the legislature.

"Thus in the process of interpretation there is a grammatical element, concerned with words, and consisting in the explanation of the law in accordance with the rules of language, so that the words are taken in their technical and legal sense, not in their popular sense; there is also an element of logic, concerned with analysing the intention of the legislature, and therefore with the logical relationship existing between the separate parts; these two elements are mutually complementary.

"In the legal technical sense, and also in popular parlance, the word 'accused' can be construed only as synonymous with 'charged' [imputato]. An accused person is a person against whom an information has been laid, who is charged with an offence or who is standing his trial for an alleged criminal offence, but in no sense—not even in the popular one—can he be said to be a convicted person.

"According to our Code of Procedure, articles 79 and 3, a person is held to be appearing on a charge at all the stages or steps of the judicial proceedings which precede the final judgement and is treated as 'charged' [imputato] for so long as the conviction has not become effective.

"The fact that this principle should also be observed in the application of article 45 of the Treaty is made clear, furthermore, by the element of logic which enters into its interpretation, that is to say, by the context of the words used by the legislator (or rather, in this case, by the victorious States which imposed the Peace Treaty on Italy). The article in question states literally that Italy shall surrender the accused persons for the purposes of a subsequent trial and adds that Italy shall likewise make available as witnesses Italian nationals whose evidence is required for the trial of the accused persons. It is clear, therefore, that under this clause, construed according to the rules of grammar and of logic, the surrender of the accused persons is linked to the holding of a trial and that, consequently, it is inadmissible to read into the clause any intention to refer to persons convicted by a final decision, for a person does not become 'convicted' until all the stages of the judicial proceedings have been completed."

Having in this way dismissed the arguments of the appellant prosecutor, the court went on to say *inter alia*:

". . . With respect to the State requesting extradition, it would be sufficient, for the purpose of rejecting its request, to refer to the provisions of article 45 and to point out that these require the surrender of accused persons for the purposes of a subsequent trial, but not of convicted persons, and in this case Joseph Court is such a person.

"Unavoidably, however, we must also discuss the internal legislation enacted pursuant to article 45 of the Treaty—to wit, decree No. 363 of 26 February

[1] Article 10 of the Constitution reads as follows:

"The Italian legal order conforms to the generally acknowledged rules of international law.

"The legal status of aliens shall be regulated by law in accordance with international rules and treaties.

"Any alien debarred in his own country from the effective exercise of the democratic liberties guaranteed by the Italian Constitution shall have the right of asylum in the territory of the Republic on conditions laid down by law.

"No alien may be extradited for political offences."

1948—under which the surrender of persons who are either accused or convicted of a political offence is permissible. In its decision, the Examining Chamber of the Rome Appeal Court considered how far this decree is in conformity with the legislation delegating powers to the Government and also considered its constitutionality, that is to say, enquired if it is in conformity with the principles of the Constitution..."

On the question of the decree's conformity with the delegating legislation, the court held, *inter alia*:

"According to the tradition of Italian law the judge may at any time consider whether the limits of delegating legislation have been respected, and hence may rule invalid any provisions which constitute an excess of or deviation from the terms of the delegation... Now, though the peace treaty authorizes, or rather requires, the surrender of persons whose case is still *sub judice*, but not of convicted persons, the Government, in enacting legislation to give effect to article 45 of the said Treaty, was not empowered to include convicted persons among those liable to extradition . . . and since the Government has exceeded the powers vested in it by the delegating legislation, the judge is bound to declare the provision in question invalid, though, of course, this ruling applies only to the provisions in the decree which deal with political offenders and to decided cases."...

With reference to the constitutionality of the decree in question, the court declared: "It will suffice to recall that, while the Joint Criminal Chambers (in a previous decision) have held that treaties entered into before the promulgation of the Constitution remain operative after its promulgation, even though they conflict with article 10, paragraph 3, of the Constitution, they cannot be held to be operative beyond the terms laid down in the treaties themselves. Accordingly, once it has been established that article 45 of the peace treaty refers solely to accused persons, legislation enacted after 1 January 1948 which admits the possibility of granting extradition in respect of persons convicted of a political offence and which, in admitting this possibility, widens the scope of the international treaty beyond that treaty's own limits, is clearly in conflict with the said article 10 of the Constitution."

The Court of Cassation (Second Criminal Chamber), by a decision dated 28 May 1952 (appeal from a decision of the Examining Chamber, Rome, of 16 June 1950), gave a ruling along similar lines in a case involving a request for the extradition of a Belgian citizen who had been convicted of a political offence (*Foro Italiano* 1952, II, 129).

The principles upheld in this decision are set forth below (extracts):

According to Belgian legislation, if after 31 December 1946 a person is found guilty by a judgement by default of an offence against the external personality of the State, the judgement becomes absolute and the conviction becomes effective on the expiry of six months after the publication of the judgement in the periodicals specified in article 9 of the Belgian decree of 26 May 1944.

The Italian State is not bound to grant the extradition of a Belgian citizen convicted of such offences either by article 45 of the Peace Treaty (since the case concerns not an accused person to be tried subsequently, but a convicted person) or by international agreements (since the extradition of persons accused or convicted of a political offence was expressly excluded by the agreement of 15 January 1875, which is still in force).

JAPAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

Act repealing the cabinet order concerning removal and exclusion of teachers and educational officials from educational positions (Act No. 79, promulgated on 9 April 1952).

This Act repeals the cabinet order based on the memorandum of the Supreme Commander for the Allied Powers dated 22 October 1945 (regarding the administration of the educational system of Japan) and on the memorandum dated 30 October 1945 (regarding the investigation, screening and certification of teachers and educational officials).

Subversive Activities Prevention Act (Act No. 240, promulgated on 21 July 1952).

This Act is designed to contribute to the maintenance of public security, deals with the control of organizations which have engaged in terroristic subversive activities and provides penalties for such activities. Extracts from this Act are published in this *Yearbook*.

Act amending the Labour Relations and Conciliation Act (Act No. 288, promulgated on 31 July 1952).

This Act amends the Labour Relations and Conciliation Act (Act No. 25 of 1946). One of the principal modifications of the Act enables the Prime Minister to declare an emergency conciliation period during which the parties to a labour dispute are prohibited from striking for a period of fifty days following the publication of the declaration, when the dispute involves a major industry, public utilities or is of such a nature that suspension of operation by strike would materially interfere with the national economy, or would substantially endanger the life of the people.

Act providing for insurance for crews of fishing-boats (Act No. 212, promulgated on 25 June 1952).

This Act is designed to contribute to the stability of fisheries enterprises by guaranteeing the payment of compensation in cases of detention outside of Japan to any crew member of a fishing-boat.

Act granting assistance to sick and wounded ex-servicemen and surviving family members of the war dead (Act No. 127, promulgated on 30 April 1952).

This Act provides for assistance out of public funds, to soldiers or to civilians employed by the armed forces for injury, or disease suffered in the exercise of their official duties, and to surviving members of the families of those who died as soldiers or civilians employed during the war.

Act amending the Child Welfare Act (Act No. 222, promulgated on 1 July 1952).

This Act, which amends Act No. 164 of 1947, prohibits children employed as pedlars in door-to-door selling or from being on the streets between the hours of 10 p.m. and 3 a.m., and also prohibits children under fifteen years of age who are so employed from entering a restaurant or a café.

Act providing for maternal welfare funds (Act No. 350, promulgated on 29 December 1952).

This Act provides for financial or other assistance to widows or unmarried mothers with one or more children thereby furthering their economic independence and promoting the welfare of the child.

The Japanese Red Cross Society Act (Act No. 305, promulgated on 14 August 1952).

The Japanese Red Cross Society is to carry out the humanitarian services which correspond to the ideals of the Red Cross.

Act governing labour relations in enterprises operated by local public bodies (Act No. 289, promulgated on 31 July 1952).

The aim of this Act is the maintenance of peaceful relations between management and labour in enterprises operated by local public bodies so that the needs of the persons served by those enterprises may be properly fulfilled by securing the normal operation of such services.

Act providing for the electrification of agricultural and fishing villages (Act No. 358 promulgated on 29 December 1952).

This Act provides for the electrification of agricultural localities and fishing villages previously lacking this utility and is designed to enhance the prosperity of these districts and to raise thereby the cultural level of their inhabitants.

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[1]Note received through the courtesy of Mr. Masano Toda, Director, Civil Liberties Bureau of the Attorney-General's Office. About the Civil Liberties Bureau, see *Yearbook on Human Rights for 1951*, p. 211.

SUBVERSIVE ACTIVITIES PREVENTION ACT[1]

Act No. 240 of 21 July 1952

CHAPTER I

GENERAL PROVISIONS

Objects of the Act

Art. 1. It is the object of this Act to make provision for whatever action may be necessary for the purpose of controlling organizations which carry on any terroristic subversive activity and for penalties in respect of such activities, and so to contribute to the safeguarding of public security.

Interpretation and Application of the Act

Art. 2. This Act, having a grave bearing upon the fundamental human rights of the people, shall be applied only to the extent absolutely necessary for the safeguarding of public security, and shall be interpreted strictly.

Rules to be observed in the Application of Controls

Art. 3. 1. Any action or investigation instituted under this Act with a view to control shall be taken or conducted only in so far as it is absolutely necessary for achieving the objects specified in article 1, and shall not under any circumstances whatsoever be carried out, in deviation from the prescribed authority, in such a way as would unlawfully infringe freedom of thought, worship, assembly, association, expression and learning, the right of workers to associate and act collectively, or any other liberty or right of the people which is guaranteed by the Japanese Constitution.[2]

2. Any action or investigation instituted under this Act with a view to control shall not on any account whatsoever be improperly carried out in a way which would restrict or interfere with any lawful activity by trade unions and other organizations.

Definitions

Art. 4. 1. In this Act, the term "terroristic subversive activity" means:

(1) (i) The commission of any of the acts referred to in article 77 (internal disturbance) of the Penal Code (Act No. 45 of 1907), article 78 (acts preparatory to or conspiring to produce an internal disturbance), article 79 (aiding and abetting an internal disturbance and other offences), article 81 (inducement of a foreign incursion), article 82 (aiding and abetting a foreign incursion), article 87 (attempt to induce or aid and abet a foreign incursion) and article 88 (acts preparatory to or conspiring with a view to inducing or aiding and abetting a foreign incursion) of that Code;

(ii) Inciting others to commit any of the acts referred to in (i) above;

(iii) Instigating any of the acts referred to in articles 77, 81 and 82 of the Penal Code, with a view to causing any of these acts to be committed;

(iv) Printing, distributing or displaying in public any document or drawing which claims that it is proper or necessary to commit any of the acts referred to in articles 77, 81 and 82, if the object of the printing, distribution or display is to cause such an act to be committed;

(v) Communicating by wireless or other means of broadcasting any statement which claims that it is proper or necessary to commit any of the acts referred to in articles 77, 81 and 82, if the object of the communication is to cause such an act to be committed.

(2) The commission of any of the following acts with a view to promoting, supporting or opposing a political doctrine or policy:

(i) The act referred to in article 106 of the Penal Code (riot);

(ii) The acts referred to in article 108 (wilfully setting fire to occupied houses or buildings) and article 109, paragraph 1 (wilfully setting fire to unoccupied houses or buildings) of that Code;

(iii) The act mentioned in the first part of article 117, paragraph 1, of that Code (criminal detonation of high explosives);

(iv) The act referred to in article 125 of that Code (endangering the traffic of railway trains, electric trains, street cars and so forth);

(v) The act referred to in article 126, paragraph 1 or 2 (overturning of railway trains, electric trains, street cars and so forth) of that Code;

(vi) The act referred to in article 199 of that Code (murder);

(vii) The act referred to in article 236, paragraph 1, of the said Code (robbery);

(viii) The act referred to in article 1 of the Penal Regulations to control explosives (Cabinet Ordinance No. 32 of 1884) (criminal use of explosives);

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[1] Japanese text in *Official Gazette* of 21 July 1952. English text based on the translation received through the courtesy of Mr. Torao Ushiroku, First Secretary of Embassy, Office of the Permanent Observer of Japan to the United Nations. The Act entered into force on the day of its promulgation.

[2] See *Yearbook on Human Rights for 1946*, pp. 171–172.

(ix) The act referred to in article 95 of the Penal Code (interference with a person in the performance of his official duties or undue influence on a person performing official duties) if committed by a number of persons by means of lethal weapons or poisonous substances with respect to a person engaged in procuratorial or police duties, any assistant to such official, any person who guards or escorts persons detained by law, or any person engaged in an investigation under this Act; or

(x) Inciting others to prepare or to conspire for the purpose of the commission of any of the acts referred to in paragraphs (i) to (ix) above, or instigating any such act with a view to causing it to be committed.

2. For the purposes of this Act, if a person is persuaded by another, by means of a document, drawing, spoken words or any action prepared, uttered or done with a view to procuring the commission of a particular act, to resolve to commit that act, or is confirmed by that other person in his resolve to commit that act, then that other person shall be deemed to have instigated the act in question.

3. In this Act, the term "organization" means a continuous association of persons, or a federation of such associations, organized for the purpose of achieving a particular common objective. Any agency, branch, chapter or subsidiary body of an organization, if it comes within the scope of this definition, shall be subject to control under this Act.

CHAPTER II

CONTROL OF SUBVERSIVE ORGANIZATIONS

Restriction on the Activity of Organizations

Art. 5. 1. In any case where the Public Security Examination Commission has good reasons to believe that there is a clear danger that an organization which has carried on a terroristic subversive activity will again in the future carry on such a subversive activity continuously or repeatedly then the Commission is empowered to take any of the following actions concerning such organization; Provided, however, that such action shall not exceed the limits of what is strictly and reasonably necessary for the purpose of removing the danger:

(1) If the terroristic subversive activity in question was carried on in a mass demonstration or procession or public gathering, to prohibit any demonstration, procession or public gathering in a specified place for a period not exceeding six months;

(2) If the terroristic subversive activity in question was carried on by means of a periodical of the organization (the term "periodical" to mean any publication continuously issued by the organization for the purpose of advocating, disseminating or publicising the objects, doctrine or policy of the organization), to prohibit the publication or distribution of the periodical for a specified period which may not exceed six months; and

(3) To forbid any particular officer, official or member of the organization (these terms when used in this Act being deemed to include also any representative, executive officer or other person engaged in the business of the organization) who took part in the subversive terroristic activity in question to do anything in furtherance of the organization's interests for a specified period which may not exceed six months.

2. After an order has been made for action under paragraph 1 above it shall be unlawful for any person acting as officer, official or member of the organization affected to do anything which would frustrate the object of the order; Provided, however, that in the case of an order made under paragraph 1(3) of this article, the foregoing provision shall not apply to anything done by an officer, official or member of the organization concerned that is ordinarily considered necessary in litigation contesting the validity of the order.

Prohibition of Evasion

Art. 6. If an order has been made against an organization under paragraph 1 of the preceding article it shall be unlawful for any officer, official or member of that organization to do anything that is in any way whatsoever calculated to evade the provisions of paragraph 2 of the said article.

Order of Dissolution

Art. 7. The public Security Examination Commission is empowered to order any organization coming within any of the following categories to be dissolved if the Commission has good reason to believe that there is a clear danger that the organization will again in the future carry on a terroristic subversive activity continuously or repeatedly and if in the opinion of the Commission action under article 5, paragraph 1 is unlikely to remove the danger effectively:

(1) Organizations which have carried on a terroristic subversive activity within the meaning of article 4, paragraph 1(1);

(2) Organizations which have carried on a terroristic subversive activity within the meaning of article 4, paragraph 1(2) (i) to (ix) inclusive, or which have begun but not consummated an act defined as a terroristic subversive activity, or have incited others to commit such an act, or which have instigated any such activity as aforesaid with the consequence that terroristic subversive activities were committed by others; and

(3) Organizations against which an order has been made, under article 5, paragraph 1 and which have again carried on a terroristic subversive activity.

Prohibition of Acts furthering the Interests of Organizations

Art. 8. After an order made under the preceding article has become effective, any person who was an officer, official or member of the organization concerned on and after the date on which the terroristic subversive activity occasioning the order was carried on, shall not, after the operative date of the order, perform any act furthering the interests of the organization: Provided, however, that this provision shall not apply to any act which is ordinarily considered necessary in litigation contesting the validity of the order or in the liquidation or winding up of the assets or affairs of the organization.

Prohibition of Evasion

Art. 9. It shall be unlawful for any such person as is referred to in the preceding article to do anything that is calculated in any way whatsoever to evade the provisions of the said article.

Liquidation of Assets

Art. 10. 1. After an order made against an incorporated organization under article 7 has become final, so that no further applications can be made to the courts for the rescission or variation of the order, the organization in question shall thereupon be dissolved.

2. After an order made under article 7 has become final, so that no further applications can be made to the courts for the rescission or variation of the order, the organization concerned shall thereupon promptly liquidate its assets.

3. When the liquidation of assets pursuant to the preceding paragraph has been completed, some person who has been officer or official of the organization concerned shall make a full report thereon to the Director of the Public Security Investigation Agency.

CHAPTER III

PROCEDURE FOR CONTROL OF SUBVERSIVE ORGANIZATIONS

Request for Action

Art. 11. Action under article 5, paragraph 1, and article 7 shall not be taken except at the request of the director of the Public Security Investigation Agency.

Notice

Art. 12. 1. In making a request under the preceding article, the director of the Public Security Investigation Agency shall in advance name a date and place at which the organization concerned is to offer explanations concerning its activities, and not less than seven days immediately before that date the director shall notify the organization of the date and place and state the substance of the reasons for the contemplated request for action.

2. Any notice under the preceding paragraph shall be given by publication in the *Official Gazette* and shall be deemed to have been served on the expiry of seven days after the date of such publication.

3. If the place of residence or address of the representative or executive officer of the organization concerned is known, notice in writing shall be sent to such person in addition to being published in the *Official Gazette* as stipulated in the preceding paragraph.

Legal Representative

Art. 13. Any organization which has receive a notice under paragraph 1 of the preceding article may appoint a lawyer or lawyers or any other person or persons to represent the organization in the case involving it.

Statements and Presentation of Evidence

Art. 14. Any officer, official, member or legal representative (not exceeding five in number) of the organization concerned may appear on the date fixed for the submission of explanations, make statements concerning the facts and evidence and produce supporting evidence to the official of the Public Security Investigation Agency who shall be designated by the director of the Agency (hereinafter referred to as "the designated officer").

Admission to Hearing

Art. 15. 1. The organization concerned may not appoint more than five persons to appear as observers in the case involving it.

2. On appointing any such observer, such organization shall report his name to the director of the Public Security Investigation Agency.

3. On the date fixed for the submission of explanations, any observer and any person engaged in reporting for any public newspaper or information or broadcasting medium may attend at the hearing.

4. If any of the persons referred to in the preceding paragraph does anything that interferes with the hearing of explanations, the designated officer may expel such person.

Irrelevant Evidence

Art. 16. If any evidence produced under article 14 is irrelevant it may be struck out: Provided, however, that the designated officer shall not abuse his power by unlawfully abridging the right of the organization concerned to a fair and full hearing of explanations.

Written Report of Hearing

Art. 17. 1. The designated officer shall make a report in writing concerning the hearing conducted on the date fixed for the submission of explanations by an organization.

2. The person appearing under article 14 shall be given an opportunity of making statements concerning the contents of the report referred to in the preceding paragraph; a note shall be attached to the said report stating whether such person made any statement concerning the contents of the report and setting forth the substance of his statement, if any.

Communication of Copy of Report on Hearing and Documentary Evidence

Art. 18. The designated officer, if requested by the organization concerned, shall communicate to the organization a copy of the report on the hearing and of the documentary evidence admitted.

Notice of Decision not to request Action

Art. 19. If the director of the Public Security Investigation Agency should decide not to make a request for action under article 11 in any case in which he has given the notice referred to in article 12, paragraph 1, he shall promptly notify the organization concerned of his decision and publish it in the *Official Gazette*.

Art. 20. 1. Any request for action under article 11 shall be addressed in writing to the Public Security Examination Commission and shall specify the grounds for the request, the action to be taken pursuant to article 5, paragraph 1, or article 7 and any other particulars to be prescribed by the Commission by regulations.

2. Any such request as aforesaid shall be accompanied by the evidence constituting the grounds for the request, all the evidence produced by the organization concerned and the report referred to in article 17.

3. The evidence which is referred to in the preceding paragraph as constituting the grounds for the requests for action shall be evidence concerning which the organization in question has been given an opportunity to make a statement.

Delivery of Copy of Written Request for Action and Presentation of Brief

Art. 21. 1. After the director of the Public Security Investigation Agency has submitted a written request for action to the Public Security Examination Commission, he shall notify the organization concerned of the contents of the request.

2. Any notice under the preceding paragraph shall be given by publication in the *Official Gazette* and shall be deemed to have been served on the expiry of seven days after the date of such publication.

3. If the place of residence or address of the representative or executive officer of the organization concerned is known, a copy of the written request for action shall be served upon such person in addition to being published in the *Official Gazette* as stipulated in the preceding paragraph.

4. Within fourteen days after service of the notice required by paragraph 1 of this article, the organization concerned may present its brief concerning the request for action to the Public Security Examination Commission.

Decision by Commission

Art. 22. 1. The Public Security Examination Commission shall examine the written request for action, the evidence, and the report on the hearing submitted by the Director of the Public Security Investigation Agency, and the brief presented by the organization concerned. The Commission may order any inquiries necessary for such examination.

2. For the purposes of the examination referred to in the preceding paragraph, the Public Security Examination Commission shall be empowered:

(1) To invite the persons concerned or witnesses to appear voluntarily before the Commission, to examine such persons, to hear statements made by these persons and to obtain information from them;

(2) To invite any owner, possessor or keeper of books, documents or other things to produce any such article voluntarily, or to place in the custody of the Commission any such article voluntarily produced;

(3) With the consent of the caretaker or tenant or his duly authorized representative, to inspect the office of the organization concerned or any other necessary place and examine the conduct of business or any book, document or other thing; and

(4) To request any public office or organization, public or private, to submit any relevant report or material.

3. If the Public Security Examination Commission sees fit, it may direct any member or official of the Commission to take any of the actions referred to in the preceding paragraph.

4. In taking any of the actions referred to in paragraph 2, any member or official of the Public Security Examination Commission shall, at the request of any person concerned, present his credentials indicating his official status.

5. The Public Security Examination Commission shall, in the light of the result of the examination conducted under paragraph 1, make any of the following decisions concerning the case brought before the Commission:

(1) To reject any request for action if such request is found unlawful;

(2) To dismiss any request for action if such request is found groundless; or

(3) To carry out the action requested if the request is found reasonable.

6. If the Public Security Examination Commission should not see fit to make an order under article 7 in a case in which a dissolution order has been requested, then, if the organization concerned comes within the terms of article 5, paragraph 1, the Commission shall nevertheless, and notwithstanding the provisions of (2) of the preceding paragraph, have power to make an order for action under articl. 5, paragraph 1.

Formalities to be observed in the Decision

Art. 23. Every decision by the Commission shall be made in writing. The decision shall be accompanied by a statement of the reasons therefore and bear the signatures and seals of the chairman and members of the Commission who took part in the proceedings leading to the decision.

[Art. 24 deals with the serving of notice and publication of a decision.]

Time when Commission's Decision comes into Effect

Art. 25. 1. A decision made by the Commission shall become effective—

(1) In the case of a decision to reject or dismiss a request for action, upon service of a copy of the Commission's written decision on the director of the Public Security Investigation Agency; and

(2) In the case of a decision to make an order for action under article 5, paragraph 1, or article 7, upon the publication of the decision in the *Official Gazette* as provided in paragraph 3 of the preceding article.

2. Against any decision mentioned in the preceding paragraph an application may be made to the court for a stay of execution, pursuant to the provisions of the Act making special regulations concerning the procedure in administrative litigation (Act No. 81 of 1948), with the object of securing the rescission or variation of the decision.

3. The court shall endeavour to deal promptly with an application made under the preceding paragraph and shall give its decision within one hundred days from the date of the receipt of the application, the order of trial of other cases being disregarded for this purpose.

Detailed Regulations concerning Procedure

Art. 26. Subject to the provisions of this chapter, detailed regulations governing proceedings in the Public Security Examination Commission shall be established by the Commission.

CHAPTER IV

INVESTIGATION

Investigating Power of Public Security Investigator

Art. 27. The public security investigator shall be empowered to conduct necessary investigations with a view to control under this Act, subject to the limitations laid down in article 3.

Inspection of Documents and Evidence

Art. 28. The public security investigator may, if necessary for the purposes of investigations carried out under this Act, apply to any public prosecutor or judicial police official for permission to inspect the documents, papers and evidence relating to any particular case.

2. Unless a request made under the preceding paragraph interferes with the performance of his duties, the public prosecutor or judicial police official shall comply with such request.

Exchange of Information between Public Security Investigation Agency and Police

Art. 29. The Public Security Investigation Agency, the National Rural Police and the autonomous police shall exchange documentary or other information relating to the enforcement of this Act.

Witnessing by Public Security Investigator

Art. 30. The public security investigator may, if necessary for the purposes of investigations carried out under this Act, witness any seizure of property, search and inspection effected by the judicial police in connexion with an offence involving a terroristic subversive activity.

[Articles 31–33 deal with the placing of articles in custody, the custody and the restitution of such articles.]

Production of Credentials

Art. 34. In performing his official duties, the public security investigator shall, at the request of any person concerned, produce his credentials indicating his official status.

[Chapter V contains miscellaneous provisions. Article 36 required the Attorney-General to report to the Diet through the Prime Minister concerning the control of organizations under this Act.]

[Chapter VI deals with penalties for the abuse of power by public security investigators.]

[The supplementary clauses make provision for repeals or amendments which are necessary in order to bring earlier legislation into conformity with this Act.]

THE HASHEMITE KINGDOM OF THE JORDAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No new developments in the field of human rights are to be recorded for the year 1952.

The Constitution of the Hashemite Kingdom of the Jordan, whose provisions on human rights have been published in the *Yearbook on Human Rights for 1951*,[2] was approved by the legislative bodies of the Kingdom in November and December 1951 and promulgated by the King on 1 January 1952. It came into force on the date of its publication in the *Official Gazette* No. 1093, of 8 January 1952.

[1]Information received through the courtesy of the Embassy of the Hashemite Kingdom of the Jordan, Washington.

[2]Pp. 212–215

LEBANON

LAW ON THE PRESS, 1952[1]

Legislative Decree No. 4 of 22 October 1952

Art. 1. The Press, bookshops and printing presses shall be free. Everyone shall have the right to the free expression of his opinion and to the publication of views and news through any medium of publication. This freedom shall not be limited except within the scope of the law.

[Articles 2 and 3 contain definitions.]

Art. 4. The owner (publisher) of a periodical publication must be:

(*a*) A Lebanese national; if he is an alien, the granting of a licence to him shall be subject to reciprocal agreements between Lebanon and the State of which he is a national, and also to the consent of the Council of Ministers; employees of an alien shall be treated as the alien himself for the purpose of this paragraph;

(*b*) A resident of Lebanon;

(*c*) A person who enjoys full political and civil rights;

(*d*) A person who has not been convicted of a crime or misdemeanour;

(*e*) A person who is not employed by a foreign power.

[Article 5 provides that every periodical publication shall have a responsible director who may be the owner (publisher) if he fulfils the requirements of article 4.]

Art. 6. The responsible director of a periodical publication shall be a Lebanese national, over twenty-one years of age, who fulfils, in addition to the requirements of article 4, the following conditions:

(*a*) He shall reside in the place where the periodical is published;

(*b*) He shall not hold a position carrying official immunity (such as a member of parliament);

(*c*) He shall not engage in any other profession or public service;

(*d*) He shall possess as a minimum the Lebanese baccalaureate, part II, or the equivalent thereof, and shall have worked as a journalist for at least three years . . .

No one may be a responsible director of more than one publication.

[1] Arabic text in *Official Gazette* of the Republic of Lebanon No. 44, of 1952, pp. 854-867.

[Articles 7–10 relate to licensing of periodicals or quasi-periodical publications. Article 8 provides that if the Minister of Information is satisfied that an applicant for a licence fulfils all the legal requirements, he shall be granted a licence within fifteen days from the date of the application. Refusal to grant an application shall be made by decree, and the reasons for such refusal shall be given. Such decree may be challenged before the appropriate court, following abbreviated procedures. The decree, whether affirmative or negative, shall be published in the *Official Gazette*. If the Minister of Information has not issued a decree within fifteen days, the applicant may issue his publication. Articles 11–13 deal with the financial guarantees required of the publisher, before issuing the periodical or quasi-periodical publication, to meet such fines and court expenses as he may be ordered to pay for breach of the provisions of the law on the Press.]

Art. 14. The Minister of Information shall revoke a licence for a periodical publication:

(*a*) If it does not appear within six months from the date the licence was issued;

(*b*) If publication is interrupted for one month without legitimate reason, and is not resumed on a regular basis after the lapse of a period of one month.

(*c*) If it becomes evident that the owner (publisher) of the publication no longer fulfils the conditions set out in article 4.

Art. 20. The Minister of Information may prohibit, by means of a decree, the entry into Lebanese territory of any foreign publication which disturbs the peace, offends national sentiment or violates public morals.

Anyone who publishes or distributes on Lebanese territory a publication prohibited from entering thereto under the preceding paragraph, or who publishes extracts from or summaries of the contents of such a publication, shall be liable to imprisonment from eight days to three months, or to fines ranging from 50 to 500 Lebanese pounds, or to both.

[Article 24 provides that when a periodical publishes false or erroneous articles or news dispatches on a matter of public interest, the Minister of Information may request the responsible director of the publication to print the text of a denial or a correction which he shall transmit to the Minister. The director shall print this text free of charge in the next issue of his publication, in the same place in which the original item appeared and in the same characters. If the director fails to comply with the request of the Minister, he shall be liable to penalties. A foreign publication distributed in Lebanon shall be subject to the same obligation; if it fails to comply with this obligation, its entry into Lebanon shall be prohibited by means of a decree to be issued by the Minister of Information.]

Art. 25. If a news dispatch or an article in a periodical publication refers explicitly or implicitly to an individual, the latter shall be entitled to reply in accordance with the provisions of article 24. The right of reply is absolute; it may be exercised also by authors of literary, artistic and scientific works in the publication. If the reply exceeds twice the length of the original item, the responsible director of the publication may suspend the publication of the reply until the writer pays for the space in excess of this length.

In the event of the death of the person entitled to reply, this right shall be transferred to his heirs; they may exercise this right of reply only once, acting jointly or through one of them on their behalf. The heirs may also reply to articles or news dispatches relating to the deceased, and printed after his death.

Art. 26. The responsible director of a publication may refuse to print a reply, correction or denial:

(*a*) If the item has been adequately corrected in a preceding issue of the publication;

(*b*) If the reply, correction or denial is signed illegibly or is written in a language other than that of the original item;

(*c*) If it violates the law or contains terms which, if published, might involve legal responsibility, or are contrary to public morals or derogatory to the publication itself or to individuals;

(*d*) If it is received after the lapse of more than three months from the date of the publication of the original item.

[Article 27 provides that when a publication refuses to print a reply in accordance with the provisions of article 26, the writer of the reply may request the magistrate in charge of urgent cases to rule on the matter; the request shall be promptly transmitted to the director of the publication who may present his case in writing within 24 hours and the magistrate shall decide within 3 days on the matter. The magistrate's decision shall not be subject to appeal. If the magistrate's decision provides for the printing of the reply, it shall be printed in the next issue of the publication. Article 28 specifies the penalties for failure to comply with the decision of the magistrate.]

According to article 29, a publication may not publish:

(*a*) Records of a closed meeting of Parliament;

(*b*) Records of a closed court session or of a court session dealing with divorce, desertion and illegitimacy;

(*c*) Confidential correspondence, documents, files or partial contents of files of any Government department;

(*d*) Records of court proceedings in cases of libel, where proof of the veracity of the libellous allegations is not admitted;

(*e*) Records of court proceedings, publication of which the respective court has prohibited;

(*f*) Reports, books, letters, articles, pictures and news violating public morals;

(*g*) Articles containing derogatory remarks directed at any religion, sect or denomination existing in the country.

[According to article 30, a publication may not announce the launching of a fund-raising campaign designed to collect money for fines imposed by courts for a crime or misdemeanour.]

[According to article 31, a non-political publication may not print material of a political nature such as pictures, news and comments which are openly political, or which relate to official persons or to private individuals and ultimately aim at political propaganda for or against these individuals.]

[Article 32 provides that no one shall be considered to have subscribed to a publication unless he has submitted a written request therefore, and no one shall be obliged to return a publication sent to him without his request.]

[According to article 33, a publication may not print the names of individuals who refuse to pay for a subscription to that publication.]

[Article 36 deals with false news and provides for penalties for the deliberate publication of false news, or deliberate publication of false news likely to disturb public security, or deliberate publication of false news relating to individuals.]

[Article 37 provides that anyone who incites to a crime by means of publication shall be considered as having committed this crime if the incitement leads to the commission of the crime or to the attempt to commit it. If an incitement does not result in concrete action or attempt, the offender and the responsible persons specified in article 39 of the present decree shall be liable to imprisonment from one month to one year, or a fine ranging from 100 to 5,000 Lebanese pounds, or to both. If the incitement is directed against the security, unity, sovereignty or territorial integrity of the State, it shall be punishable by imprisonment from six months to three years and a fine ranging from 500 to 10,000 Lebanese pounds, taking into consideration the provisions of the Penal Code.]

Art. 38. Anyone who, through publication of any kind, threatens to expose, divulge or report on some fact concerning an individual which may damage the reputation or honour of that individual or of any of his relatives, with a view to deriving from that individual, some illegal advantage for himself or for anyone else, and anyone who attempts to do so, shall be liable to imprisonment from two months to one year and to a fine ranging from 100 to 500 Lebanese pounds.

Art. 39. Penalties for offences committed by means of a periodical or quasi-periodical publication shall be imposed on the responsible director of the publication and on the author of the material as the original offenders. The owner (publisher) of a periodical or quasi-periodical publication shares civil responsibility and responsibility for court fees with the responsible director, but shall not be subject to criminal liability unless his active participation in the crime is proved.

Art. 40. The responsibility for crimes committed by means of a publication other than those specified in the preceding article shall devolve upon the author of the material as the original offender, and the publisher as an accomplice. If neither the author nor the publisher is identifiable, the printer shall be responsible. Owners of printing presses, bookshops and publishing houses shall bear civil responsibility and responsibility for court fees imposed upon their employees.

Art. 44. If a periodical or quasi-periodical publication prints an incitement directed against the security, unity, sovereignty or territorial integrity of the State it shall be suspended for no more than three days by decree issued by the Minister of Information. The Minister may prefer charges against the publication. The court may decide in preliminary hearings to extend the duration of the suspension until a judgement is rendered. The court may, in pronouncing judgement, suspend the publication temporarily or permanently in this case only; the publication may not be suspended in any other case, regardless of any legal provision to the contrary.

The owner (publisher) of a publication thus suspended shall not be granted a licence for any other publication for the duration of the temporary suspension or for five years after the permanent suspension.

[*Art. 60* repeals the Press Code of 2 September 1948, all previous legal provisions relating to publications, and all legal provisions incompatible with the present decree.]

LEGISLATIVE DECREE No. 6, AMENDING THE ELECTIONS ACT OF 10 AUGUST 1950[1]

of 4 November 1952

Articles 1, 2, 11, 21, 23, 24, 25, 26, 27, 30, 51 and 61 of the Electoral Act of 10 August 1950 are hereby repealed and replaced by the following articles:

Art. 1. The Chamber of Deputies of the Republic of Lebanon shall consist of forty-four members elected for a period of four years.

Art. 2. The Republic of Lebanon shall be divided into thirty-three constituencies in accordance with the schedule to this decree-law.

Art. 11. The following classes of persons may not be placed on the rolls of electors:

1. A person sentenced to loss of civic rights;

2. A person sentenced to permanent disqualification for public rank and office. A person who has been disqualified for office for a term may not be placed on the roll of electors until the term of the sentence has expired;

3. A person sentenced to a *peine criminelle* or a *peine correctionnelle* involving loss of civic rights. The following offences shall be deemed to involve loss of civic rights: theft, fraud, breach of trust, embezzlement, rape, blackmail, forgery and use of forged instruments, and the offences against public decency enumerated in book 7 of the Penal Code; and offences connected with the cultivation of, and trade in narcotic drugs;

4. A person who has been the subject of a judgement of incompetency, as long as the judgement is in force;

5. A person who has been declared bankrupt; a person who has been declared bankrupt shall not be placed on the roll of electors until his discharge;

6. A person sentenced to the penalties referred to in articles 329–334 of the Penal Code.

Art. 21. The rolls of electors shall include the names of all Lebanese, men or women, who have attained the legal majority of twenty-one years, who are in possession of their civic and political rights and have had their principal and actual domicile in the electoral ward for not less than six months; nevertheless, a woman must, before being placed on a roll of electors, furnish a certificate of at least primary education, or an equivalent scholastic diploma; a person issuing a false certificate or making use of one with full knowledge of the facts, shall be liable to the penalties provided for in article 466 of the Penal Code.

[1] Arabic text in the *Official Gazette* of the Republic of Lebanon No. 46, of 12 November 1952, pp. 927–934.

English text based on the translation in: Interparliamentary Union, *Constitutional and Parliamentary Information* (published by the Autonomous Section of Secretaries-General of Parliaments), Geneva, 15 January 1953, pp. 20–23. Permission to use this translation was granted by Mr. Emile Blamont, President of the Autonomous Section of Secretaries-General of Parliaments, whose courtesy is gratefully acknowledged. See the Elections Act of 10 August 1950 in *Yearbook on Human Rights for 1950*, pp. 184–186.

[*Former text:*

The roll of electors shall include the names of all male Lebanese nationals who are over the age of twenty-one years, who are in possession of their civic and political rights and have had their principal and actual domicile in the electoral ward for not less than six months.

To these lists shall be added the names of those who fulfil the requirements as to age and residence after the compilation of the rolls of electors, but before their final closure in accordance with the provisions of this Act.]

Art. 23. Every elector whose name is placed on the roll of electors shall be under an obligation to vote; every person who abstains from voting without a valid reason shall be liable to a fine of from 50 to 100 Lebanese pounds;

The following shall be considered valid excuses:

1. Absence from Lebanese territory;
2. Infirmity or old age;
3. The holding of a public appointment which requires the presence of the official concerned at his place of work on the day of the elections;
4. *Force majeure.*

The electoral bureau in each constituency shall, immediately after the closing of the ballot, draw up a list of those electors who have not voted and forward it to the single judge of the locality. Judgement shall be passed upon offenders in accordance with article 182 and the following articles of the Code of Criminal Procedure.

Art. 24. A member of the armed forces or person of equivalent status whatever his rank, whether a member of the army, the gendarmerie, the police or the public security forces, may not vote while exercising his functions.

Any such person who, at the time of the election, has been temporarily relieved of his duties or who is in possession of a regular leave permit must vote in the ward in which he is registered.

A member of the armed forces or person of equivalent status may not be elected deputy unless he has been placed in retirement at least six months before the date of the election.

[*Former text:*

A member of the armed forces or person of equivalent status, whatever his rank, whether a member of the army, the gendarmerie, the police or the public security forces, may not vote while attached to his unit or post or while exercising his functions.

Any such person who at the time of the elections is retired on half pay or is in possession of a regular leave permit may vote in the ward in which he is registered.]

Art. 25. Membership in the Chamber of Deputies shall be incompatible with the holding of a public or religious office remunerated by the State. Accordingly, if an official is elected to the Chamber of Deputies, he shall *ipso facto* be deemed to be relieved of his office if during the eight days following the validation of his election he fails to give notice o his refusal to accept the mandate of deputy.

A member of the Chamber of Deputies appointed to a paid public office shall by his very acceptance thereof cease to be a member of the Chamber. Nevertheless a deputy may, with the consent of the Chamber of Deputies, be appointed to a political mission abroad for a term of not more than six months, which may not be renewed. A deputy who does not satisfy the conditions laid down in new article 11 shall cease to be a member of the Chamber.

Art. 26. The following persons may not be elected in any electoral ward during the exercise of their functions and for six months after the date of their final relinquishments of office:

1. Judges of the Court of Cassation;
2. Directors-general, directors and heads of departments;
3. Inspectors-general and inspectors whose functions extend over the whole territory of Lebanon.

Art. 27. The following persons may not be elected in the wards in which they exercise their jurisdiction during the exercise of their functions and for six months after the date of their final relinquishment of office:

1. Judges of the Court of Appeals and single judges;
2. Mouhafez and Caimacams;[1]
3. District engineers and inspectors;
4. Inspectors of the Ministry of National Education;
5. Financial controllers and District directors of Finance, together with all officials serving under them, and, in general, all financial officials and persons responsible for the collection of taxes in the district concerned.

In the event of a seat falling vacant as a result of the death or resignation of a deputy, or of the dissolution of the Chamber, persons in one of the categories enumerated in articles 26 and 27 above may be elected, if they cease to exercise their functions within eight days after the publication of the decree convoking the electors.

. . .

Art. 61. The provisions of article 1 concerning the reduction of the number of deputies, the provisions of article 11 concerning the placing of women on the rolls of electors and the provisions of article 23 concerning the obligation to vote shall not come into force until the next general elections.

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[1] Governors of provinces and administrators of districts.

LIST OF ELECTORAL DISTRICTS

(Annex to legislative decree No. 6, of 4 November 1952)

District No.	*Number of seats*	*Distribution of seats by religious communities*		*Name of district*
1	1	Armenian Orthodox	1	Beirut—I
2	2	Greek Orthodox	1	Beirut—II
		Maronite	1	
3	1	Sunnite	1	Beirut—III
4	2	Sunnite	1	
		Shiite	1	Beirut—IV
5	1	Minorities	1	Beirut—V
6	2	Maronite	1	
		Druze	1	Baabda
7	2	Maronite	1	
		Greek Orthodox	1	Metene
8	1	Armenian Orthodox	1	Bourje Hammoud
9	2	Maronite	1	
		Sunnite	1	Deir el Kamar-Chehim
10	2	Druze	1	
		Greek Catholic	1	Baakline-Joun
11	2	Maronite	1	
		Druze	1	Aley
12	1	Maronite	1	Kesrouan
13	1	Maronite	1	Fetouh
14	1	Maronite	1	Djebail
15	1	Sunnite	1	Tripoli—I
16	1	Sunnite	1	Tripoli—II
17	1	Sunnite	1	Dennieh
18	1	Greek Orthodox	1	Koura
19	1	Maronite	1	Zgharta
20	1	Maronite	1	Bsherreh
21	1	Maronite	1	Batroun
22	2	Greek Orthodox	1	Akkaar
		Sunnite	1	
23	1	Sunnite	1	Saida
24	1	Shiite	1	Zahrani
25	1	Shiite	1	Nabatieh
26	2	Maronite	1	Jezzine-
		Greek Catholic	1	Magdouche
27	1	Shiite	1	Merjeyoun
28	1	Shiite	1	Sour
29	1	Shiite	1	Bint-Jebail
30	2	Maronite	1	Zahle and Eastern
		Greek Catholic	1	Bekaa
31	2	Sunnite	1	Rachaya and Western
		Greek Catholic	1	Bekaa
32	1	Shiite	1	Baalbeck
33	1	Shiite	1	Hermel

LIBERIA

ACT RESTORING AND EXTENDING THE EMERGENCY POWERS GRANTED THE PRESIDENT OF LIBERIA[1]

(approved 29 April 1952)

NOTE

The Act of 29 April 1952 extends the special emergency powers of the President of Liberia for a further period of two years, commencing from the effective date of this Act. These powers were originally formulated and approved by the Act of 20 June 1942[2] but were subsequently extended by the Acts of 22 January 1946 and 4 February 1949 respectively.[3] The Act of 20 June 1942 delegated to the President *inter alia* certain emergency powers affecting the rights of citizens guaranteed by the Constitution namely,[4]

To . . . declare any area deemed necessary to be a defence area and may therein suspend the benefits of the writ of *habeas corpus* for a period not exceeding one year at the time.

To exercise the power of sequestering or removing aliens to areas deemed less dangerous to the safety of the State; to evacuate or remove whole or part populations to areas of safety in case of danger.

To exercise, without the intermediary of the courts of law, the power of search and seizure over any article, paper or thing suspected to be concealed in any area declared to be a defence zone and the possession of which article, paper or thing shall be deemed dangerous or pernicious to the welfare or safety of the State.

To appoint and commission such officials as he may deem necessary with authority to effectively carry out the intent and spirit of this Act, within the scope of the special powers therein granted.

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[1] English text published by the Department of State (Governing Printing Office), Monrovia.

[2] See *Acts passed by the Legislature of the Republic of Liberia during the Session 1941–1942*, pp. 20–22.

[3] *Ibid.*, session 1941–1942, pp. 20–22 and session 1948–1949, pp. 26–27.

[4] See *Yearbook on Human Rights for 1946*, pp. 183–184; *idem for 1948*, p. 139.

LIBYA

Federal Legislation

EDUCATION ACT[1]

Act No. 5 of 22 September 1952

Art. 1. With a view to fulfilling the provisions of Articles 28, 29 and 30 of the Constitution of the United Kingdom of Libya[2] as soon as may be reasonably practicable, public schools shall be established and maintained by the Administration in each province, in accordance with the means available to it, sufficient for the compulsory elementary education, and for the primary and secondary education, of all Libyan children in the province. No Libyan student shall be deprived of his right to education at any stage except in accordance with the provisions of the law, and no student shall ever be prevented from taking his examinations. So far as circumstances may permit, schools and other institutions shall also be established and maintained by the provincial administrations for the further education of Libyans up to the stage of university or other higher education.

Art. 2. The Minister of Education in the Government of the United Kingdom of Libya (in this law called the Minister) shall be the authority charged with the supervision throughout Libya of the system of education prescribed by this law.

Art. 3. The Minister may make regulations in regard to the public schools and other institutions provided for by this law prescribing—

(*a*) The syllabus and courses of instruction, and minimum days and hours of attendance;

(*b*) The educational standards to be reached;

(*c*) The setting up of an authority to study and approve the books to be used;

(*d*) Examinations, and the issue of certificates of proficiency, including certificates for recognition by educational authorities abroad;

(*e*) The qualifications to be required of teachers;

(*f*) Inspection of private schools and institutions and the supervision of their syllabuses.

Art. 4. (1) There is hereby established a Council of Education in Libya (in this law called the Council) to be composed as follows:

The Minister (Chairman)

The Director-General of Education, Government of Libya (Vice-Chairman)

The Nazirs of Education in the provinces

Six persons, two from each province, having knowledge of educational matters, to be nominated by the Minister on the recommendation of the Nazir of the province.

(2) The Minister may, if he thinks it desirable in the interests of education, appoint additional Libyan members to the Council and may invite representatives of the United Nations specialized agencies or the Libyan American Technical Assistance Service to assist in the deliberations of the Council.

Art. 5. The Council shall advise and assist the Minister in the performance of his functions under this law, and in particular shall advise him in regard to the general policy for education to be followed in Libya, and the regulations to be made under article 3 of this law.

It shall be the duty of the Minister to act on the advice of the Council on all important questions.

Art. 6. (1) The Council shall be summoned by the Minister, and it shall meet at least twice a year.

(2) The Council shall have power to make rules regulating its procedure, including rules as to a quorum, the appointment and duties of a secretary, and the appointment and functions of sub-committees.

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[1] English text in *The Official Gazette of the United Kingdom of Libya*, vol. 2, No. 5, of 10 October 1952, received through the courtesy of Mr. Suleiman Gerbi, Under-Secretary for Foreign Affairs. The date of promulgation was 22 September 1952.

[2] These articles read as follows:

"*Art. 28.* Every Libyan shall have the right to education. The State shall ensure the diffusion of education by means of the establishment of public schools, and of private schools which it may permit to be established under its supervision, for Libyans and foreigners.

"*Art. 29.* Teaching shall be unrestricted so long as it does not constitute a breach of public order and is not contrary to morality. Public education shall be regulated by law.

"*Art. 30.* Elementary education shall be compulsory for Libyan children of both sexes; elementary and primary education in the public schools shall be free."

Art. 7. To ensure the training of teachers there shall be maintained by the administration of Tripolitania the teachers' training college for men and the teachers' training college for women already established by that administration in Tripoli, and there shall be maintained by the administration of Cyrenaica the teachers' training colleges for men and women to be established in Benghazi by the Administration of Cyrenaica, and such other institutions as the Minister may approve.

Art. 8. In order to provide for education beyond the primary stage, there shall be maintained by the administration of Tripolitania the secondary schools in Tripoli and Zavia, the technical and clerical training college in Tripoli, and the agricultural school at Sidi el Mesri, and there shall be maintained by the administration of Cyrenaica the secondary schools and trades schools in Benghazi, the agricultural school at El Aweila, and the Mohamed Ali el Senussi Religious Institute at Sidi Rafa; and there shall further be maintained such other institutions as may be established for the purpose in pursuance of article 1 of this law.

Art. 9. (1) For the administration of the teachers' training colleges, and the technical and clerical training college in Tripoli, and the teachers' training college and trades school in Benghazi respectively, there is hereby established a board of management in each province to be composed as follows:

The Nazir of Education for the province (Chairman)

The Director of Education for the province (Vice-Chairman)

The chief inspector in the province, or his representative

The Director-General of Education, Government of Libya, or his representative

A representative of the Nazirate of Finance of the province

A representative of the UNESCO mission in Libya

A representative of the Libyan American Technical Assistance Service.

(2) The Nazirs of Education may, if they think it desirable for the better administration of the institutions, appoint additional Libyan members to the boards.

(3) The principals of the institutions may be invited to take part in the deliberations of the boards.

(4) The boards shall have power to make rules regulating their procedure, including rules as to a quorum and the appointment of a secretary and his duties.

Art. 10. (1) The boards of management shall be responsible for the general management of the institutions under their charge and shall ensure that the syllabus and courses of instruction prescribed are followed.

(2) They shall, subject to the terms of this law and of any regulations made under article 3, control the number of students to be admitted and the conditions of their acceptance; they may prescribe the duration and number of terms to be kept, and may make recommendations to the Civil Service Committee of the province regarding the appointment, transfer and discharge of the staff.

(3) The boards shall prepare annual budgets showing the proposed expenditure of the institutions and send them to the Minister for his information; and shall report annually to the Minister on the work of the institutions, and on the expenditure incurred.

(4) The provisions of this article shall be subject, in regard to the technical and clerical training college in Tripoli and the trades school in Benghazi, to the provisions of any agreement entered into by the Government of the United Kingdom of Libya with the specialized agencies of the United Nations or the Libyan American Technical Assistance Service.

Art. 11. The teachers' training colleges and all schools and other institutions providing education beyond the primary stage shall be open to students from all the provinces.

Art. 12. Any expenditure incurred in pursuance of this law, except so far as it is met by the specialized agencies of the United Nations, the Libyan American Technical Assistance Service or other bodies, shall, if it is expenditure by the Council, be paid out of the revenues of the Government of the United Kingdom of Libya; and if it is expenditure by the provincial administrations or the boards of management, shall be paid out of the revenues of the provincial administrations, supplemented as may be necessary by grants from the Government of Libya in accordance with article 174 of the Constitution of Libya.

. . .

ARABIC LANGUAGE ACT, 1952[1]

Act No. 6 of 27 September 1952

Art. 1. Arabic shall be the official language of the State in accordance with article 186 of the Constitution.[2]

Art. 2. (1) All correspondence, tenders and all other forms of written communication and documents annexed thereto submitted to the Government of the United Kingdom of Libya or to a provincial administration, or to any department thereof, or to any municipal authority shall be in the Arabic language.

If any such communication is composed in a foreign language, an Arabic text, which shall be the authoritative text, shall be enclosed.

(2) Any communication submitted contrary to the provisions of paragraph (1) above may be ignored.

(3) This article shall not apply to any such communication submitted by individuals not resident in the United Kingdom of Libya or by bodies or institutions whose head office is not in the United Kingdom of Libya and who have no branch or agency therein.

Art. 3. All books, registers, papers and documents, to which representatives of the Government of the United Kingdom of Libya or of the provincial administrations or of any municipal authority are entitled to have access for examination or inspection, by virtue of any law, regulation, concession or monopoly contract, or licence, shall be written in the Arabic language or accompanied by an Arabic translation.

Art. 4. (1) Signs and all public notices exhibited by companies, banks, associations and their branches and by persons practising in the legal profession or in any scientific or technical profession, or in the medical profession or any other profession connected with health, and all notices exhibited in public places by such persons or bodies and all notices of public meetings, shall be in the Arabic language.

(2) This article shall not preclude the use of a foreign language with Arabic, provided that the foreign language has not a bigger size, a more prominent place or a higher position than the Arabic.

Art. 5. (1) Whoever contravenes the provisions of article 3 or article 4 shall be guilty of an offence and shall be liable to a fine of not less than ten and not exceeding one hundred pounds.

(2) The court shall give the offender not more than three months to comply with the provisions of article 3 or article 4 and if after that period the offender has still not complied with the said provisions, he shall be liable on conviction to a fine of not less than one hundred and not exceeding five hundred pounds, or to imprisonment not exceeding six months, or to both.

Art. 6. (1) This law may be cited as the Arabic Language Law, 1952.

(2) This law shall come into force three months from the date of publication in the *Gazette*, except article 3, which shall come into force on 1 April 1953, or such later date as the Minister of Finance and Economics may if necessary appoint by notice in the *Gazette*.

[1]English text in *The Official Gazette of the United Kingdom of Libya*, vol. 2, No. 5, of 10 October 1952, received through the courtesy of Mr. Suleiman Gerbi, Under-Secretary for Foreign Affairs. The date of promulgation was 27 September 1952.

[2]See *Yearbook on Human Rights for 1951*, p. 228.

Legislation of the Provinces

CYRENAICA

EMPLOYERS AND EMPLOYED PERSONS ACT[1]

Act No. 24 of 15 October 1951

SUMMARY

This Act deals with the rights and obligations of employers and employed persons. The term "employed person" includes any person not specifically excluded from its provisions, who has entered into or works under a contract with an employer, whether the contract be by way of manual labour or otherwise; be expressed or implied, orally or in writing; and whether it be a contract of service or a contract of apprenticeship, or a contract personally to execute any work or labour. The employed persons excepted

[1]English text in *The Cyrenaica Gazette* No. 29, of 16 January 1952, received through the courtesy of Mr. Sulciman Gerbi, Under-Secretary for Foreign Affairs. Summary prepared by the United Nations Secretariat.

from the provisions of the present Act are, among others, household domestic servants, persons employed in seasonal agriculture, ploughing and harvesting, and any class of persons whom the Council of Ministers may by regulation declare not to be employed persons for the purpose of this Act.

Every written contract shall contain in clear and unambiguous terms all that may be necessary to define the rights and obligations freely entered into by employers and employed persons, and no judge or other responsible official shall attest any contract of service unless it specifies as accurately as may be:

(i) The name of the employer, and of the undertaking and of the place of employment;

(ii) The name of the employed person and any other particulars necessary for his identification;

(iii) The nature of the service to be performed;

(iv) The place or limits within which such service is to be performed;

(v) The wages to be paid and the manner and periodicity of payment of wages;

(vi) The appropriate period of notice to be given by the party wishing to terminate the contract, due regard being had to the provisions of this Act relating thereto; and

(vii) Any special conditions of the contract.

Every contract of service, wherein no agreement respecting notice of longer duration is expressed, may be terminated at any time by notice given by either party subject to certain conditions: Where an employed person is engaged at wages fixed at a monthly rate, the contract can be terminated at the expiration of one calendar month's notice or on payment of a sum equivalent to one month's wages; in case of wages fixed at a fortnightly, weekly or daily rate, corresponding provisions, depending, in the two latter instances, on the length of continuous service, are laid down. An employer, however, may dismiss without notice an employed person for wilful disobedience of a lawful order, or gross misconduct in or connected with his employment, or serious negligence or wilful misconduct calculated seriously to injure the employer's business.

No written contract of service shall be enforceable against any party thereto who at the time of making such contract was unable to read and understand the language in which it is written, unless it bears an attestation under the hand of a judge or other responsible official to the effect that such contract was read over and explained to such party in the presence of such responsible official and was entered into by him voluntarily and that he appeared fully to understand its meaning and effect.

Every contract of service required to be attested shall be executed and attested in triplicate. The employer shall retain one copy of the contract of service; shall deliver one copy to the employed person; and shall deposit one copy with the Commissioner of Labour within one month of the attestation thereof.

The most essential rights and obligations of employers and employed persons recognized by the present Act are the following. The normal working week for any employed person whose wages are fixed at a weekly or fortnightly rate shall be forty-eight hours. Where for any reason an employed person whose wages are fixed at a weekly rate is called upon to work more than forty-eight hours in any one week, his employer shall pay to him, in addition to his weekly wages, not less than one forty-eighth of such weekly wages increased by not less than 10 per cent in respect of each completed hour which he works in excess of forty-eight hours in such week. Corresponding provisions are laid down for employed persons whose wages are fixed at a fortnightly rate and for those whose wages are fixed at a daily rate on the basis of an eight-hour working day.

The wages of an employed person, less the just value of any food, fuel or quarters supplied to such employed person, shall be paid in money unless: (i) there is an agreement to the contrary, which shall be in writing; or (ii) there is an oral agreement for the use of land for tillage or other customary benefits in lieu of wages to the employed person. Wages shall be paid to the employed person personally or to any person authorized by him in that behalf in writing, without any deductions whatsoever except such deduction as may be specifically authorized by the contract under which the wages are payable under this or another law. No employer shall make any deduction by way of a discount, interest or any similar charge on account of any advance of wages made to any employed person in anticipation of the regular date of payment of such wages.

After the completion of one year of continuous service, an employed person whose wages are fixed at a monthly rate shall be entitled to twelve consecutive days of rest, and an employed person whose wages are fixed at a fortnightly, weekly or daily rate, six consecutive days of rest at full wages in each year. If a public holiday or holidays (other than the weekly holiday) fall within the period of rest at full wages, the period of such public holiday or holidays shall not be excluded in calculating the period of rest with full wages to which the employed person is entitled.

In addition, the Act provides for a certain administrative supervision and control. Every employer of employed persons engaged at wages fixed at a daily rate, for example, is required to keep a record of the daily attendances of, and payment to, and deduction of wages from, each such employed person, and to retain such record for at least six months after the

last entry therein and to produce it on request to the Commissioner of Labour or a person authorized by him. For the purpose of this Act the Commissioner of Labour, or a person authorized by him, or a medical inspector appointed by the Director of Medical Services, or any person appointed by the Council of Ministers may at any time enter upon any land or into any building where he has reason to believe that any person is employed, and may put questions relevant to the purposes of this Act concerning such employed person to his employer or to any person who may be in charge or to the employed person himself, who shall answer any such questions to the best of their ability.

TRADE UNION ACT[1]

Act No. 25 of 15 October 1951

SUMMARY

This Act recognizes trade unions as lawful, subject to registration and to the fulfilment of certain other conditions. The term "trade unions" includes any combination, whether temporary or permanent, the principal purpose of which is under its constitution the regulation of the relations between workers and employers, or between workers and workers, or between employers and employers.

The registration is to be applied for by every trade union within two months of the date of its formation or of the date of coming into force of this Act, whichever is later. No trade union and no member thereof shall perform any act in furtherance of the purposes for which it has been formed unless and until it has been registered, provided that any trade union existing on the day immediately preceding the date of the coming into force of this Act and every member of such trade union shall be exempt from this provision during a period of two months from the mentioned date. The registration is undertaken by the registrar of trade unions who is to be appointed by the Prime Minister. Application for registration may be made by any ten members of a trade union by subscribing their names to the rules of the trade union. If the registrar refuses to register a trade union, he shall forthwith notify the applicants of the grounds of such refusal.

The registrar shall refuse to register any trade union if in his opinion:

(i) The name of the trade union is identical with that under which any other existing trade union has been registered, or so nearly resembles such name as to be likely to deceive; or

(ii) The name of such trade union contains any words which are misleading or refer directly or indirectly to any personage, practice or institution, or is otherwise unsuitable as a name for a trade union; or

(iii) All or any of the objects of the trade union are unlawful; or

(iv) Any other trade union already registered is sufficiently representative of the interests in respect of which the application to register is made.

Any person aggrieved by any refusal of the registrar to register a trade union may, within thirty days of the notification of such refusal, refer the matter to a judge of the civil court who, after making or causing to be made such inquiry as he may deem necessary, may order that the trade union be registered or be not registered.

The registration may be cancelled by the registrar on proof to his satisfaction:

(i) That a certificate of registration has been obtained by fraud or mistake; or

(ii) That any of the objects of a trade union are unlawful; or

(iii) That a registered trade union has voluntarily violated any of the provisions of this law; or

(iv) That a registered trade union has ceased to exist.

Before cancelling the registration of a trade union the registrar shall give the trade union not less than two months' previous notice in writing, specifying the ground of the proposed cancellation.

Any trade union aggrieved by the cancellation of its registration may, within thirty days from the date of the notification of such cancellation, appeal to the civil court whose decision shall be final.

Where the activities of a trade union are calculated to endanger public safety, or law and order, the Prime Minister may suspend the registration of the trade union for such period as he thinks fit, or may cancel such registration.

Trade unions are forbidden to engage in any form of political activity. The name of any trade union engaging in political activities shall be forthwith struck off the register by the registrar. The members

[1] English text of the Act in *The Cyrenaica Gazette* No. 30, of 1 February 1952, received through the courtesy of Mr. Suleiman Gerbi, Under-Secretary for Foreign Affairs, Tripoli. Summary prepared by the United Nations Secretariat.

of the committee of management and every officer of a trade union who acts in contravention of the provision relating to the prohibition to engage in political activities shall be guilty of an offence involving fine and imprisonment.

Among other conditions to which the enjoyment of the right to form, to operate and to join trade unions is subject, the most important are the following. The rules of every registered trade union shall contain provisions relating to matters such as the name of the trade union, its objects, benefits to members, membership subscriptions and dues, qualifications for membership, management of the trade union funds, etc. which are specified in the schedule attached to this Act. Every alteration of the rules of a registered trade union shall be registered with the registrar and shall take effect from the date of registration unless some later date is specified in the rules. Every registered trade union shall furnish statements of accounts to the registrar before the first day of June in every year, which statements shall show:

(i) Fully the assets and liabilities at the date, and income and expenditure during the year preceding the date to which they are made out; and

(ii) Separately the expenditure in respect of the several objects of the registered trade union.

A person under the age of twenty-one years, but above the age of sixteen, may be a member of a registered trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the said registered trade union, execute all instruments and give all acquittances necessary to be executed or given under such rules, and enjoy all the rights of a member, except that he shall not be a member of the committee of management thereof nor hold any office therein.

Agreements between members of a registered trade union, such as those relating to the payment of subscription or the application of the funds of a registered trade union to provide benefits to members, are not enforceable in any court under the provisions of the present Act.

WORKMEN'S COMPENSATION ACT[1]

Act No. 28 of 31 October 1951

SUMMARY

This Act recognizes the right of workers and their dependants to compensation in cases of accidents arising out of, and in the course of their employment. The compensation is to be paid by the employer at the rates which are fixed by the present law, or ordered by the court, or agreed upon between the worker and the employer. The right to compensation exists even though the worker, at the time when the accident happened, may have been acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or may have been acting without instructions from the employer, if such act was done by the worker for the purpose of, and in connexion with his employer's trade or business. Exceptions, however, are provided in a number of cases. No compensation shall be payable, for example, in respect of any incapacity or death resulting from a deliberate self-injury, or if it is proved that the injury to a worker is attributable to the serious and wilful misconduct of that worker. In the latter case, if the injury results in death or serious and permanent incapacity, the court, on consideration of all the circumstances, may award the compensation or such part thereof as it shall think fit.

The compensation is to be paid to or for the benefit of the worker in cases of permanent total incapacity, permanent partial incapacity, and temporary incapacity. Where the compensation in the case of temporary incapacity, whether total or partial, consists of periodical payments ordered by the court or agreed upon between the parties, it may be reviewed by the court on the application either of the employer or of the worker. Where the death of a worker has resulted from an injury, the compensation shall be paid to the court and the court may order any sum so paid in to be apportioned among the dependants of the deceased worker or any of them in such proportion as it thinks fit, or in its discretion order such sum to be allotted to any one such dependant. The sums so allotted to any dependant shall be paid to him or invested, applied or otherwise dealt with for his benefit in such manner as the court shall think fit.

Where it appears to the court that, on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order made ought to be varied, the court may make such order for the variation of the earlier order as in the circumstances of the case the court may think just. Where there are both total and partial dependants, the compensation may be allotted partly to the total and partly to the partial dependants.

[1]English text in *The Cyrenaica Gazette* No. 32, of 1 March 1952, received through the courtesy of Mr. Suleiman Gerbi, Under-Secretary for Foreign Affairs. Summary prepared by the United Nations Secretariat.

MINIMUM WAGES ACT, 1951[1]

Act No. 29 of 1 November 1951

. . .

3. (1) The Council of Ministers may by order fix a minimum wage for any occupation in Cyrenaica or in any part thereof in which they are satisfied that the wages for that occupation are unreasonably low and such order may include the fixing of minimum wages for piece work, time work, the minimum wages to be paid to any special classes of employees within the occupation, the exceptions or any other matter which requires to be inserted in the order.

(2) When an order has been made under sub-section (1) the Council of Ministers may from time to time, by subsequent order, increase or reduce the minimum wage so fixed and alter, vary or amend any other provisions of the first or any such subsequent order.

(3) No first order shall be made until the recommendations of a labour advisory board appointed under the provisions of section 4 shall have been considered.

4. (1) There shall be established a labour advisory board for Benghazi, and the Council of Ministers may, as occasion requires, appoint labour advisory boards elsewhere in Cyrenaica for each particular occupation in respect of which a direction is given under the provisions of section 5.

[The following paragraphs of this section deal with the composition of the labour advisory boards for Benghazi and those elsewhere in Cyrenaica, and provide for procedural matters.]

5. (1) A labour advisory board shall, as and when directed by the Minister of the Interior so to do, inquire into

(*a*) The rates of wages and the conditions of employment in any occupation in respect of which it is proposed to fix a minimum wage, or

(*b*) The rates of wages in any occupation in respect of which it is proposed to fix a minimum wage, or

(*c*) The conditions of employment in any occupation.

(2) Such inquiry may be directed to be made in connexion with any or all classes of persons employed in such occupation, and, at the conclusion thereof, the board concerned shall formulate recommendations in respect thereto and forthwith forward such recommendations to the Minister of the Interior for consideration by the Council of Ministers.

6. (1) Prior to the commencement of any inquiry directed to be held under the provisions of sub-section (1) of section 5, the secretary of a labour advisory board or such other labour officer or inspector as may be authorized in that behalf by the Commissioner of Labour shall have power to request from any employer affected by the direction all such particulars

(*a*) Relating to the wages paid for any or any particular class of work or to any person or any particular class of persons employed by him;

(*b*) Relating to the conditions of employment in any or any particular class of work of any person or class of persons in any premises under his control;

(*c*) Generally regarding the occupation concerned, as he may, in his discretion think fit for the purpose of facilitating the inquiry.

(2) For the purpose of

(*a*) Verifying any particulars furnished on request being made under the provisions of sub-section (1), or making further inquiries or examination relating thereto, or

(*b*) Obtaining such particulars or examining or inspecting any premises in the case of failure of any employer to comply with a request made under the provisions of sub-section (1),

the secretary or the authorized labour officer or inspector, as the case may be, may at all reasonable times, enter any premises used by any such employer in connexion with the occupation which is the subject of the inquiry and may

(i) Examine and inspect all or any of such premises;

(ii) Require the production of and examine and inspect any books, records or other documents and copy any material part thereof;

(iii) Examine either alone or in the presence of any other person, as he in his discretion thinks fit, with respect to any matter relating to the occupation which is the subject of the inquiry, any person whom he finds in such premises or whom he has reasonable cause to believe to be employed in such occupation, and to require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined.

[Sections 7–9 provide for penalties for not paying minimum wages; deal with the recovery of arrears; and contain provisions with respect to legal proceedings and for the prevention of evasion.]

10. (1) Where an employee in any occupation for which a minimum wage has been fixed is an apprentice or learner, it shall not be lawful for his

[1] English text in *The Cyrenaica Gazette* No. 33, of 30 April 1952, received through the courtesy of Mr. Suleiman Gerbi, Under-Secretary for Foreign Affairs.

employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Provided that nothing in this sub-section shall apply to any such payment duly made in pursuance of any instrument of apprenticeship not later than four weeks after the commencement of that employment.

(2) If any employer acts in contravention of this section, he shall be liable, on conviction, in respect of each offence to a fine of 20 Libyan pounds, and the court may, by the conviction, in addition to imposing a fine, adjudge him to repay to the employee or other person by whom the payment was made the sum improperly received by way of premium.

11. Every employer in an occupation for which a minimum wage has been fixed shall keep such records of wages as are necessary to show that the provisions of this law are being complied with as respects his employees, and, if he fails to do so, he shall be liable on conviction in respect of each offence to a fine of 2 Libyan pounds and also to a fine of 1 Libyan pound for every day during which the default continues after conviction.

12. Any agreement for the payment of wages in contravention of any of the provisions of this law shall be void.

13. The penal courts shall have exclusive jurisdiction to try cases brought under the provisions of this law.

THE CYRENAICAN ELECTORAL ACT[1]

Act No. 9 of 4 June 1952

A LAW TO MAKE PROVISION FOR THE ELECTION OF MEMBERS TO THE LEGISLATIVE COUNCIL OF CYRENAICA

. . .

Art. 2. (1) No person may vote or be a candidate for election at any general or by-election to the Legislative Council of Cyrenaica unless he is of Libyan nationality and resides in Cyrenaica.

(2) For the purposes of this law, every person who, at the date of the commencement of this law, resides in Cyrenaica and does not possess the nationality of any other State shall be deemed to be of Libyan nationality if:

(*a*) He was born in Cyrenaica; or

(*b*) Either of his parents was born in Cyrenaica.

A person shall be deemed, for the purposes of this law, to reside in Cyrenaica if he had his normal place of residence in Cyrenaica for a period of not less than ten years prior to the date of the commencement of this law.

Art. 3. Without prejudice to the provisions of article 2 of this law, to be qualified to vote at an election of members of the Legislative Council of Cyrenaica, a person:

(*a*) Must be of the male sex;

(*b*) Must have completed his twenty-first year (Gregorian);

(*c*) Must not be a lunatic or an imbecile;

(*d*) Must not be an undischarged bankrupt;

(*e*) Must not, when the elections are held, be serving a term of imprisonment for any reason.

Art. 4. Without prejudice to the provisions of Article 2 of this law, to be qualified to be elected a member of the Legislative Council of Cyrenaica, a person:

(*a*) Must be of the male sex;

(*b*) Must have completed his thirtieth year (Gregorian);

(*c*) Must not be a member of the Royal Family;

(*d*) Must be able to read and write Arabic fluently;

(*e*) Must not, when the elections are held, be serving a term of imprisonment for any reason;

(*f*) Must not have been sentenced to any term of imprisonment or fine for any dishonourable act, nor for sedition or instigating to sedition or any similar offence, nor for a breach of public order or tranquillity, or any act likely to cause the same;

(*g*) Must not be a lunatic or an imbecile;

(*h*) Must not be an undischarged bankrupt;

(*i*) Must have had his name inscribed upon the roll of electors of an electoral district in Cyrenaica.

[The following articles deal with the electoral system, the establishment of constituencies and polling districts, the appointment of a supervisor, assistant supervisors and registering officers, the completion and revision of registers and objections to the inclusion of any name in the Register.]

[1] English text in *The Cyrenaica Gazette* No. 35 (New Series), of 16 June 1952, received through the courtesy of Mr. Suleiman Gerbi, Under-Secretary for Foreign Affairs. This Act repeals the Cyrenaican Electoral Act No. 8, of 1950.

PART II

ISSUE OF WRITS AND NOMINATION OF CANDIDATES

. . .

Art. 22. (1) Any person who possesses the qualifications set out in article 4 and who is qualified to vote in a constituency and who is willing to stand for election, may be nominated as a candidate for that constituency; provided that an elector registered in any electoral district may be a candidate in any constituency in that electoral district or in any other constituency.

Upon presentation of his nomination papers, a candidate shall deliver to the returning officer a certificate from the Commissioner of Police that he has not been convicted of any offence mentioned in paragraph (*e*) of article 4 of this law. A candidate shall, at the same time, present a certificate from the Director of Education that he is able to read and write Arabic fluently.

(2) No person may be nominated as a candidate for more than one constituency.

. . .

[A sum of 50 pounds is to be deposited with the returning officer by the candidate or some person on his behalf. The deposit is forfeited if a candidate is not elected and the number of votes polled by him does not exceed one eighth of the total number of votes polled in his constituency.]

. . .

Art. 30. A candidate at an election may not incur any personal expenses in connexion with or incidental to such election to an amount exceeding 200 Libyan pounds, which sum shall include his reasonable travelling expenses in connexion with such election.

. . .

PART III

THE CONDUCT OF ELECTIONS IN ELECTORAL DISTRICTS

[This part deals with uncontested and contested elections and with the duties of the officer presiding at each polling station in the Returning Officer's electoral district.]

Art. 37. Only such persons as are included in the electoral roll of the polling district in which the polling station is situated may vote at that polling station.

Art. 38. A list of the duly nominated candidates shall be prominently displayed in the polling station.

Art. 39. Voting shall be by secret ballot by means of a voting token, which shall not be identifiable by any individual mark, and which shall be issued direct to the voter in the polling station by the person in charge. It shall not be signed or marked by the voter.

. . .

[Part IV deals with irregularities and election offences.]

PART V

DISPUTES AS TO VALIDITY OF ELECTIONS

Art. 56. (1) Without prejudice to the provisions of article 54 of this law, all questions which may arise as to the right of any person to be or to remain an elected member of the Legislative Council shall be referred to and decided by the Cyrenaican Secular Court of Appeal, hereinafter referred to as the Court, in accordance with the provisions of this part of this law.

Art. 58. The election of a candidate as a member of the Legislative Council shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Court—namely:

(*a*) That by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, the majority of electors were or may have been prevented from electing the candidate whom they preferred;

(*b*) Non-compliance with the provisions of this law relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;

(*c*) That a corrupt practice or illegal practice was committed in connexion with the election by the candidate or with his knowledge or consent;

(*d*) That the candidate incurred personal expenditure to an amount exceeding 200 Libyan pounds;

(*e*) That the candidate was at the time of his election a person disqualified for election as a member.

. . .

PART VI

ELECTION OFFENCES, ETC.

. . .

Art. 72. Any person who:

(*a*) Infringes the secrecy of the ballot or the secret of an elector's vote without his permission;

(*b*) Publishes or spreads before or during the election false statements regarding the conduct of a candidate, or his character, in order to affect the result of the election,

shall on conviction by a penal court be liable to imprisonment for a period not exceeding six months or to a fine not exceeding one hundred pounds, or both.

. . .

LIECHTENSTEIN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. In application of article 18 of the Labour Protection Act of 29 November 1945, the Government issued a standard contract of employment for domestic servants on 28 February 1952.

2. The Act of 3 April 1952 amending article 5 of the Industrial Code of 13 December 1915 provides that a corporate body carrying on business in Liechtenstein shall, wherever possible, appoint a Liechtenstein manager. This Act is published in the *Liechtensteinisches Landes-Gesetzblatt* No. 11, of 30 May 1952.

3. On 24 July 1952, the Government of Liechtenstein issued a decree concerning tuberculosis insurance. This decree is published in the *Liechtensteinisches Landes-Gesetzblatt* No. 17, of 14 August 1952.

4. The Act concerning Old Age and Survivors' Insurance was adopted by referendum on 14 December 1952 and came into effect on 1 July 1953. It is constructed on lines similar to the Swiss Act concerning Old Age and Survivors' Insurance, of 20 December 1946.[2]

[1] This note is based on texts and information received through the courtesy of Mr. Joseph Büchel, formerly Secretary of Government, Vaduz.

[2] See *Yearbook on Human Rights for 1948*, pp. 193–196.

LUXEMBOURG

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. JUDICIAL DECISION

Among the decisions given by Luxembourg courts in 1952 attention should be drawn to a judgement of the Higher Court of Justice (Civil Cassation) of 24 July 1952 concerning the exercise of the right to strike.

The significance of this decision is apparent from the grounds of the judgement which are reproduced below:

"Considering that it appears from the findings of fact binding on this court stated in the judgement which is sought to be set aside that the respondent and his fellow-strikers went on strike solely to obtain an increase in wages after they had followed the conciliation procedure established by law; that they resumed work after the employer had granted them the increase claimed; that the strike in question was therefore concerned with occupational interests, legitimate and lawful;

"Considering firstly, that it has not been alleged that the workers manifested the intention of leaving their employment permanently;

"Considering secondly, that participation in a legitimate and lawful strike concerned with occupational interests is a right implicitly granted to the worker by article 11 (5) of the Constitution[2] and therefore cannot render him liable to any penalty or loss; that it constitutes therefore a lawful suspension of the contract of employment and, at the same time, a valid reason for absence within the meaning of the grand-ducal order of 8 August 1947 . . ."

Observation: This judgement recognizes in principle the legality of the right to strike and provides that a strike concerned with occupational interests, occurring under legitimate and lawful conditions *is not a breach of the contract of employment.*

[1]This note was prepared by, and received through the courtesy of Mr. Ferdinand Wirtgen, Registrar-General and Director of State Lands, Luxembourg. English translation from the French text by the United Nations Secretariat.

[2]The text of article 11 (5) of the Constitution reads as follows: "The social security, health protection and leisure of workers shall be organized, and trade union liberties shall be guaranteed, by law."

II. INTERNATIONAL INSTRUMENTS

1. Act of 12 May 1952 approving the general convention and the special protocol on social security between the Grand Duchy of Luxembourg and the Netherlands, signed at Luxembourg, on 8 July 1950.

Mémorial of 16 May 1952, No. 31, pp. 452 *et seq.*

The above-mentioned convention and protocol have been ratified, and the instruments of ratification were exchanged on 27 May 1952 at the Hague. The convention came into force on 1 June 1952.

The purpose of the convention is to accord wage-earning Netherlands and Luxembourg nationals the benefits of the social security legislation applicable in the Netherlands or in Luxembourg under the same conditions as nationals of each of these countries.

2. The Act of 23 June 1952 approving the treaty setting up the European Coal and Steel Community and the supplementary Acts signed at Paris on 18 April 1951.[3]

Mémorial of 9 July 1952, No. 41, pp. 695 *et seq.*

The Treaty and the supplementary Acts have been ratified, and the instruments of ratification were deposited on 23 July 1952 at the Ministry of Foreign Affairs of the French Republic in Paris. The treaty came into force on the same day.

3. An Act of 22 July 1952 approved the protocol, signed in Paris on 19 November 1948, bringing under international control drugs outside the scope of the convention of 13 July 1931 for limiting the manufacture and regulating the distribution of narcotic drugs, as amended by the protocol signed at Lake Success on 11 December 1946.

Mémorial of 2 August 1952, No. 48, pp. 901 *et seq.*

The protocol has been ratified, and the instrument of ratification was deposited on 17 October 1952 with the United Nations Secretariat. It came into force in respect of the Grand Duchy of Luxembourg on 17 November 1952.

[3]For the text of those pertinent articles of the Treaty relating to human rights, see p. 412 of the present *Yearbook.*

MEXICO

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

In 1952 the Federal Congress adopted an amendment to articles 34 and 115 of the Federal Constitution. Article 34 is now formulated as follows:

"All men and women who, in addition to being Mexicans, possess the following qualifications are citizens of the Republic:

"I. Those who have reached the age of eighteen years and are married, or twenty-one years, if unmarried;

"II. Those who have an honest means of livelihood."

Article 34 previously read:

"All Mexicans who possess the following qualifications are citizens of the Republic:

"I. Those who have reached the age of eighteen years and are married, or twenty-one years, if unmarried;

"II. Those who have an honest means of livelihood."

Article 35 which remained unchanged, reads as follows:

"Privileges of a citizen are:

"I. To vote in popular elections;

"II. To be eligible to all popularly elective offices and be qualified for any other position or commission, provided he has the qualifications prescribed by law . . ."

The sentence in article 115, "Women shall participate in municipal elections on the same terms as men, having the right to vote and to be elected . . ." (Constitutional amendment of 12 February 1947), was abolished since the amendment to article 34, in conjunction with article 35, granted to women the right to vote in all popular elections.

To become effective, these amendments required ratification by a majority of the State legislatures, which had not yet been obtained by the end of 1952.[1]

[1]The amendment became effective in 1953, after having been ratified by the majority of the States.

DECISIONS OF THE SUPREME COURT OF JUSTICE RELATING TO HUMAN RIGHTS[1]

1. *Liability of the Employer in the event of a Disease occurring concurrently with an Occupational Disease*

If a miner who suffered during his life from silicotuberculosis (considered under the Act as an occupational disease in this type of work) dies of a bronchopneumonic illness, the latter, having developed in an organ seriously impaired, must be regarded as the result of an occupational injury; for as, under article 321 of the Act referred to, a defect or illness of the worker antedating an accident sustained in the course of his work may not be deemed to be a reason for the reduction of compensation, so, by analogy, where an occupational disease occurs in conjunction with a non-occupational disease, this co-incidence suffices, if death results, to cause the latter to be similarly regarded as an occupational disease and as the employer's liability, even if the disease caused by work was not the direct, root or primary cause of death.

2. *Industrial Accidents*

If, as the result of an industrial accident, a worker is unable to perform his former duties and is assigned to other work suited to his physical capacities after the accident, the employer is bound to pay, apart from the appropriate compensation, only the wage to which the worker is entitled in his new occupation under the scale of wages, not the wage he received before the accident.

3. *Petroleos Mexicanos: Liability to pay the Life Insurance of Workers*

If a worker employed by the Petroleos Mexicanos dies while he is enjoying the year's leave of absence for the treatment of a non-occupational disease to which he is entitled by virtue of the collective contract, that does not exempt the company from its liability to pay life insurance under that contract, since this is a benefit established for the welfare of the worker's family or economic dependants, remaining in force until the employment relationship is terminated, which occurs only when the one year's waiting period

[1]Note received through the courtesy of the Permanent Delegation of Mexico to the United Nations. English translation from the Spanish text by the United Nations Secretariat.

has expired and the worker has not reported for work or remains unfit to resume his duties.

4. *Social Insurance: Agreement more favourable to the Workers than the Legal Employment Contract*

If, by virtue of an agreement endorsed by decree of the President of the Republic, the system of social insurance provided for in a legal employment contract is replaced by another system entitling the workers to greater benefits, the said agreement is legal and must be applied, since it contains provisions that are more favourable to the workers.

5. *Payment for Compulsory Rest Days*

The employer's liability to pay wages for compulsory rest days continues to exist even when the worker is prevented by illness from performing the services for which he has contracted, since the contractual relation has not been broken, but merely suspended in one of its parts—i.e., that relating to the performance of the services. Accordingly, the continued existence of the contractual bond entails liability to pay wages for rest days, and the suspension, *sui generis*, of the contract does not release the employer from the said liability, inasmuch as article 93 of the Federal Labour Act categorically provides that employees shall be paid their wages in full for the compulsory rest days and article 116 of the same Act contains an exhaustive list of grounds for the suspension of contract not entailing liability on the part of the employer, which list does not include suspension caused by the worker's illness.

MONACO

ACT No. 572 AMENDING ARTICLE 18 OF THE CIVIL CODE[1]

of 18 November 1952

Introductory note. Whereas Monegasque nationality legislation had reduced the modes of acquiring this nationality to: legitimate descent *jure sanguinis*, birth out of wedlock in certain circumstances, marriage and naturalization, the Act of 29 November 1952 breaks with an exceptionally restrictive tradition. Under the new Act a person born in Monaco and retaining his habitual residence in the principality may, if one of his parents was of Monegasque origin or if one of his parents and one grandparent of the same line were themselves born in the principality, opt for Monegasque nationality.

This legislative reform has raised a question of constitutional law, for it will be shown in the discussion which follows that, within certain limits, the rules governing nationality in Monaco are a matter of public law.

Title II of the Constitution of 5 January 1911, entitled "Public Rights", sets forth the individual rights and public liberties inspired by the classic declarations of human rights; those rights are not merely proclaimed, but are placed under the jurisdictional supervision of a supreme court whose sole function is to ensure the observance of the rights and liberties in question.

These provisions contain features both of constitutional law and of a system of guarantees concerning human rights and liberties as a whole.

The Principality of Monaco is thus one of the States which, in the Constitution itself, treat the matter of nationality as a question of public law, by contrast with those in which nationality is dealt with by the ordinary law.

Since the Constitution and the records of the proceedings leading to its adoption are silent on the point, it had been a debatable question whether the Monegasque constitutional provisions contain the entire law relating to nationality or whether they are meant simply to draw a distinction between the rules which are to remain inviolate and those which can form the subject of ordinary legislation.

The Act of 18 November 1952 confirms the second interpretation, which had been endorsed by implication by the Monegasque legislature when it enacted certain earlier Acts and which is moreover corroborated by the fact of the co-existence of the constitutional provisions and of the appreciably fuller provisions still embodied in the Civil Code.

It should be pointed out that the essential provisions concerning nationality occupy no insignificant place in the Constitution: their context, as has been said above, is the section entitled "Public Rights". This reinforces the view that of the two possible interpretations the correct one was chosen. There is reason to believe that the authors of the Constitution intended, not to rule out the possibility of the law relating to nationality being amended by legislation, but simply to protect the individual against disturbance by the legislative or executive power in the enjoyment of certain rights which he possesses or can expect to enjoy. No legislative provision and no governmental enactment can restrict the scope of the constitutional provisions. On the other hand, they may be extended by legislation.

The most interesting point to note is that the right to Monegasque nationality acquired by or promised to a person who fulfils the conditions laid down in article 2 of the Constitution is as inviolable as the right of ownership, the freedom of the individual or freedom of conscience. Since the right to nationality is very often in fact the prerequisite of the secure enjoyment of the individual freedoms, whether they be those long recognized or those social rights which derive from modern ideas, it is surely logical and elementary that this right should itself be hedged about with guarantees, in the same way as the other rights and freedoms. That was undoubtedly the intention of the authors of the Monegasque Constitution.

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[1]French text in the *Journal de Monaco* No. 4965, of 1 December 1952, received through the courtesy of Dr. Louis Aureglia, National Counsellor at Monte Carlo. Dr. Aureglia is also the author of the introductory note.

Art. 1. Article 18 of the Civil Code is hereby repealed and replaced by the following provisions:

"*Art. 18.* A person who has lost the status of Monegasque subject may recover this status by obtaining his reinstatement by sovereign ordinance [*provided he resides in the principality*].[1]

"By the same ordinance the status of Monegasque subject may be granted to that person's wife and adult children, if they apply for it."

["*The minor children of the reinstated father or mother become Monegasque subjects unless, within one year after attaining their majority, they decline this status by a declaration made before the registrar of births, marriages and deaths as provided in article 10.*"][1]

Art. 2. Any person born in the principality of a parent possessing Monegasque nationality by birth, may, even if that parent has lost the said nationality, acquire Monegasque nationality by making a declaration before the registrar of births, marriages and deaths within one year after attaining majority, provided that he resides in the principality and proves that he habitually resided therein while a minor.

Art. 3. Any person born in the principality, one of whose parents and one of whose grandparents of the same line were themselves born in the Principality, may acquire Monegasque nationality by making a declaration before the registrar of births, marriages and deaths within one year after attaining majority, provided that he resides in the principality and proves that he habitually resided therein while a minor.

Art. 4. The time limit within which a person may opt for Monegasque nationality shall begin to run on the date of the promulgation of this Act in the case of any person who, on that date, had attained or passed the age of twenty-one years.

[1]Words in italics and between brackets repealed in 1952.

NEPAL

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

In 1948, the Fundamental Rights Act was promulgated. This Act contains sections on freedom of the press and publications, which were revised in 1949, and other sections on freedom of speech.

Part I of this Act contains definitions; lists the grounds for suppression of a periodical, such as incitement to sedition, etc. and the procedure to be followed in connexion therewith. It lays down provisions to which a periodical must conform before commencing and during publication, and defines the responsibilities of editors and publishers. Part II deals with the publication of books, depositing of copies, etc. Part III fixes the penalties (fines and imprisonment) to be imposed in case of contraventions of the provisions of this law. Part IV contains miscellaneous provisions relating to the *Official Gazette*, registration of books, etc.

The sections on freedom of speech guarantee freedom of speech and writing subject to exceptions (which are mainly identical with the grounds for suppression of a periodical) and fixes the penalties to be imposed in the case of non-observance of these provisions.

In 1949, the Personal Freedom Act was promulgated. It deals with the freedom of the person, determines the conditions under which a person may be arrested or detained and the legal safeguards against the abuse of these measures, release on bail, redress for wrongful imprisonment and related subjects.

A Nepalese Citizenship Act was promulgated in 1952, and rules and regulations were issued by the Government of Nepal under article 11 of this Act. Extracts from this Act are reproduced in this *Yearbook*.

[1]This note is based on texts and information received through the courtesy of Mr. R. P. Manandhar, Secretary to the Government, Kathmandu.

NEPALESE CITIZENSHIP ACT, 1952[1]

2. Every person who resides in Nepal and fulfils any one of the following conditions shall be deemed to be a citizen of Nepal.

(*a*) A person who is born within the territories of the Kingdom of Nepal;

(*b*) A person one of whose parents is born in Nepal and who, with his family, intends to make Nepal his permanent home, and submits a written declaration to that effect.

3. An alien woman, contracting marriage with a Nepalese citizen, according to the laws and customs prevailing in the Kingdom of Nepal, shall be deemed to be a citizen of Nepal.

4. A person belonging to one of the following categories, who fulfils all the formalities mentioned in this Act can acquire Nepalese citizenship.

(*a*) Children born of Nepalese parents in Nepal, or born to Nepalese parents living in foreign countries who have not acquired the citizenship of the said countries.

(*b*) A woman who is born of Nepalese parents, and is married to a foreigner, shall recover Nepalese citizenship in case of her husband's death or of dissolution of marriage by divorce or desertion by the husband or legal separation from him.

(*c*) Persons and their descendants who have resided in foreign countries and have acquired a foreign citizenship can, upon their return to and continuous residence in Nepal for one year, recover Nepalese citizenship.

(*d*) Persons who have been residents of Nepal for a period of at least five years.

6. Persons who have acquired Nepalese citizenship shall be eligible to exercise all rights and enjoy all privileges of a Nepalese citizen from the day of receipt of their citizenship papers.

7. Any person who acquired citizenship rights under sub-section (*d*) of article 4 of this Act under false statements and deceptions shall forfeit the right of citizenship and shall further be liable to a fine not exceeding 1,000 rupees. In such a case the citizen-

[1]English text received through the courtesy of Mr. N. A. Dikshit, Secretary to the Government, Department of Foreign Affairs, Kathmandu. According to article 1, the Act came into force immediately upon promulgation.

ship shall be considered to be void from the day of its acquisition.

8. Any Nepalese national who acquires foreign citizenship cannot at the same time continue to retain Nepalese citizenship.

10. As is provided in the Nepal–Tibet treaty of 1855, sons of Nepalese fathers and Tibetan mothers shall be deemed to be Nepalese citizens, whereas daughters of the same parents shall be deemed to be Tibetan.

11. The Government shall be authorized to issue rules and regulations regarding applications, the grant or the withholding of the grant of the rights of citizenship, as well as for the procedure to be followed in these matters.[1]

[1]Under this article, the Government of Nepal issued rules and regulations the texts of which were received through the courtesy of Mr. N. A. Dikshit, Secretary to the Government, Department of Foreign Affairs, Kathmandu. Under these rules and regulations, a person wishing to acquire Nepalese citizenship shall, in accordance with article 4 of the Nepalese Citizenship Act, 1951, apply to the police department at Kathmandu or to the police *goswara* of the district. The officer in charge of the police *goswara* of the district and the officer in charge of the police department shall make an investigation to ascertain whether the applicant fulfils all the conditions laid down in the Act, whether the statements made by him are correct, and whether the applicant is considered to be an undesirable person. If all conditions for the acquisition of citizenship are fulfilled, the applicant may be granted the rights and privileges of Nepalese citizenship. The officer in charge of the police department shall deliver a certificate of citizenship to the applicant, indicating the date from which he may exercise the rights and shall be bound to fulfil duties of citizenship. Instructions shall be issued to the police department, Kathmandu, or the police *goswara* of the district, to keep a register or record of those acquiring Nepalese citizenship up to date.

If citizenship is withdrawn under article 7 of the Nepalese Citizenship Act, 1951, the document by which citizenship is withdrawn shall contain all relevant particulars. A writ shall be issued by the office which issued the citizenship papers and which keeps the register, requesting the person in question to return the naturalization papers and the name of the person shall be removed from the register within thirty-five days of the withdrawal of citizenship. If the person concerned does not comply with the order concerning the return of the citizenship papers, his name may be removed from the register without the naturalization papers being returned, and an entry shall be made to that effect in the register.

NETHERLANDS

SUPPLEMENTARY PROVISIONS ON SOCIAL ASSISTANCE ADOPTED BY THE NETHERLANDS GOVERNMENT[1]

SUMMARY

In view of some recent developments in the social assistance rendered by the Netherlands Government, it has been thought desirable to prepare a summary of the nature and purpose of the supplementary social provisions adopted by the Netherlands Government.[2]

In addition to the general provisions for the promotion of employment and the legal provisions covering social insurance and guaranteeing subsistence payments in cases of social need (sickness, accident, unemployment, etc.), the Netherlands Government provides supplementary social benefits and related services for various population groups.

The object of these additional social provisions is to restore social independence to those persons who, notwithstanding the general provisions referred to in the preceding paragraph, cannot or can only inadequately provide for their essential social needs, and this is accomplished by giving material and moral assistance in various forms (e.g. social-cultural) and by providing employment.

The *nature* of these supplementary provisions is shown by the fact that although their object is to standardize, they are so constructed that a very differentiated individual or group treatment may be applied, if it is warranted by the group or individual (viewed in relation to the general interest) in need of assistance. Hence, although the legislation concerns provisions relating to standards and conditions to be applied on a national scale, an effort has been made to adapt each provision as far as possible to the nature and circumstances of the population group for which it is intended.

Since these additional social provisions, which may be regarded as completing the Government regulations for the promotion of social security, are not embodied in formal laws, such differential treatment can be rapidly adapted to changing circumstances.

The execution of these regulations rests with the local authorities, and the supervision of their execution with the State. Costs incurred in the application of the regulations are borne for the most part by the State.

Where particular provisions concern regulations applicable to employees, they are applied by the federations of trade unions operating jointly through specially constituted consultative bodies.

The above-mentioned additional social benefits include:

(*a*) Supplementary maintenance provisions;

(*b*) Supplementary labour provisions;

(*c*) Social and cultural work.

(*a*) SUPPLEMENTARY SOCIAL MAINTENANCE PROVISIONS

1. *Social Provision for Unemployed Persons*

The entry into force of the legal provisions governing compulsory unemployment insurance (in the Unemployment Insurance Act) on 1 July 1952 made it necessary to establish directives for the giving of social assistance to those unemployed persons who, under that law, could not establish any right, or any further right, to assistance.

Consequently the transitional regulations and the State Unemployment Assistance Regulations[3] were superseded with effect from 1 July 1952 by new regulations: social provisions for the unemployed. Under these regulations, the unemployed are divided into two categories—those who do not generally come within the provisions of the Unemployment Act (group A, comprising domestic servants and persons whose incomes are above a certain limit), and those to whom the Unemployment Act is applicable in principle but who for certain reasons are no longer receiving assistance (group B, comprising persons who have already drawn benefit for the whole of the period permitted by the Unemployment Act).

The benefit payable to the first group (group A) is based on a certain percentage (80 per cent for heads of households) of the wage which the unemployed person would have been earning in his profession during the period of his unemployment. These

[1] Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch summary by the United Nations Secretariat.

[2] For a survey of the development of such legislation see *Yearbook on Human Rights for 1948*, pp. 153–154.

[3] See *Yearbook on Human Rights for 1949*, pp. 150–151.

benefits are subject to a maximum limit, and may not be drawn for more than twenty-one weeks.

The benefit payable to the second group (group B) is paid in accordance with a fixed scale depending on the composition of the family, the amount of rent paid, etc. There is no time limit on benefits in this category.

To become eligible for benefit, unemployed persons must register for employment at the Labour Exchange. The provisions regarding the deduction of any additional income received by the unemployed person or of any income received by a member of his household are different for groups A and B.

Under the new regulations (as in the old regulations now superseded[1]), provision is made for appeal, and local review boards are to be set up. The federations of trade unions operating jointly are *represented on these review boards.* Further details on the matter are given under the heading: "Social and cultural work".

2. *Social Welfare Provisions for Ex-service Men*

Reference may be made to the *Yearbook on Human Rights for 1948.*[2] These regulations refer to assistance on demobilization or during illness.

3. *Guarantees for Dock Labour Pools*

Employment for dock workers frequently fluctuates widely in accordance with the level of activity in ports and these workers have traditionally had to contend with periods of unemployment of varying length. Consequently, many Netherlands ports have during the past few years designed, with State assistance, a system of "guarantee" regulations for dock workers, ensuring continuous employment to a regular minimum number of dockers. In addition, the State gives a subsidy towards the cost of the wages and social charges of the workers during the hours in which there is no work for them.

4. *Social and Economic Assistance Regulations for Self-employed Persons*

The purpose of these regulations[3] is to assist owners of small businesses and self-employed persons who, through no fault of their own and for particular reasons, are unable to support themselves and their families, by means of a combination of appropriate measures, selected according to the needs of the case, such as periodical or non-recurring financial assistance, interest-free loans, and business credits.

Such assistance (which when it takes the form of periodical money payments is subject to a time limit) is given when the business or profession of the applicant can be regarded as viable. Otherwise, the same assistance may be given as to unemployed workers provided that the persons concerned wind up their business and register for employment at the labour exchange.

(*b*) Supplementary Social Assistance

1. *Social Assistance Regulations for Unemployed Manual and Clerical Workers*

These regulations enable local authorities to employ unemployed manual and clerical workers, for whom no normal work can be obtained, on suitable projects and to obtain a substantial government grant for the purpose. The object of the regulations is to increase, maintain or restore the work potential of the persons concerned.

The regulations provide for a differential wage system for manual and clerical workers.

2. *Special Supplementary Assistance for the Blind*

In its 1952 budget the Netherlands Government set aside a fund for special supplementary assistance for the blind. A plan for the allocation of this fund was drawn up in agreement with a Government-appointed national commission for the welfare of the blind. The objects of the plan were:

I. The promotion of employment for the blind in private trades (under this heading are included contributions towards the cost of the necessary apparatus, contributions towards transport costs and temporary additional salary payments for employed blind persons);

II. The maintenance and distribution of special appliances for blind persons;

III. Incidental benefits.

3. *Regulations regarding Social Assistance to Visual Artists*

Following the information already given in this connexion in the *Yearbook on Human Rights for 1950*[4] it may be stated that the purpose of the above regulations is to help visual artists in need of social assistance in a way adapted to their needs. Local authorities are empowered to buy the works of artists who are in need of assistance on the advice of special local committees (including advice on prices and selection of works), on which experts in the visual arts are represented. The purchase price is paid to the artists in weekly instalments. The Government pays a substantial subsidy towards the purchase price and may claim a proportional share in the works of art thus acquired.

[1] See *Yearbook on Human Rights for 1950*, p. 199.
[2] *Idem for 1948*, p. 154.
[3] *Ibid.*
[4] P. 199.

(c) Social and Cultural Work

For a number of years already, several Netherlands local authorities have been receiving government assistance for the organization of social and cultural programmes for the unemployed in order to counteract the demoralizing effects of unemployment. The 1952 social assistance provisions for the unemployed described under paragraph (*a*) above included a provision obliging local authorities to promote the social and cultural welfare of the unemployed in all cases where the number of unemployed in the locality made it desirable to do so. The work is carried out by private or church organizations, including the federations of trade unions operating together, or, with their assistance, by the local authorities.

Local authorities receive a 50 per cent subsidy towards the cost of this social and cultural work.

In addition to the above kinds of assistance, other special regulations in the Netherlands apply to war and resistance victims and others.[1]

Persons in need of assistance who are not eligible for benefit either under the social insurance laws or the additional State social assistance benefits for particular classes of people, enumerated above, can in principle receive assistance under the Poor Persons Act[2] which leaves local authorities almost complete freedom to assess the need for assistance and nature and extent of any help which they give. The financial charge of such assistance is borne by the local authorities themselves.

[1] See *Yearbook on Human Rights for 1948*, p. 154.

[2] *Ibid.*, p. 153.

ACT CONCERNING SAFETY REGULATIONS FOR DANGEROUS EQUIPMENT AND SAFETY DEVICES[1] (DANGEROUS EQUIPMENT ACT)

of 5 March 1952

SUMMARY

Legislation for the protection of workers has been in existence in the Netherlands for many years. It is contained more particularly in the Safety Act of 1934, the Stevedores' Act and the regulations implementing those acts, and includes among its aims the protection of workers against dangers inherent in the use of dangerous tools and equipment. Nevertheless, more or less serious, and even fatal accidents still regularly occur. The Government therefore considered it advisable that the body of legislation, largely of a punitive nature, should be supplemented by regulations laying greater stress on the *preventive* aspect. The Safety Act of 1934 already had in it provisions relating to the manufacture and sale of dangerous equipment. In practice, however, the relevant provisions do not appear to have had the effect anticipated. The object of the Safety Act is limited to workers' safety in general and safety in factories and workshops in particular. The term "work" is limited to the activity of employees in an undertaking. However, more and more equipment is being produced for use both at "work" and elsewhere (e.g. for domestic use and for use in firms employing no staff). Examples are mechanically operated clothes wringers, centrifuges, bread-cutting machines, atomizers, etc.

Moreover, the Safety Act did not enable regulations to be made covering the various safety devices and methods such as protective goggles and masks and fire-extinguishing apparatus.

Article 2 of the Dangerous Equipment Act states that dangerous equipment and safety devices (which will be defined in general administrative regulations) must fulfil certain conditions regarding construction, in the most liberal sense of the word. Consequently, article 3 states that such equipment and safety devices must be tested so that where dangerous equipment and safety devices are manufactured by series production methods, it will be sufficient to approve samples. Re-testing at intervals is considered necessary in cases where the state of maintenance of the equipment is of essential importance to its safety (for example, with lifts, loading and unloading equipment, pressure vessels, acetylene equipment, etc.). Supervision is simplified by the fact that all dangerous equipment and safety devices must have either a certificate or a stamp of approval.

Since the acceptance regulations must be given in detail, they are not specified in the Act. They will be laid down by general administrative regulations; this method will at the same time make it possible to avoid delay in taking advantage of particular technical advances.

The law also provides for the appointment of departments, institutions or undertakings for the inspection of such equipment and safety devices and to issue certificates of approval (article 5). The inspec-

[1] Dutch text of the Act in *Staatsblad of the Kingdom of the Netherlands* No. 104. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch text by the United Nations Secretariat.

tion costs are borne by the manufacturer or the person putting the equipment or safety device on the market.

Article 10 makes it an offence to possess, supply, use or expose for sale any dangerous equipment or safety device not covered by a valid certificate of approval or marked with a valid stamp of approval.

Article 12 provides for the appointment and competence of the inspecting officials. Finally, the Act contains provisions regarding appeals, responsibility and the obligation to provide information and penalties for infringement.

ACT CONTAINING REGULATIONS GOVERNING PENSIONS AND SAVINGS[1] (PENSION AND SAVINGS FUNDS ACT)

of 15 May 1952

SUMMARY

An attempt had already been made before the Second World War to lay down regulations governing pension and savings funds in private firms. More than a month before the occupation of the Netherlands in 1940, the Government submitted a bill for the statutory regulation of staff pension and savings funds to the Second Chamber of the States-General. Owing to the war, this bill was never dealt with.

After the liberation, the Government withdrew the original bill, and in 1950 a fresh bill on pension and savings funds was submitted to the Second Chamber after exhaustive consultation with experts in the fields of insurance and labour legislation. This bill, with some amendments, became law in 1952.

One of the most important articles is article 2, in which it is provided that an employer who gives any undertaking with regard to pension to persons connected with his firm, or who had done so before this article came into force, is obliged either to join an industrial pension fund (that is, a fund covering a complete branch of industry),[2] or to set up a company pension fund, which must comply with the new legal requirements for his firm, or to enter into insurance contracts with life insurance companies.

Savings funds are also subject to the Act (article 3), if the monies collected are intended to be paid out by way of provision for old age. Savings funds for other purposes are not subject to the Act.

The Act provides that monies intended for pension purposes should be regarded as separate property, not subject to any risk attaching to the firm itself. The rules and statutes of a fund and any amendments thereto require the approval of the Minister for Social Affairs and Public Health.

The composition of the managements of funds is laid down in article 6, and provisions relating to the rules and statutes of pension funds and savings funds are dealt with in article 7.

Article 8, in which regulations regarding the dismissal of an employee are laid down, is of great significance. These regulations may be summarized as follows:

1. No payment need be made to a person who has participated in a pension fund for less than one year on the termination of his participation.

2. A person who participates for more than one year but not more than five years is credited with his own contributions on termination of his participation, unless the fund makes more favourable provisions.

3. A person who has participated in a pension fund for more than five years receives on termination of his participation on the basis of his own and his employer's contributions a non-contributory claim, to an old age pension, the amount of which will depend on when the period required for pension entitlement was completed, and a non-contribution claim to a widow's pension, to be determined on a reasonable basis, if this is included in the undertaking.

4. The non-contributory claim specified in point 3 may be replaced by payment of a lump sum, if the claim represents only a small amount, or is due to a female participant who terminates her participation on marriage, or if participation is terminated on account of emigration.

The funds are supervised by the Insurance Board, which is also concerned with the Act on the compulsory participation in an industrial pension fund.[3]

The introduction of the Act is to take place gradually. The rules and statutes governing existing pension and savings funds will have to be brought into line with the provisions of the Act, and measures will have to be taken to place the schemes on a proper financial and actuarial basis if necessary. For this purpose the Act allows a time limit of twenty-five years in specified cases.

[1] Dutch text of the Act in *Staatsblad of the Kingdom of the Netherlands* No. 275. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1949*, pp. 150–151.

[3] *Ibid.*

TECHNICAL EDUCATION IN 1952[1]

SUMMARY

Three important developments occurred in 1952 in the field of technical education, using the term in its widest sense.

(*a*) Technical education was extended by the creation of a new kind of school, the technical extension school [uitgebreid technical school].

The object of this education is to train an intermediate class of junior administrative grades, such as draughtsmen, draughtsmen-constructors, assistant calculators or managerial assistants, for the various forms of industry. The training lays the foundations of the theoretical and practical technical knowledge required for such posts. Students are given further educational training in the firms which they enter.

(*b*) The apprenticeship system (i.e. the training of young workers in their employers' firms) has been extended. In addition to the national organizations responsible for the technical side of training, regional bodies have been set up which are primarily concerned with the social side of apprentice training (liaison with parents and apprentices in firms), paying due regard to differences in background.

(*c*) Courses have been instituted for girls in employment, one of the objects being to prepare girls aged 16 and over who work in industry for the tasks which they will later have to perform as women in the community. The girls receive four hours' general technical education a week and a special syllabus has been worked out for them. The course, which lasts two years, is held during working hours, and employers pay the girls during this time. In addition to the technical education there is an additional course covering general education and recreation which is subsidized by the educational school extension services department [Vorming Buiten Schoolverband] of the Ministry of Education, Art and Science, and is largely given during the evening. Some 10,000 girls were trained under this programme in 1952.

[1] Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation from the Dutch text by the United Nations Secretariat.

NEW ZEALAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION[2]

Administration Act 1952, No. 46

Consolidates and amends legislation relating to the estates of deceased persons and includes a restatement of the right of an illegitimate child and the mother of an illegitimate child to succeed in certain cases on intestacy.

Deaths by Accidents Compensation Act 1952, No. 35

Consolidates and amends certain enactments relating to actions for damages on behalf of the dependants of persons killed by accident.

Education Amendment Act 1952, No. 39

Contains provision for the enrolment at a separate school or in a special class of children suffering from cerebral palsy who have not attained school age.

Evidence Amendment Act 1952, No. 50

Lays down the rules subject to which a person charged with an offence, and the wife or husband of that person, as the case may be, are competent and/or compellable witnesses for the defence and the prosecution.

Justices of the Peace Amendment Act 1952, No. 44

Gives a general right of appeal to the Supreme Court from the decision of a justice and makes provision for the admission to bail of an appellant who is in custody under the conviction or order to which his appeal relates. If bail is refused the prisoner shall be given the same treatment as a prisoner before trial.

Licensing Amendment Act 1952, No. 79

Removes limitations on the right of women to hold licences for the sale of liquors and contains provisions controlling the supply of liquor to minors.

Maori Purposes Act 1952, No. 70

Repeals provisions of the Principal Act imposing limitations or restrictions on the acquisition, alienation or disposition of land by Maoris.

Married Women's Property Act 1952, No. 53

Confirms that a married woman has the same capacity as if she were unmarried, subject to the limitations that she cannot sue her husband in tort except for the protection and security of her own property and that, while they are living together, she cannot take criminal proceedings against him in respect of any property claimed by her. A husband is not liable for his wife's torts or antenuptial debts, and may take criminal proceedings against her in respect of any of his property in the same circumstances as she may take criminal proceedings against him in respect of any of her property.

Minimum Wage Amendment Act 1952, No. 18

Provides that minimum wage rates are to be prescribed by Order-in-Council having regard to any standard wage pronouncement or general order made by the Court of Arbitration which may be applicable. The purpose of this amendment is to obviate the necessity which previously existed, of enacting legislation for any change in the minimum wage rates.

Summary Jurisdiction Act 1952, No. 41

Extends the jurisdiction of magistrates and justices of the peace in relation to the summary trial of indictable offences and makes better provision for its exercise. The right to claim trial by jury is to be given by the court to persons whose offence, on indictment, would be punishable by imprisonment for a term exceeding three months. The act provides the maximum penalty to which a person summarily convicted under the Act may be sentenced and safeguards him against being twice punished for the same offence.

Workers' Compensation Amendment Act 1952, No. 17

(*a*) Increases the maximum weekly payments of compensation which may be awarded and provides that compensation for loss of earning power resulting from partial incapacity is to be based on the worker's weekly earnings increased or reduced in accordance with any increases or reductions in wage rates occurring during the period of the payments, instead of being based, as previously, on his earnings at the time of the accident.

(*b*) Makes provision for the apportionment or disposal of any sum received in compensation for the death of a worker.

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[1]This survey was prepared by the New Zealand Government.

[2]The Acts summarized in this part are published in *New Zealand Statutes 1952*, vols. I and II. The regulations are published in *Statutory Regulations 1952*.

II. REGULATIONS

Agricultural Workers Wages Order, 1952, No. 203

Agricultural Workers (Farms and Stations) Extension Order, 1952, No. 206

Agricultural Workers (Orchardists) Extension Order, 1952, No. 204

Agricultural Workers (Tobacco Growers) Extension Order, 1952, No. 205

Increase the wages of various types of agricultural workers and/or make changes in their conditions of work.

Hospital Employment Regulations 1952, No. 86

Hospital Employment (Dental Officers) Regulations 1952, No. 87

Hospital Employment (Dietitians) Regulations 1952, No. 88

Hospital Employment (Engineers) Regulations 1952, No. 89

Hospital Employment (Laboratory Workers) Regulations 1952, No. 90

Hospital Employment (Male Nurses) Regulations 1952, No. 91

Hospital Employment (Medical Officers) Regulations 1952, No. 92

Hospital Employment (Nurses) Regulations 1952, No. 93

Hospital Employment (Occupational Therapists) Regulations 1952, No. 94

Hospital Employment (Orthopaedic Technicians) Regulations 1952, No. 95

Hospital Employment (Physiotherapists) Regulations 1952, No. 96

Hospital Employment (Secretarial and Clerical Officers) Regulations 1952, No. 97

Hospital Employment (X-ray Workers) Regulations 1952, No. 98

Lay down the conditions and rates of remuneration for workers in hospitals.

Industrial Conciliation and Arbitration Amendment Regulations 1952, No. 100

These regulations are complementary to the Industrial Conciliation and Arbitration Amendment Act 1951,[1] and prescribe the procedure to be followed:

1. In appealing against a refusal of the Registrar of Industrial Unions to record a rule on the ground that it is unreasonable or oppressive.

2. In applying for exemption from union membership on religious grounds.

3. In making application for the total or partial exemption from an amendment made to an award at the request of the original parties.

4. In giving notice to the parties of the making of awards etc. by deputy judges and stipendiary magistrates.

5. In applying for an inquiry into an alleged irregularity in connexion with an election for an office in a union or a branch of a union.

Public Service Salary Order 1952, No. 224

Increases the salaries payable to officers of the Professional Division and the Clerical Division of the Public Service.

Taranaki Maori Trust Board Regulations 1931, Amendment No. 5, 1952, No. 132

Gives wider representation to the Taranaki tribes beneficially interested in the compensation monies paid annually to the Taranaki Maori Trust Board in settlement of claims arising out of confiscations.

Tokelau Islands Departure Regulations 1952, No. 21

Require residents of the Tokelau Islands over the age of twelve years to obtain a permit from the administrator before departing from the islands.

Workers' Compensation Rules 1939, Amendment No. 1, 1952, No. 115

Modify the Workers' Compensation Rules 1939 in order to give effect to the Crown Proceedings Act 1950 for the purposes of actions involving the crown.

III. DECISIONS OF NATIONAL COURTS

Miller v. *Low* (1952)[1]

The case concerned the custody of two children whose mother had been divorced by the father on the grounds of adultery and had later married the co-respondent. The Court of Appeal awarded the mother the custody of the children on the grounds that, in all the circumstances of the case, the factor which overrode every other consideration and which was a matter to be regarded as crucial was the importance to the children of their mother's affection and care. It was held that, where a case can be determined solely by reference to the substantial interests of the children, the rival claims of parents based on considerations of their guilt or innocence are irrelevant, except in so far as they bear on the interests of the children.

Connet v. *Connet* (1952)[2]

The court, in deciding the question of the custody of a child, must regard the welfare of the child as the

[1] See *Yearbook on Human Rights for 1951*, pp. 262-264.

[1] *New Zealand Law Reports 1952*, p. 575.

[2] *Ibid.*, p. 304.

first and paramount consideration. There is a legal presumption in favour of the innocent parent, but effect will not be given to that parent's claim if it be adverse to the welfare of the child.

Keith v. *Hadfield (1952)*[1]

On an application for apportionment of damages recovered under the Deaths by Accidents Compensation Act, it was held that the effect of legislation in force in New Zealand was to entitle the illegitimate child of the deceased's widow, who lived with the deceased's family and was wholly dependent on him, to share in such damages.

[1] *New Zealand Law Reports 1952*, p. 80.

IV. INTERNATIONAL INSTRUMENTS

The Minimum Wage Fixing Machinery (Agriculture) Convention 1951, adopted by the International Labour Conference at Geneva on 28 June 1951

New Zealand ratification deposited on 1 July 1952. In force for New Zealand and the Cook Islands (including Niue) on 23 August 1953.

The Right of Association (Non-metropolitan Territories) Convention 1947, adopted by the International Labour Conference at Geneva on 11 July 1947

New Zealand ratification deposited on 1 July 1952. In force for New Zealand and the Cook Islands (including Niue) on 1 July 1953.

NICARAGUA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

I. LEGISLATION

On 10 March 1952, regulation No. 491, on elections in Indian communities, was issued. Extracts from this regulation are published in this *Yearbook.*

Law No. 53, of 6 November 1952, published in *La Gaceta* No. 257, of 7 November 1952, extended the general state of economic emergency, which had been proclaimed by legislative decree No. 22 of 8 November 1950 and extended it for one year by decree No. 24 of 11 October 1951, for another year from the date of expiration of the last mentioned decree. The guarantees of articles 85 and 123 of the Constitution, which were declared suspended by legislative decree No. 22, of 8 November 1950, therefore remained in suspension. These two articles read as follows:

"*Art. 85.* The State recognizes the unrestricted freedom of commerce, contract and industry. The conditions for the exercise of this freedom and the safeguards accorded shall be prescribed by law.

"*Art. 123.* No law shall have a retroactive effect, except in favour of the offender in a criminal case."

The executive power is authorized to declare as terminated the general state of economic emergency or the suspension of certain constitutional guarantees before the expiration of this law.

[1] See *Yearbook on Human Rights for 1950*, pp. 429–431.

II. INTERNATIONAL INSTRUMENTS

By decree of 2 October 1951, the President of the Republic ratified the Inter-American Radio Agreement and the resolutions and recommendations of region 2 of the International Telecommunication Union, signed at the Inter-American Radio Conference on 9 July 1949 in Washington.[1] This decree is published in *La Gaceta* No. 77, of 3 April 1952.

By decree of 26 April 1952, published in *La Gaceta* No. 152, of 7 July 1952, the President of the Republic approved the four Geneva conventions[2] signed by the delegate of Nicaragua on 12 August 1949, and submitted them to the National Congress for approval. The National Congress approved these conventions and the above-mentioned decree in resolution No. 17, of 9 July 1952 (Chamber of Deputies) and 18 July 1952 (Senate), published in *La Gaceta* No. 180, of 8 August 1952. The President thereupon ratified these conventions by decree of 24 July 1952, published in *La Gaceta* No. 195, of 26 August 1952.

On 26 January 1952, the National Congress adopted a law providing for ratification of the Convention on Extradition, signed at the Seventh Inter-American Conference on 26 December 1933 and approved by decree of the executive power of 15 November 1934. This law was published in *La Gaceta* No. 285, of 12 December 1952. By decree of 8 September 1952, published in the same issue of *La Gaceta*, the President of the Republic ratified the convention.

[2] *Idem for 1949*, pp. 299–309.

REGULATION No. 491, CONCERNING ELECTIONS IN INDIAN COMMUNITIES[1]

of 10 March 1952

Art. 1. Every Indian community shall elect a council to administer the communal property.

Art. 2. Not less than twenty days before the date of the election, the mayor of each municipality shall, by means of notice issued through the competent court, advise the Indian communities within his jurisdiction that an election will be held; by the

[1] Spanish text in *La Gaceta* No. 57, of 11 March 1952. English translation from the Spanish text by the United Nations Secretariat. By article 4 of the Indian Communities Act, of 3 June 1914, the Congress authorized the executive power to issue regulations governing the election of councils to administer the property of the Indian communities. No such regulations were issued before 1952 and, as stated in the preamble to this regulation, the councils were either not elected or were elected informally without regard to statutory provisions and could not be considered as representing the opinion of the majority in the communities.

same procedure, he shall summon the prominent members of each community to appear in his office where he shall explain to them the purport of this regulation.

Art. 3. Nominations of candidates for election to the council shall be submitted not less than fifteen days before the date of the election. The said nominations shall be submitted in writing to the competent mayor. The election may not be contested by more than two parties.

The offices for which candidates shall be nominated for election to the council shall be those of president, vice-president, secretary and two members . . .

Art. 4. Upon receipt of the official lists of candidates the mayor shall declare them to be duly admitted and shall order the printing of an equal number of ballot papers for each party; if the community in question is not very large the ballot papers may be typewritten. The mayor shall sign and stamp with his official seal each of the ballot papers, which shall remain under his supervision and control.

[Articles 5 to 8 deal with the directorate which is to supervise the elections. Each directorate consists of three members (persons who have reached the age of majority and are able to read and write); the mayor selects two of them from two panels of ten persons presented by the parties, one member for each party, and the third member, who acts as President, is selected from a third list presented for each community by the political chief.]

The Electors

Art. 9. Votes may be cast only by persons who are over the age of twenty-one years, or who are over the age of eighteen years and can read and write. Any dispute covering the age of an elector shall be resolved by a majority decision of the Directorate.

. . .

NORWAY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. CONSTITUTION

Several articles of the Constitution of 17 May 1814 were amended during the year 1952.

An amendment of 28 June 1952 to section 92, published in *Norsk Lovtidend* I, No. 26, of 15 July 1952, provides that men and women shall have equal rights to be appointed to posts in the civil service. This modification is only of formal importance, since, with the exception of ecclesiastical posts, equal rights of men and women in this field had been established since 1938 (Act of 24 June 1938, No. 5, concerning access of women to the civil service).

The present text of article 92 of the Constitution of Norway reads as follows:

"*Art. 92.* Only Norwegian citizens, *men or women*[2] who speak the Norwegian language, shall be appointed to public office in the State, provided:

"(*a*) They were born in the kingdom of parents who at that time were Norwegian nationals, or

"(*b*) They were born abroad of Norwegian parents who at that time were not nationals of another State, or

"(*c*) They have resided thereafter for ten years in the kingdom, or

"(*d*) They have been naturalized by the *Storting*.

Persons not fulfilling these requirements may, however, be appointed as teachers at universities or other institutions of higher education, as physicians and as consuls abroad.

["*No one may be appointed as a chief civil or ecclesiastical official before having attained thirty years of age, or as mayor, judge of a lower court or sub-prefect before having attained twenty-five years of age.*

"*The extent to which women meeting the requirements prescribed for men by the Constitution may be appointed to public office shall be determined by law.*"][3]

An amendment of 26 November 1952, published in *Norsk Lovtidend* I, No. 49, of 27 December 1952, provided for the abrogation of article 57, paragraph 2, and for certain other modifications of the Constitution. This article now reads as follows:

"*Art. 57.* (2) The number of representatives to be elected as members of the *Storting* shall be fixed at one hundred and fifty."

["*The number of representatives in rural constituencies and the number of representatives in urban constituencies shall always be in the proportion of two to one.*"][3]

Article 61 was also amended, and now reads as follows:

"*Art. 61.* No one may be elected as a representative unless he has attained twenty-one years of age, has resided in the kingdom for ten years, and is entitled to vote [*in the district from which he is elected*"].[4]

A consequential amendment to article 63, of only formal importance, became necessary because of the amendment to article 61.

II. LEGISLATION

Certain changes have been made in the legislation concerning social security. The right to social security was extended by the following laws:

Act of 28 June 1952 amending the provisional Act of 16 July 1936 concerning assistance to blind and disabled persons;[5]

Act of 28 June 1952 amending the Act of 16 July 1936 concerning old age pensions[5] (this Act also grants to foreign refugees the right to old age pensions, subject to certain conditions);

Act of 28 June 1952 amending the Act of 28 July 1949 concerning the State Pension Fund;[5]

Act of 28 November 1952 amending the Act of 3 December 1948 concerning pensions for seamen.[6]

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[1] Information received through the courtesy of the Royal Department of Justice and Police.

[2] Words in italics added in 1952.

[3] Words in italics and between brackets abrogated in 1952.

[4] Words in italics and between brackets abrogated in 1952. Paragraph 2 of this article, which provided that former Prime Ministers or Ministers could be elected from constituencies in which they were not entitled to vote, was likewise abrogated, as the requirement of residence in the constituency was abolished for each candidate by the change of paragraph 1.

[5] *Norsk Lovtidend* I, No. 26, of 15 July 1952.

[6] *Ibid.*, No. 47, of 15 December 1952.

III. JUDICIAL DECISION

By a decision of the Supreme Court of 13 December 1952 a film company was found to be unauthorized to show a film in which a living model was used. The court found that a showing of the film would exceed the limit of proper conduct and would conflict with a person's right to legal protection. A summary of the decision is published in this *Yearbook*.

IV. INTERNATIONAL AGREEMENTS

Norway did not enter into international agreements concerning human rights during 1952, except such as were concluded under the auspices of the United Nations and the Council of Europe.[1]

[1]See pp. 373–376 and 409 of this *Yearbook*.

JUDICIAL DECISION

FILM BASED ON A MURDER INCLUDING DISTINGUISHING CHARACTERISTICS—MURDERER RELEASED ON PAROLE AFTER TWENTY YEARS OF IMPRISONMENT—SHOWING OF FILM PROHIBITED—GENERAL LEGAL PROTECTION OF THE PERSON—RIGHT NOT TO BE HARMED UNNECESSARILY—RIGHT TO PRIVACY—INTERESTS OF THE FILM COMPANY—LIMITATION OF "ARTISTIC FREEDOM"

A. *v.* NORSK FILM A/S

Supreme Court[1]

13 December 1952

The facts. Mr. A., who had been sentenced to life imprisonment for the murder of a sheriff (bailiff) in 1926 and released on parole in 1946, instituted proceedings against a film company (Norsk Film A/S) in the City Court of Oslo to prevent the defendant from showing a film called *Two Suspicious Persons*, which, he contended, was based on the sheriff's murder and the murderers' flight. The plaintiff, who since his release has married and has two children, further maintained that showing the film would stir up public resentment against him and his family and consequently violate his right to privacy.

The plaintiff obtained a majority decision in his favour in the City Court, against which the defendant appealed to the Supreme Court.

Held: That the decision of the City Court should be affirmed.

Justice Quigstad, in delivering an opinion which was supported by the majority of the court, said:

". . . I have reached the same conclusion as the City Court and can, in the main, support the findings of the majority of that court.

"Thus, I agree with the description given by the City Court of the film's plot and this plot's close similarity to the sheriff's murder in 1926 and the flight and apprehension of the murderers. I can further support the conclusion drawn from this by the City Court when it stated that 'in spite of the fact that it is not the aim or purpose of the film to give an account of the sheriff's murder or the tracking down of the criminals which took place at that time, the film has so many similarities with the events surrounding the sheriff's murder in 1926 that there can be no doubt that it will be considered by the public as a film about the sheriff's murderers' flight, both on the basis of its contents and on the basis of the comments already contained in advance notices of the film in the newspapers and which can be expected in connexion with the film review, and therefore must be said to make use of a "living model".'

"Even though, according to the appellant, the film's aim has not been to describe the murderers and their flight, I have no doubt that this has been the result, and that the showing of the film will arouse particular interest with the public.

"A number of statements have been presented to the Court expressing very different opinions about the moral and artistic value of the film. However, since, in my opinion, the artistic and moral qualities are inconclusive for the outcome of this case, I find it unnecessary to deal further with these questions.

"The plaintiff has contended that the showing of the film would be contrary to articles 246, 247 and 390 of the Penal Code. I consider it unnecessary to

[1]Decision published in *Norsk Retstidende* 1952, p. 1212. Summary prepared by the United Nations Secretariat.

decide whether or not the case concerns these provisions of the Penal Code. I am satisfied, as was the City Court, that Norwegian law contains a general legal protection of the person, and that the respondent has the right, within the framework of this protection, to oppose the showing of the film in question . . .

"The question of the extent of this protection is more complicated. I feel, however, that it goes beyond the protection accorded by articles 246, 247 and 390 of the Penal Code, the provisions of article 72 of the Copyright Act and articles 3 and 6 of the Photography Act; the legal provisions referred to above may be considered only as special laws enacted within the framework of the general legal protection of the person.

"In order to clarify the question of the legal protection of the person, treatises on foreign law have been presented to the Supreme Court in a greater number than to the City Court."

Justice Quigstad then cited Swiss, Danish, and United States law, stating with regard to the latter that "the criminal also in that country regains a right to privacy when, after having served the sentence for his crime, he again finds his place in society".

"In order to decide whether, in the present case, the encroachment of the legal protection of the person can be called illegal, it is necessary to undertake a comparison of interests, and I shall first consider the effects which a showing of the film *Two Suspicious Persons* might have on the respondent.

"It is to be expected that the identity of the respondent with the sheriff's murderer Madsen will become known in wider circles than before. The film reaches a far greater number of people than for instance a printed publication, and its presentation form is particularly vivid. It will be seen, debated, and reviewed by newspapers. Details of the real events are to be expected to be repeated in the press and illustrated magazines, and, although the respondent has changed his name, it is unavoidable that his identity will be revealed to persons to whom it was previously unknown. Bringing the judgement and its characterization of the respondent again to public attention will lead to reflections unfavourable to him also amongst persons who formerly knew his connexion with the sheriff's murder, but in whose minds this knowledge has faded. The veil of oblivion which is of considerable importance to the respondent, his wife and his children now and in the future will be lifted to a great extent and painful incidents may arise from people's curiosity and inconsiderateness, which cannot be estimated in advance.

"In addition, the knowledge of being the object of attention and talk in connexion with events that the respondent most of all would like to forget, will necessarily cause psychical sufferings.

"I am not thinking here of the serious mental crisis which, according to information presented in the present case, he underwent in prison, but rather of the universal experience that the majority of those who have been punished are particularly vulnerable and sensitive; the living conditions of released convicts are, both objectively and subjectively, so difficult and their social position so shaky, that human as well as social considerations require that they be given all possible support. In the field of criminology, it is therefore recognized as the duty of society to provide conditions which will enable the released criminal to become again a member of society and to support himself by honest means. It is a part of these efforts to avoid any unnecessary publicity about the past of the criminal. In this connexion, the gradual reduction of the harmful effects of the publicity on the criminal, which the passing of time brings about must be taken into consideration. During the prosecution and for a certain time after the conviction, the criminal is the object of legitimate attention caused by himself, and a more or less widespread mentioning of his crime will not exert any substantial influence on his social position. The situation is different after he has served his sentence and, as a released convict, has to pass through the psychologically and socially difficult process of finding a new place in society. Here, the veil of oblivion of the past plays a decisive role for him, his dependants and his surroundings and this situation will normally continue until so much time has passed that the publicity no longer can cause any major harm. I add in this connexion that the respondent has refused any form of compensation, but all the time has maintained his protest against the showing of the film.

"When I weigh the company's interest in having the film shown against the consideration to be given to the respondent, it should be remembered that the literary, stage or film art has a legitimate interest in gathering material from real events and persons, and that the artistic treatment of this material requires what is normally called 'artistic freedom'. However, as a principle, this freedom, just as the freedoms to speak and print, is not without limitation. All these freedoms must be restricted when they are in conflict with other equally important interests of society, or with rights to which everyone in a society is entitled under law—including the right not to be harmed unnecessarily.

"To me the following question arises: what is the purpose of the appellant in showing the film? Is it necessary, in order to fulfil this purpose, to have the film follow closely the real events?

"Concerning the first part, the president of the film company has explained, *inter alia:* 'The film will describe how this young boy gradually made Ekström his hero and how he finally followed this brutal gangster on his burglary raids,' and further: 'We

believed that the film would have a strong moral and instructive influence and that it would have an effect on young people who would see how false and dangerous it was to make an anti-social person like Ekström their hero.'

"But was it necessary for this purpose or for the artistic treatment of the material, to include exactly those distinguishing characteristics which in the public's memory were most strongly connected with the real events? It seems to me that the answer here must be in the negative. In addition, the company's producer knew that the respondent was still alive, but did not attach the slightest importance to it; the decision to produce the film was made by the company's board of directors in July 1949, and the production, which lasted until the following year, started only in September. About 22 September 1949, the company's president was informed that objections had been raised against the production, and approximately at the same time letters of protests were received by the producer from a number of organizations in the respondent's community.

"On 27 August, the respondent already protested to the Department of Justice, on the occasion of a news item concerning the intended production, and on 6 September, his parole officer directed a similar communication to the Department of Justice. In a meeting of the film company's board of directors, on 13 October 1949, during which the protests were considered, it was decided, however, to continue the production.

"I find that the film company, after having been informed of the respondent's protests, should at least have taken steps to change the film in order to eliminate those similarities in the plot and dialogue which particularly revealed its relationship with the sheriff's murder and the part played by the respondent in this drama, even though this would have increased the costs. I cannot agree that the film's above-mentioned objective and the artistic treatment of the subject would have placed decisive obstacles in the way of such a revision.

"After weighing the interests of the parties involved, I therefore reach the conclusion that the respondent's interests must be given decisive weight, and that a showing of the film concerned must be considered as unreasonable and conflicting with a normal sense of justice. In my opinion, the appellant's behaviour in this case shows a lack of understanding, respect and consideration, which exceeds proper limits.

"Since the case concerns a question for the solution of which previous judgements give little guidance, I find that court costs should not be imposed."

PAKISTAN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. *Suffrage*

(*a*) Constitutional reforms were introduced in the State of Bhawalpur, which had acceded to Pakistan. For the first time in the history of this State, general elections were held on the basis of universal adult franchise to its Legislative Assembly, and a popular Ministry was installed in office.

(*b*) The amendment of the Government of India Act, 1935, as modified and adapted by the Pakistan (Provisional Constitution) Order, 1947, was continued in 1952 in order to give effect in the provinces to adult franchise, increased allocation of seats, reservation of seats for women and representation of minorities in the provincial legislatures. Section 61 of this Act provides that the composition of the Legislative Assembly of a province shall be such as is specified in relation to that province in the fifth schedule. The fifth and sixth schedules deal respectively with composition of provincial legislatures and provisions concerning franchise. The provisions of these schedules relating to the provinces of the Punjab, the North-West Frontier Province and Sind were amended in 1950 and 1951.[2] The Government of India (Third Amendment) Act, 1952,[3] *inter alia*, amends the provisions of these schedules relating to the province of East Bengal. This Amendment Act increases the representation in the Legislative Assembly of East Bengal from 171 to 309 seats. Of these seats, 30 are general, 36 schedule caste, 228 Muslim, 1 Pakistani Christian and 2 Buddhist, and 12 seats are reserved for women. It also introduces adult franchise for election of members to the Legislative Assembly of the Province of East Bengal.

The table of seats appended to the fifth schedule and certain relevant texts of the sixth schedule as amended in 1952 are reproduced in this *Yearbook*.

2. *Freedom of Person*

A person cannot be deprived of his freedom unless he has been arrested and convicted of an offence by a court of law. If convicted, he may submit petitions for clemency to the Provincial Government or to the Governor-General. Emergency legislation of a temporary character provides for preventive detention of persons whose activities are prejudicial to the security of the State. Laws of this type are the Safety and Preventive Detention Acts of the Provincial Governments and the Central Government's Security of Pakistan Act, 1952. In this Act, however, the following safeguards have been provided against arbitrary action:

(*a*) Every person detained under the Act is informed about the reasons of his detention in order to enable him to make a representation;

(*b*) The case against the *detenu*, together with his representation, is placed before an Advisory Board consisting of persons who are or have been High Court judges or are qualified to be such;

(*c*) Under the Act, the Government is obliged to rewiew the case of each *detenu* every six months and to communicate the result of the review to the *detenu*.

Moreover, the *detenu* has the right to make a *habeas corpus* petition to a High Court against his detention.

The text of the Security of Pakistan Act, 1952, is reproduced in this *Yearbook*.

3. *Freedom of Association*

On 26 May 1952, Pakistan ratified the ILO Convention concerning the application of the principles of the right to organize and to bargain collectively.

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[1] The information on which this note is based was received through the courtesy of the Government of Pakistan.

[2] See *Yearbook on Human Rights for 1951*, pp. 271–275.

[3] English text of the Act in *Gazette of Pakistan*, Extraordinary, of 26 April 1952, pp. 609–612.

GOVERNMENT OF INDIA (THIRD AMENDMENT) ACT, 1952[1]

FIFTH SCHEDULE

COMPOSITION OF PROVINCIAL LEGISLATURES

TABLE OF SEATS[a]

Provincial Legislative Assemblies

Province	Total seats	General seats[b]	Scheduled caste seats	Muslim seats	Pakistani Christian seats (or, in the Punjab, Pakistani Christian and Anglo-Pakistani seats)	Buddhist seats	University seats	Seats for women		
								General	Muslim	Scheduled caste
1	2	3	4	5	6	7	8	9	10	11
East Bengal	309	30	36	228	1	2	...	1	9	2
The Punjab[c]	197	1	...	186	4	...	1	...	5	...
North-West Frontier[c] Province	85	1	...	82	...	...	...	...	2	...
Sind[c]	111	10	...	98	...	...	...	...	3	...

[a] The table of seats was substituted by the Government of India (Third Amendment) Act, 1952, section 2 (*j*). This Act gave effect to the new allocation of seats in the Legislature of East Bengal. See also the preceding Note on the development of human rights, par. 1b.

[b] "'General seat' means, in Sind and the North-West Frontier Province a seat other than a Muslim seat, in the Punjab a seat other than a Muslim or a Pakistani Christian and Anglo-Pakistani seat, and in East Bengal a seat other than a Muslim, a Pakistani Christian, a Buddhist or a Scheduled Caste seat": Government of India (Third Amendment) Act, 1952, section 2 (h) (ii).

[c] See *Yearbook on Human Rights for 1951*, pp. 271—275.

SIXTH SCHEDULE

PROVISIONS AS TO FRANCHISE

PART IV.—EAST BENGAL

General Requirement as to Residence

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency.

(2) In this paragraph "a place of residence" means a place where a person ordinarily and actually resides during the greater part of the year.

Qualification dependent on Age[2]

2 (*as substituted in 1952*). Subject to the provisions of part 1[3] of this schedule, a person shall be qualified

[1] English text of the Act in *Gazette of Pakistan*, Extraordinary, of 26 April 1952, pp. 609-612.

[2] The former heading (which was "Qualifications dependent on Taxation") and the text of paragraph 2 substituted by the Government of India (Third Amendment) Act, 1952, section 3 (2) (*a*). English text of the Act in *Gazette of Pakistan*, Extraordinary, of 26 April 1952, pp. 609-612.

[3] Part I deals with general provisions as to franchise.

to be included in the electoral roll of a territorial constituency if he has attained the age of twenty-one years.

[Former paragraphs 3–14, dealing with qualifications dependent on rights in property, etc., educational qualification, qualification by reason of service in His Majesty's forces, additional qualification for women, application necessary for enrolment in certain cases, special provisions as to Muhammadan women's constituency, interpretation, etc., were omitted by the Government of India (Third Amendment) Act, 1952, section 3(2)(*b*).]

ACT No. XXXV OF 1952[1]

AN ACT TO PROVIDE FOR SPECIAL MEASURES TO DEAL WITH PERSONS ACTING IN A MANNER PREJUDICIAL TO THE DEFENCE, EXTERNAL AFFAIRS AND SECURITY OF PAKISTAN, OR THE MAINTENANCE OF SUPPLIES AND SERVICES ESSENTIAL FOR THE COMMUNITY, OR FOR THE MAINTENANCE OF PUBLIC ORDER

1. (1) This Act may be called the Security of Pakistan Act, 1952.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once, and shall remain in force for three years from the date of its commencement.

2. In this Act, unless there is anything repugnant in the subject or context

(1) "The Code" means the Code of Criminal Procedure, 1898;

(2) "Document" includes gramophone records, sound tracks and any other articles on which sounds have been recorded with a view to their subsequent reproduction.

3. (1) The central Government, if satisfied with respect to any particular person that, with a view to preventing him from acting in any manner prejudicial to the defence or the external affairs or the security of Pakistan, or any part thereof or to the maintenance of supplies and services essential to the community, or for the maintenance of public order, it is necessary so to do, may make an order

(*a*) Directing such person to remove himself from Pakistan in such manner, before such time, and by such route, as may be specified in the order;

(*b*) Directing that he be detained;

(*c*) Directing that, except in so far as may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place as may be specified in the order;

(*d*) Requiring him to reside or remain in such place or within such area in Pakistan as may be specified in the order, and if he is not already there, to proceed to that place or area within such time as may be specified in the order;

(*e*) Requiring him to notify his movements or to report himself or both to notify his movements and report himself in such manner, at such times, and to such authority or person, as may be specified in the order;

(*f*) Requiring him to conduct himself in such manner, abstain from such acts, or take such order with any property in his possession or under his control, as may be specified in the order;

(*g*) Imposing upon him such restrictions as may be specified in the order in respect of his employment or business;

(*h*) Prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order:

Provided that no order shall be made under clause (*a*) of this sub-section in respect of any person who is or is deemed to be a citizen of Pakistan under the law for the time being in force.

(2) An order made under sub-section (1) may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due performance of, or as an alternative to the enforcement of, such restrictions or conditions made in the order as may be specified in the order.

(3) If any person is in any area or place in contravention of an order made under sub-section (1), or fails to leave any area or place in accordance with the requirements of such an order, then, without prejudice to the provisions of sub-section (5) of this section, he may be removed from such area or place

[1] English text in *Gazette of Pakistan*, Extraordinary, of 6 May 1952. See also the Note on the development of human rights, p. 210 of this *Yearbook*.

by any police officer or by any person authorized by the central Government in this behalf.

(4) So long as there is in force in respect of any person an order under clause (*b*) of sub-section (1) directing that he be detained, he shall be liable to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment of offences and breaches of discipline, as the central Government may from time to time specify.

(5) If the central or the provincial Government has reason to believe that a person in respect of whom an order as aforesaid has been made directing that he be detained, has absconded or is concealing himself so that such order cannot be executed, that government may

(*a*) Make a report in writing to a magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the magistrate;

(*b*) By order notified in the *Official Gazette* direct the said person to appear before such officer, at such place, and within such period, as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(6) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and if such person has entered into a bond in pursuance of the provisions of sub-section (2), his bond shall be forfeited.

(7) An order made under this section shall remain in force for such period as may be specified in the order or, if no period is specified, until revoked by the authority making the order:

Provided that a revocation shall not prevent the making under this section of a fresh order to the same effect as the order revoked.

4. (1) The central Government or the provincial government may, by order, direct that any person in respect of whom an order has been made under sub-section (1) of section 3 shall

(*a*) Allow himself to be photographed and allow his finger and thumb impressions to be taken by an officer specified in the order,

(*b*) Furnish specimens of his handwriting and signature, and

(*c*) Attend at such time and place before such authority or person as may be specified in the order for all or any of the purposes mentioned in this sub-section.

(2) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

5. (1) The central Government shall, whenever necessary, constitute one or more advisory boards for the purposes of this Act.

(2) Every such board shall consist of two persons, who are, or have been, or are qualified to be judges of a high court and such persons shall be appointed by the central Government.

6. In every case where a detention order has been made under clause (*b*) of sub-section (1) of section 3, and where before the commencement of this Act an order has been made in respect of any person under clause (*b*) of sub-section (1) of section (3) of the Pakistan Public Safety Ordinance, 1952, the authority making the order shall, within one month of the date of detention, communicate to the person affected thereby the grounds on which the order has been made to enable him to make if he wishes a representation in writing against the order, and it shall be the duty of such authority to inform such person of his right of making such representation and to afford him the earliest opportunity of doing so:

Provided that nothing in this section shall require the authority to disclose facts which it considers to be against the public interest to disclose.

7. In every case where a detention order has been made under clause (*b*) of sub-section (1) of section 3, or where an order has been passed under section 10, 11 or 12, the authority making the order shall, within three months of the issue of the order, place before the advisory board constituted by the central Government under section 5 the grounds on which the order has been made and the representation, if any, made by the person or persons affected by the order.

8. (1) The advisory board shall, after considering the materials placed before it and, if necessary, after calling for such further information from the Government or from any person concerned or affected, as it may deem necessary, submit its report to the central Government.

(2) The report of the advisory board shall specify in a separate part thereof the opinion of the advisory board as to whether or not there is sufficient cause for the passing of the order, and except for that part

of the report in which such opinion of the advisory board is specified the report shall be confidential.

(3) A person against whom an order under clause (*b*) of sub-section (1) of section 3 or under section 10, 11, or 12 has been made or who is affected by such an order, shall not be required or permitted to attend in person or to appear by any legal representative before the advisory board, or to produce any witness before the advisory board.

(4) On receipt of the report of the advisory board, the central Government shall consider the same and shall pass such order thereon as appears to the central Government just and proper:

Provided that the central Government shall review all such orders every six months from the date of the order, unless revoked earlier, and shall, in the case of an order under clause (*b*) of sub-section (1) of section 3, inform the persons affected by the order of the result of the review.

9. Any person detained with a view to preventing him from acting in any manner prejudicial to the defence or external affairs or the security of Pakistan, or any part thereof may be detained without obtaining the opinion of an advisory board for a period not exceeding one year from the date of his detention.

10. (1) If the central Government is satisfied with respect to any association that there is danger that the association may act in a manner or be used for purposes prejudicial to the defence or external affairs or the security of Pakistan or any part thereof or to the maintenance of supplies and services essential to the community, or to the maintenance of public order, it may, by written or notified order, direct the winding up of the association and thereupon the association shall be disbanded and wound up.

(2) Where in pursuance of sub-section (1) an association has been directed to be wound up, the central or the provincial Government may, by written order, authorize any officer to take possession of any land or building or any other property or documents belonging to or in the custody of the association, for such period as may be specified in the order.

(3) If the central Government is satisfied that any association is engaged, in succession to a former association disbanded and wound up under sub-section (1), in activities substantially similar to those carried on by that former association, it may, by written or notified order, direct that this section shall apply to the association so engaged.

(4) No person shall

(*a*) Manage or assist in managing any association to which this section applies;

(*b*) Promote or assist in promoting a meeting of any members of such an association, or attend any such meeting in any capacity;

(*c*) Publish any notice or advertisement relating to any such meeting;

(*d*) Invite persons to support such an association; or

(*e*) Otherwise in any way assist the operations of such an association.

(5) The provisions of sections 17A to 17E of the Criminal Law Amendment Act, 1908, shall apply in relation to an association to which this section applies, as they apply in relation to an unlawful association:

Provided that all powers and functions exercisable by the provincial government under the said sections as so applied shall be deemed to be exercisable by the central Government.

(6) If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

11. (1) Where in the opinion of the central Government any document made, printed or published contains any news, report or information likely to endanger the defence or external affairs or security of Pakistan or any part thereof or maintenance of supplies and services essential to the community, or the maintenance of public order, it may, by written order

(*a*) Require the editor, printer, publisher or person in possession of such document to inform the authority specified in the order of the name and address of any person concerned in the supply and communication of such news, report or information, as the case may be;

(*b*) Require the delivery to an authority specified in the order of any document connected with the news, report or information referred to in clause (*a*);

(*c*) Prohibit the further publication of such news, report or information, and the sale and distribution of such document;

(*d*) Declare such document and every copy or translation thereof or extract therefrom to be forfeited to Government;

(2) Where in pursuance of clause (*b*) of sub-section (1) any document is required to be delivered to a specified authority, that authority or any police-officer may enter upon and search any premises whereon or wherein such document or any copy thereof is or is believed to be.

(3) Where in pursuance of clause (*d*) of sub-section (1) any document has been declared to be

forfeited to Government, any police officer may seize any copy thereof wherever found in Pakistan, and any magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search any premises whereon or wherein such document, or any copy thereof, is or is believed to be.

12. (1) The central Government or any authority empowered by it in this behalf, may if it considers necessary or expedient

(i) By order addressed to a printer, publisher or editor or printers, publishers and editors generally

(*a*) Require that all matter or any matter relating to a particular subject or class of subjects, shall, before being published in any document or class of documents, be submitted for scrutiny to an authority specified in the order;

(*b*) Prohibit or regulate the making or publishing of any document or class of documents, or of any matter relating to a particular subject or class of subjects or the use of any press as defined in the Press (Emergency Powers) Act, 1931;

(*c*) Prohibit for a specified period[1] the publication of any newspaper, periodical, leaflet or other publication; or

(ii) Refuse to permit any person to make a declaration under sub-section (2) of section 5 of the Press and Registration of Books Act, 1867.

(2) If any person contravenes any order made under sub-section (1), then, without prejudice to any other proceedings which may be taken against such person, the central Government may declare to be forfeited to Government every copy of any document published or made in contravention of such order and any press as defined in the Press (Emergency Powers) Act, 1931, used in the making of such document.

13. If any one contravenes any of the provisions of section 11 or 12, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

14. (1) No court shall take cognizance of any offence under this Act except on a report in writing by a servant as defined in section 21 of the Pakistan Penal Code.

(2) Proceedings in respect of an offence under this Act alleged to have been committed by any person may be taken before the appropriate court having jurisdiction in the place where that person is for the time being or where the offence or any part thereof was committed.

(3) Notwithstanding anything contained in the Code an offence under this Act shall be triable by a magistrate of the first class.

15. Subject to the provisions of the next succeeding section, all offences punishable under this Act shall be tried in accordance with the procedure prescribed for the trial of summons cases by chapter XX of the Code.

16. Notwithstanding anything contained in the Code, all offences punishable under this Act shall be cognizable and non-bailable; and no person accused or convicted of any offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless

(1) The prosecution has had an opportunity of being heard in respect of the application for such release; and

(2) Where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence.

17. Except as provided in this Act, no order made, direction issued, or proceeding taken under this Act, shall be called in question in any court, and no suit, prosecution, or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Act, or for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act: Provided that an appeal shall lie against every conviction and sentence passed under sections 3(5)(*b*), 3(6), 4(2) and 13 of this Act, in the same manner and subject to the same limitations as against a conviction and sentence passed by a first-class magistrate under the Code of Criminal Procedure 1898.

18. The central Government may, by order, direct that any power which by or under any of the provisions of this Act is conferred on the central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised in respect of Karachi by the administrator of Karachi or by such other officer subordinate to him and not below the rank of district magistrate as he may, by order, direct.

19. (1) The central Government may make rules, not inconsistent with the provisions of this Act, to carry into effect the purposes thereof.

(2) All rules made under this section shall be laid

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[1]Ordinance No. VI of 1952, superseded by this Act, provided as follows: "*prohibit either absolutely or for a specified period . . .*"

before the central legislature as soon as may be after they are made.

20. (1) The Pakistan Public Safety Ordinance, 1952, is hereby repealed.

(2) Any order or rule made or deemed to have been made under the Pakistan Public Safety Ordinance, 1952, and in force or having effect accordingly immediately before the commencement of this Act shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been made under the provisions of this Act, and shall have effect accordingly subject to the provisions of this Act.

(3) No suit, prosecution or other legal proceeding, whether by way of petition or otherwise, shall lie against or to the Crown or any person or authority for anything which has been in good faith done or intended to be done in pursuance of or in exercise of the powers conferred or in good faith believed to have been conferred by or under the Pakistan Public Safety Ordinance, 1949, of the Pakistan Public Safety Ordinance, 1952.

PANAMA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

Act No. 1 of 22 February 1952, published in *Gaceta Oficial* No. 11696, of 31 January 1952, modifies articles 18 and 28 of the Popular Elections Act No. 39, of 19 September 1946. National, provincial and local parties function in Panama: provincial parties may nominate candidates to all offices to be filled by popular election, provided these parties are organized in each district of the province and number 750 members in provinces with a population under 25,000 inhabitants, 1,000 members in provinces with 25,000–75,000 inhabitants and 1,500 members in provinces with over 75,000 inhabitants. A provincial or local political party not obtaining votes at least equal to the number of the adherents required for its registration is to be declared dissolved. A national political party polling less than 10,000 votes at a presidential election shall likewise be dissolved.

Act No. 4 of 7 February 1952, published in *Gaceta Oficial* No. 11708, of 14 February 1952, grants amnesty for political offences committed in connexion with certain specified events. The preamble states that the law is designed to create an atmosphere of complete confidence and tranquillity in view of the forthcoming elections.

Act No. 9 of 12 February 1952, published in *Gaceta Oficial* No. 11712, of 19 February 1952, concerns the election of mayors by popular vote.

Article 199 of the Constitution of Panama provides that "there shall be in each district a mayor, chief of the municipal administration, and two alternates. The law shall decide whether the executive power shall appoint them or whether they shall be elected by popular vote". This article further provides that in case of election by popular vote, the following rules shall be observed: "The term shall be four years. No one may be elected for more than two consecutive terms; and the relatives within the fourth degree of consanguinity or second of affinity of the person who has held the mayorship for one term or part of another consecutively may not be elected for the term immediately following." Article 266 provides that "the mayors for the first term mentioned in article 199 shall be elected by popular vote".

Act No. 9 provides that the mayors shall be elected by direct popular vote for the period between 1 September 1952 and 31 August 1956. It further modifies article 143 of Act No. 39 of 1946[1] which now reads as follows: "Any person who has exercised, within the constituency for which he is nominated, any office having authority and jurisdiction, during the three months prior to the date of the election, shall not be entitled to stand for election as deputy or alternate to the National Assembly, *with the exception of the deputies in the exercise of their functions.*"[2]

The Act further provides that elections to the Councils and for the office of mayor shall be held every fourth year in each municipality of the Republic.

Act No. 18, of 14 February 1952, establishes a Department of Indigenous Affairs in the Ministry of the Interior and of Justice. Extracts from this Act are published in this *Yearbook.*

Decree No. 1091, of 30 June 1952, amends article 2 of decree No. 818, of 18 June 1951.[3] This article deals with the composition of the public entertainment censorship boards in Panama City, Colon and elsewhere. The amending decree is published in *Gaceta Oficial* No. 11844 of 1 August 1952.

Decree No. 1124, of 15 September 1952, regulates the operation of broadcasting stations. Extracts from the decree are published in this *Yearbook.*

Act No. 34, of 25 November 1952, adopts a plan for public works for the year 1953. This plan calls for the building of schools, hospitals, roads, etc. in the provinces of Panama. The Act is published in *Gaceta Oficial* No. 11954 of 17 December 1952.

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[1] See the former text in *Yearbook on Human Rights for 1948*, p. 371.

[2] Words in italics added by the amending Act.

[3] See *Yearbook on Human Rights for 1951*, p. 278.

ACT No. 18 TO GIVE EFFECT TO ARTICLE 94 OF THE CONSTITUTION AND TO MAKE CERTAIN OTHER PROVISIONS[1]

of 14 February 1952

Art. 1. There shall be established, as a branch of the Ministry of the Interior and of Justice, a section to be known as the Department of Indian Affairs of the Republic . . .

Art. 2. For administrative purposes the areas now occupied by Indian tribes shall be divided into four districts . . .

Art. 5. In pursuance of article 94 of the National Constitution, the Department of Indian Affairs of the Republic, in collaboration with the Ministries of Education, Labour, Social Welfare and Public Health, Agriculture and Trade and Industries, shall be responsible for:

(*a*) Compiling statistics concerning the diseases predominating in the said Indian areas, for the purpose of taking appropriate action;

(*b*) Organizing social welfare campaigns to be carried out by the bodies hereinafter referred to;

(*c*) Studying the living conditions of the Indians in every respect, including nutrition, clothing, housing, methods of cultivation, means of transport and native industries;

(*d*) Studying the living conditions of the Indians in relation to their tribal organization, co-operative activities, communal customs, entertainments, and social activities in general, with a view to guiding these activities towards higher purposes;

(*e*) Organizing Catholic missions to help in integrating the Indian tribes in the civilized community.

Art. 6. The Department of Indian Affairs of the Republic shall in addition be responsible for:

(*a*) Compiling statistics showing the average income and expenses of the Indians and ensuring that contracts for services or other contracts entered into with them are duly observed;

(*b*) Studying the position of the Indian agricultural worker with regard to the ownership and lease of land;

(*c*) Investigating the land situation in relation to the Indian population, and determining the average area of land now held per person, the areas intended for grazing or cultivation and the lands which are held in common;

(*d*) Determining, in areas which comprise Indian reservations, how the family property might be put to better use;

(*e*) Studying the best method of settling or grouping the population in communities so that the benefits of education and social welfare may be extended to them in a more efficient manner;

(*f*) Taking measures to develop closer co-operation between the Indian communities and the national Government;

(*g*) Reporting to the national Government, through the proper agencies, on conditions in the Indian communities with reference to the establishment of schools where necessary in view of the size of the school population; and

(*h*) Choosing the seat of each district authority.

Art. 7. For the purpose of speeding up the formation of the groups which have to be trained in the said communities with a view to their integration, the national Government shall, through the Ministry of Education, award three scholarships annually to the Indian inhabitants of each district set up under this Act.

Art. 8. The Ministry of Education, through its technical bodies, shall draw up special curricula for existing or proposed schools in the Indian areas. These curricula shall include only those subjects which, in the light of past experience in schools, are indispensable for a harmonious cultural change in these groups.

Art. 9. As soon as practicable the national Government shall establish a mobile health unit in each locality chosen as the permanent seat of the administrative authorities of each of the districts referred to in this Act . . .

Art. 11. It is hereby directed that the National Institute of Indian Studies and Social Anthropology shall be established, to be subject to the jurisdiction of the Ministry of Education.

Art. 12. The Institute's functions shall be:

(*a*) To advise the Executive on the administration of the country's Indian affairs;

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[1] Spanish text in *Gaceta Oficial* No. 11717, of 25 February 1952. English translation from the Spanish text by the United Nations Secretariat. Art. 94 of the Constitution of Panama of 1 March 1946 reads as follows:

"*Art. 94.* The State shall give special protection to peasant and Indian communities with the purpose of integrating them effectively in the national community with regard to their standard of living and their economic, political and intellectual conditions. Any action relating to Indian communities shall have the purpose of conserving as well as developing the values of their autochthonous culture."

(*c*) To carry out research into Indian questions and anthropological subjects, with the main emphasis on the practical problems of raising the living standards of ethnic groups which are materially backward and of integrating them into the national life.

(*d*) To combat racial discrimination;

(*e*) To establish, in agreement with the University of Panama, a special curriculum for the training of national technical staff specializing in the above-mentioned subjects;

(*f*) To establish contacts with both public and private international institutions having similar aims, so that the country may benefit from their experience;

(*g*) To collaborate with other national institutions concerned with cultural development.

. . .

DECREE No. 1124 GOVERNING THE OPERATION OF RADIO TRANSMITTING STATIONS

of 15 September 1952[1]

Art. 1. With a view to promoting the economic and cultural development of the country, the licensing of commercial radio transmitting stations and amateur radio transmitting stations of a private nature shall be authorized, subject to the observance of the provisions hereinafter set out.

Art. 2. No private radio transmitting station shall operate, and no person shall operate or cause to be operated a private radio communication station, unless a licence has been previously obtained from the executive branch.

. . .

Commercial Radio Transmitters

Art. 10. In case of war, threat of war or serious disturbance of the public peace, or if the public interest urgently requires, the executive branch may order the expropriation or occupation of commercial radio transmitting stations without prior compensation.

Art. 11. In cases in which it orders the occupation of a radio transmitting station pursuant to the foregoing article, the executive branch shall be empowered to use, operate and control the radio transmitting station so occupied, the only duty of the national Government being to pay the expenses occasioned by the operation of the said station.

Art. 15. Announcers employed by radio transmitting stations and radio commentators must be Panamanian citizens of full age and must be in possession of a licence issued by the Ministry of the Interior and Justice after appropriate inquiry.

Such a licence may be withdrawn should its holder infringe the provisions of this decree, fail to observe professional ethics or be convicted by a competent authority of the offence of defamation or insulting behaviour.

Art. 18. Announcers' licences may be issued to aliens who are nationals of countries offering equal facilities in commercial radio transmission to citizens of the Republic of Panama.

Art. 20. Radio commentators' licences shall be issued exclusively to Panamanian citizens of full age.

Art. 23. Radio news broadcasts shall not be improvised, and accordingly their producers shall be under a duty to submit to the legal representative of the radio transmitter, through the operator of the same, the written text, signed by the producer, of the contents of such broadcasts. In any case in which such written text is not submitted, the radio transmitter and its legal representative shall be jointly liable. The originals of the written texts shall be kept and properly filed by the owner of the radio transmitter, and must be placed at the disposal of the Ministry of the Interior and Justice, which may demand their production at any time.

Art. 28. No radio transmitting station shall broadcast or communicate foreign news extracted from newspapers or periodicals without the permission of the owners of the newspapers or periodicals until more than twelve hours have elapsed since the time when the news was published.

Art. 30. It shall be unlawful for radio transmitting stations to broadcast false news, or talks, lectures or news reports likely to cause, suggest or incite disturbances of the public peace.

Art. 31. The owners and operators of radio transmitting stations shall be jointly liable, in civil and in criminal law, for wrongs or offences committed against the good repute of persons, by means of broadcasts made by the station, and for any injury or loss caused by means of broadcasts which may be held to con-

[1] Spanish text in *Gaceta Oficial* No. 11894, of 29 September 1952. English translation from the Spanish text by the United Nations Secretariat.

travene the provisions of laws, treaties, conventions or international agreements in force in the Republic, or the regulations issued by the executive branch. Such joint liability shall extend to persons who, although not directly connected with the station, take part in broadcasts in the course of which such wrongs or offences are committed or such damage or injury is caused.

Paragraph: If the owner of a radio transmitting station is a body corporate, the liability referred to in this article shall extend to the legal representative of the said body corporate, without prejudice to its civil liability.

Art. 34. The term "amateur radio station" means a radio station used exclusively for research into and the study of the technique of radio communications generally for purely personal and not for gainful purposes.

Art. 36. Licences for radio amateurs shall be issued only to Panamanian nationals. In special cases, however, such licences may also be issued to aliens resident in the country provided that they are employed by the Government and that similar rights are accorded to Panamanians in their respective countries of origin, the presence of these conditions to be proved in each instance.

Art. 50. Radio communications made by amateur radio stations shall be made in Spanish; they may, however, also be made in English, French and Portuguese if, before and after each transmission, the station identifies itself in Spanish.

Art. 53. The Government shall have power in certain contingencies to use the transmitting and receiving equipment of radio amateurs if special circumstances so require, as in case of public disaster or epidemic diseases or if it is in the public interest and indispensable to use the said equipment because, owing to *force majeure*, the usual means of telecommunication are not functioning. In such cases, radio amateurs shall be under a duty to provide their help.

. . .

Amateur Radio Transmitters

. . .

Art. 54. It shall be strictly forbidden for amateur radio stations to:

(*a*) Transmit or receive any commercial messages whatsoever;

(*b*) Transmit or receive messages in code or in abbreviations not universally recognized by amateurs;

(*c*) Transmit false or tendentious news likely to cause a disturbance of the public peace;

(*d*) Transmit recorded music;

(*e*) Employ obscene or indecent language;

(*f*) Make allusions or transmit news offensive to the constituted authorities or harmful to good relations with friendly countries.

. . .

PARAGUAY

DECREE No. 10810, OF 26 APRIL 1952, CONTAINING REGULATIONS FOR THE PAYMENT OF THE BENEFITS GRANTED BY LEGISLATIVE DECREE No. 1860 OF 1 DECEMBER 1950[1]

SUMMARY

Sickness Benefit

In case of non-occupational illness or of accident not due to employment, insured persons shall be entitled to medical and surgical care, hospitalization, drugs and dental care. Medical and surgical care shall be given for a period not exceeding twenty-six weeks for one and the same illness. Insured persons incapacitated for work shall be entitled to a cash allowance payable from the eighth day following the day on which sick leave was granted and duly certified by officials of the medical department of the institution; the allowance shall be payable for such time as incapacity persists, up to a maximum of twenty-six weeks. The sickness allowance shall be equal to 50 per cent of the average wages on which the insured person has paid contributions during the four months preceding the beginning of incapacity. No sickness allowance shall be granted to an insured person with less than six weeks of contributions in respect of actual employment during the preceding four months. An insured person's wife or, in default of such, a woman with whom he has been living as if she were his wife for two years prior to the illness, and his children until they reach the age of sixteen years, shall be entitled to (*a*) medical care and drugs for a period not exceeding thirteen weeks for one and the same illness; (*b*) dental care; (*c*) surgical care; (*d*) medical care, drugs and hospitalization during pregnancy, confinement and the post-natal period; (*e*) hospitalization of children up to two years of age

Maternity Benefit

During pregnancy, confinement and the post-natal period, an insured woman shall be entitled to: (*a*) medical and surgical care, hospitalization and drugs; (*b*) a cash allowance for the three weeks preceding and the six weeks following the probable date of confinement (sixty-three days); and (*c*) a supply of milk for the child if she is unable to breast-feed it. An insured man's wife or unmarried dependant living as wife shall be entitled during pregnancy, confinement and the post-natal period to medical and surgical care, hospitalization and drugs, provided that the insured person's contributions are paid up. The social welfare service shall make periodic visits to the homes of insured women during the post-natal period in order to deal with their social problems, to ensure that they receive proper medical care and the statutory allowance, and give them any information likely to promote the social welfare of mother and child.

Invalidity resulting from Disease

An insured person shall be deemed to be an invalid if, as a result of non-occupational disease or an accident other than an employment accident, he is unable to obtain, by work in keeping with his strength, ability and vocational training, remuneration equal to at least one-third of the remuneration usually obtained by an employee in good health, of the same sex and similar ability and training, in the same region. In order to qualify for an invalidity pension an insured person must have been declared disabled by the medical board of the Institution and also (*a*) have paid at least 150 weeks' contributions; (*b*) have been under sixty years of age at the time when the disability was incurred and application was made for the pension. Invalidity pensions may be provisional or permanent; an invalidity pension shall be granted provisionally for a period not exceeding five years. The pension may be made permanent at any time, or at the expiry of the period of five years, provided that the invalidity is permanent in the opinion of the medical board.

Employment Injuries

In case of employment accident or occupational disease an insured person shall be entitled to the following benefits:

(*a*) Medical, surgical and dental care, pharmaceutical supplies and hospitalization;

(*b*) The supply of any necessary prosthetic and orthopaedic apparatus;

(*c*) A cash allowance if he is incapacitated for work for more than seven days;

[1] Spanish text of the decree in *Gaceta Oficial* No. 440, of 28 April 1952. Summary by the United Nations Secretariat.

(*d*) A monthly pension or compensation payment in cases of permanent disability.

For the purposes of this law, "employment injury" means employment accidents and occupational diseases to which workers are exposed in the course of work performed on account of another person. The allowance for an employment accident or occupational disease shall be equal to 75 per cent of the average wages on which the insured person has paid contributions during the four calendar months immediately preceding certification of the circumstances giving rise to the claim.

If an insured person dies as the result of an employment accident, the institution shall pay:

(*a*) A funeral grant, the amount of which shall be established annually by the Superior Council as being necessary to cover the cost of an inexpensive funeral;

(*b*) A life pension to the widow or to an invalid widower maintained by his insured wife, equal to 40 per cent of the pension to which the insured person would have been entitled for permanent total incapacity;

(*c*) A pension for each child under sixteen years of age of a deceased insured man and for the children of a deceased insured woman if the children's father is also dead or is an invalid or they have not been acknowledged by the father. The amount of each of these pensions shall be equal to 20 per cent of the pension to which the insured person would have been entitled for permanent total incapacity.

(*d*) A pension for a mother who at the time of the insured person's death was being maintained by him or, in the absence of a dependent mother, the father, if incapacitated for work and fulfilling the same condition, for such time as his incapacity continues. The amount of the pension shall be equal to 20 per cent of that to which the insured person would have been entitled for permanent total incapacity.

Old Age

An insured person who reaches the age of sixty years and has a minimum of 780 contribution weeks shall be entitled to an old-age pension. On the death of an old-age pensioner, the widow, or invalid widower if not himself a pensioner of the institution, shall be entitled to apply for payment of a life pension equivalent to 40 per cent of that received by the deceased spouse. Each child under sixteen years of age of the deceased person shall be entitled to an orphan's pension equivalent to 20 per cent of the old-age pension received by the deceased. The pension shall cease when the beneficiary reaches the age of sixteen years.

Benefits in Case of Death

On the death of an insured person, in addition to the funeral grant established by the superior council, which shall be equal in amount to the grant payable in case of employment accidents and occupational diseases, the institution shall pay a death grant to the deceased person's family.

PERU

ACT No. 11672
TO ESTABLISH THE NATIONAL HEALTH AND SOCIAL WELFARE FUND[1]

of 31 December 1951

Art. 1. The National Health and Social Welfare Fund is hereby established to use the resources allocated to it under this Act for the purpose of contributing to works and services designed to improve sanitary conditions in the country, protect the health of the inhabitants and promote social welfare.

Art. 2. The National Fund shall have the following specific purposes:

(*a*) To control and prevent avoidable and communicable diseases, particularly tuberculosis, smallpox, malaria, typhus, leprosy, venereal diseases and the diseases prevalent in each region;

(*b*) To establish, develop and improve maternity and child welfare services;

(*c*) To provide drainage for population centres and institute and improve sanitary services and the supply of drinking water;

(*d*) To build hospitals, complete those now unfinished and extend existing hospitals;

(*e*) To provide public assistance agencies, public hospitals and social welfare institutions, except the Workers' and Employees' Social Insurance Funds, with all the financial and technical assistance which they need for the better achievement of their purposes, in cases where their own resources are inadequate or should be supplemented, in order that the services provided by the said institutions for the benefit of the community may be extended or improved;

(*f*) To increase the construction of dwellings for manual and office workers in accordance with the density of the population and the practices of the various zones;

(*g*) To correct defects in the regional health and social welfare services;

(*h*) To contribute towards the training of specialists in the various branches of national health services; and

(*i*) To sponsor and encourage studies and research relating to health and social welfare.

[The following articles deal with the resources allocated to the fund. A governing board shall be responsible for the administrative, financial and technical direction of the Fund. The members of the governing board shall be the Minister of Public Health and Social Assistance, who shall be the chairman; one member appointed by the President of the Republic, who shall be the Vice-Chairman; the Director-General of Public Health; the Director-General of Labour; representatives of other ministries, of labour groups and of the medical profession. The Act determines the competence of the governing board and establishes the general directorate of the National Fund within the Ministry of Public Health and Social Assistance, which shall arrange and make studies for the execution of the decisions and rulings of the National Fund and carry out other functions. The Ministry of Public Health and Social Assistance shall divide the country into public health districts and shall establish a system of health and social welfare units consisting of regional or basic units, zonal units, rural units and urban units. The executive power shall transmit annually to Congress the general account of the Fund simultaneously with the general account of the Republic.]

[1]Spanish text in *El Peruano* No. 3276, of 9 January 1952. English translation from the Spanish text by the United Nations Secretariat. The regulations of the High Council of the National Health and Social Welfare Fund were approved by supreme resolution of 31 January 1952 (published in *El Peruano* No. 3312, of 20 February 1952).— Supreme decree No. 163, of 14 October 1952, established a High Council for National Health. This decree was published in *El Peruano* No. 3515, of 21 October 1952. The High Council collaborates with the ministries concerned with public welfare, advises the Ministry of Public Welfare and Social Assistance on technical matters and studies, and gives advice on bills relating to questions of health. The Council is composed of representatives of the various ministries and services concerned, of the Peruvian medical association, and the Peruvian Society for Public Welfare.

PHILIPPINES

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

I. LEGISLATION

Freedom of Information

Act No. 677, of 8 April 1952, grants the Pan Asia Newspaper Alliance a temporary permit for the establishment of a radio receiving station for the purpose of receiving for reproduction, press messages from radio stations exterior to the Philippines. This Act is published in *Official Gazette* No. 4, April 1952, pp. 1266–1268.

The Act reserves a special right to the Republic of the Philippines in time of war, insurrection, public peril, calamity, disaster or disturbance of peace or of public order to take over and to operate this station or stations upon the order and direction of the authorized government department without compensation to the grantee for the use of this station during that period. "In order to aid in the educational upbringing of the people through wider dissemination of news information so essential in a democracy," section 10 of this Act provides that "the grantee shall be exempt from the payment of the percentage tax on gross receipts so long as said grantee, or its successors and assigns, limits itself to the reception of news only for publication and/or distribution to newspaper and other information media in the Philippines".

Act No. 819, of 12 August 1952, grants a temporary permit to construct, maintain and operate a radio broadcasting station in Cebu city. This Act is published in *Official Gazette* No. 10, October 1952, pp. 4246–4249.

Under this Act the Government of the Philippines reserves a special right to take over and operate this station under the order and direction of the President of the Philippines in time of war, insurrection or public disturbance. Sections 10 and 16 read as follows:

"*Sect. 10.* It shall be unlawful for the grantee to use, employ, or contract for the labour of persons held in involuntary servitude."

"*Sect. 16.* The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from its stations; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter; Provided that the grantee during any broadcast shall cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and wilful failure to do so shall *constitute* a valid cause for the cancellation of his permit."

Administrative order No. 204, creating the Informational Media Guaranty Programme Committee, is published in *Official Gazette* No. 11, November 1952, pp. 4752–4754.

The purpose of this order is to promote a scheme to make books, periodicals, newspapers, motion pictures and translation rights available to Philippine importers in an effort to convey scientific, cultural, technical, educational and other information about the United States of America.

Non-discrimination in Employment

Act No. 761, of 20 June 1952, provides for the organization of a National Employment Service. This Act is published in *Official Gazette* No. 8, August 1952, pp. 3204–3210.

The purpose of this Act is to assist workers to obtain suitable employment and, *inter alia*, to provide adequate arrangements for the placement of veterans, women, juveniles and disabled persons.

Section 5(*a*), paragraph 4, reads as follows:

"*Sect. 5.* Placement and recruitment.—To ensure effective placement and recruitment, the service shall

"(*a*) Assist workers to obtain suitable employment and assist employers to obtain suitable workers and shall for this purpose

". . . (4) refer applicants and vacancies from one employment office to another, in cases in which the applicants cannot suitably be placed or the vacancies suitably filled by the original office or in which other circumstances warrant such action: Provided that the service shall observe strict neutrality in case of employment available as a result of an industrial dispute and shall not discriminate under existing laws against any applicant on account of race, colour, sex, or belief: Provided further, that the service shall not refer workers to employment in respect to which the wages or other conditions of work are below the standards prescribed by law or prevailing practice; . . ."

The service is further directed to promote the vocational readjustment of any person requiring such assistance.

Non-discrimination in Education

Act No. 763, of 20 June 1952, to establish the Mindanao Institute of Technology is published in *Official Gazette* No. 8, August 1952, pp. 3210–3213.

The institute established under this Act will provide elementary, secondary general, secondary vocational and normal courses of instruction, as well as collegiate agricultural and industrial courses leading to bachelors' degrees. It will provide fellowships for faculty members and scholarships to students showing special evidence of merit.

Section 8 of the Act reads as follows:

"*Sect. 8.* The body of teachers, principals, supervisors, instructors and professors of the institute shall constitute the faculty of the institute, with the president of the institute as the presiding officer. In the appointment of professors or instructors of the institute, no religious test shall be applied, nor shall the religious opinions or affiliations of the faculty of the institute be made a matter of examination or inquiry: provided, however, that no instructor or professor in the institute shall inculcate sectarian tenets in any of the teachings, nor attempt either directly or indirectly, under penalty of dismissal by the board of trustees, to influence students or attendants at the institute for or against any particular church or religious sect."

Act No. 778, of 21 June 1952, for the purpose of converting the present Philippine School of Commerce into the Philippine College of Commerce is published in *Official Gazette* No. 9, September 1952, pp. 3737–3740.

The purpose of the new college is to provide higher vocational, professional, and technical instruction and training in business education and commerce; it will promote research, advanced studies, and progressive leadership in the field of business education and commerce.

Sections 3 and 10 of the Act read as follows:

"*Sect. 3.* No student shall be denied admission to the Philippine College of Commerce by reason of age, sex, nationality, religious belief, or political affiliation."

"*Sect. 10.* The body of instructors and professors of the college shall constitute the faculty of the college, with the president as the presiding officer. In the appointment of professors or instructors of the college, no religious test shall be applied, nor shall the religious opinions or affiliations of the faculty of the college be made a matter of examination or inquiry: Provided, however, that no instructor or professor in the college shall inculcate sectarian tenets in any of the teachings, nor attempt either directly or indirectly, under penalty of dismissal by the board of trustees, to influence students or attendants at the college for or against any particular church or religious sect."

Act No. 807, of 21 June 1952, is designed to convert the Bukidnon National Agricultural School in the municipality of Maramag, province of Bukidnon, to a national agricultural college to be known as the Mindanao Agricultural College. This Act is published in *Official Gazette* No. 9, September 1952, pp. 3774–3776.

The purpose of this college is to provide practical, professional, technical and special instruction, and to promote research, extension services, and progressive leadership in the field of agriculture, education and related subjects. The college shall also provide fellowships for faculty members and scholarships to students showing special evidence of merit.

Section 9 of the Act reads as follows:

"*Sect. 9.* The body of instructors and professors of the college shall constitute the faculty of the college. In the appointment of professors or instructors of the college, no religious test shall be applied nor shall religious opinions or affiliations of the faculty of the college be made a matter of examination or inquiry: Provided, however, that no instructor or professor in the college shall inculcate sectarian tenets in any of the teachings, nor attempt either directly or indirectly, under penalty of dismissal by the board of trustees, to influence students or attendants at the college for or against any particular church or religious sect."

Protection of Working Women and Children

Act No. 679, of 15 April 1952, regulates the employment of women and children and provides penalties for violation thereof. This Act is published in *Official Gazette* No. 4, April 1952, pp. 1269–1274.

The Act restricts the employment of children below fourteen, sixteen and eighteen years of age, setting different restrictions on employment for each of these age groups. It provides for medical examination of children to determine their physical fitness for work. As regards employment of women, section 7 of the Act reads as follows:

"*Sect. 7.* Employment of women.—(*a*) No woman shall be employed in any shop, factory, commercial or industrial establishment or other place of labour

"(1) To perform work which requires the employee to work always standing or which involves the lifting of heavy objects; or

"(2) To work between ten o'clock at night and six o'clock in the morning of the following day.

"An employer may be exempted from the requirement of paragraph (2) of sub-section (*a*) of this section

"(1) In case of *force majeure* causing an unforeseen and non-recurrent interruption in the work; or

"(2) By the Secretary of Labour, if, after proper investigation, he finds that the work has to do with raw materials or materials in the course of treatment which are subject to rapid deterioration and that night work is necessary to preserve such materials against loss.

"(*b*) In any shop, factory, commercial, industrial, or agricultural establishment or other place of labour where men and women are employed, the employer shall not discriminate against any woman in respect to terms and conditions of employment on account of her sex, and shall pay equal remuneration for work of equal value, for both men and women employees."

Other sections of the Act deal with the protection of women in cases of maternity and contain clauses concerning facilities for women and children in places of employment.

Public Health

Act No. 731, of 18 June 1952, to provide for the establishment of the National Indigent Children's Hospital, appropriating funds for the purpose, is published in *Official Gazette* No. 7, July 1952, pp.2564–2565.

The hospital established in Manila under the Department of Health is to render free medical service and give free accommodation to sick and under-nourished children at the request of their parents or guardians. A certain amount to cover building expenses, purchase of supplies, materials and equipment, salaries and wages of personnel shall be set aside in the annual General Appropriations Act.

Act No. 747, of 18 June 1952, to regulate the fees to be charged against patients in government hospitals and charity clinics classifying patients according to their financial condition is published in *Official Gazette* No. 7, July 1952, pp. 2582–2583.

Patients with low income, as defined by this Act shall be treated free of charges incurred by the hospital during their confinement and shall have priority in accommodation. Patients with moderate income shall pay only the cost of medicine and the hospitalization fees. Patients with higher income shall in addition pay professional fees. Government employees and members of their families shall be given a reduction of 20 per cent from all hospital fees.

Act No. 753 of 18 June 1952 amending sections 1058–1071 of article 15 of Act No. 2711, known as the Revised Administrative Code, providing for the control of leprosy and for other purposes, is published in *Official Gazette* No. 7, July 1952, pp. 2588–2592.

Protection of Agriculture

Act No. 720, of 6 June 1952, provides for the creation, organization and operation of rural banks, and for other purposes. This Act is published in *Official Gazette* No. 6, June 1952, pp. 2138–2143.

Under this Act a system of rural banks is to be established to facilitate the granting of loans to small farmers and merchants so as to assist them in the promotion of their welfare.

Act No. 821 of 14 August 1952 establishes an agricultural credit and co-operative financing system to assist small farmers in securing liberal credit and to promote the effective organization of farmers into co-operative associations. This Act is published in *Official Gazette* No. 10, October 1952, pp. 4254–4255.

The purpose of this Act is to assist small farmers in securing liberal credit and to promote the effective formation of co-operative associations so as to enable them to market their agricultural commodities efficiently; this Act is designed to place agriculture on a basis of economic equality with other industries, and to improve the standard of living of the people engaged in agriculture.

II. JUDICIAL DECISIONS

Decision of the Supreme Court of the Philippines of 29 February 1952, relating to equality of rights and freedom of contract.

Decision of the Supreme Court of the Philippines of 24 March 1952, relating to the legality of a strike and freedom of contract.

Decision of the Supreme Court of the Philippines of 28 August 1952, relating to eligibility to public office.

Summaries of these decisions are published in this *Yearbook.*

III. INTERNATIONAL INSTRUMENTS

A cultural treaty between the Republic of the Philippines and the Spanish State was concluded and signed at Manila on 4 March 1949, ratified on 5 January 1951 and made public by proclamation No. 301 of the President of the Philippines on 9 January 1952. The English text of this treaty is published in the *Official Gazette of the Republic of the Philippines* No. 1, January 1952.

JUDICIAL DECISIONS

FREEDOM OF CONTRACT—FREEDOM OF EMPLOYER TO CHOOSE HIS WORKERS—EQUALITY OF RIGHTS OF EMPLOYERS AND EMPLOYEES—PROHIBITION TO EXCLUDE MEMBERS OF A UNION FROM WORK TO THE BENEFIT OF MEMBERS OF ANOTHER UNION—EQUAL PROTECTION CLAUSE OF THE CONSTITUTION

DAVAO STEVEDORES MUTUAL BENEFIT ASSOCIATION *v.* COMPANIA MARITIMA ET AL.

Supreme Court of the Philippines[1]

29 February 1952

The facts. The Compania Maritima and the Manila Steamship Company own and operate vessels engaged in coastwise shipping between Manila and Davao with stopovers in Cebu and other way ports. To handle the stevedoring work on board these vessels at Cebu and Mindanao ports, the Katubsanan sa Mamumuo, a labour union with headquarters in Cebu, is under contract with both shipping companies to furnish the necessary labour, and to that end from forty to sixty of its members go with the vessels to the different ports of call. But they work only aboard ship, for the work on the wharf is handled by the local stevedores.

The Davao Stevedores Mutual Benefit Association proposed to all ship agents in the port of Davao that the association handle the stevedoring work on board their vessels while in that port and threatened to carry out this proposal no matter what the answer of the ship agents should be. To prevent trouble, agents of the Department of Labour tried to mediate, but as they failed to effect a settlement, the department certified the dispute to the Court of Industrial Relations as a proper case for that court to decide.

At the instance of the Compania Maritima (later joined by the Manila Steamship Co.) a writ of preliminary injunction was issued to enjoin the association from carrying out its threat, and thereafter the case was heard on the merits with the intervention of the Katubsanan sa Mamumuo and then decided by one of the judges of the court. The decision awarded the stevedoring work on board the vessels of the Compania Maritima and Manila Steamship Co. when in the port of Davao to members of the Davao Stevedores Mutual Benefit Association to the exclusion of Stevedores from Cebu, members of the Katubsanan sa Mamumuo. But this decision was revoked by a resolution of the court *in banc*. The Davao Stevedores Mutual Benefit Association appealed against this resolution.

Held: The resolution appealed from is affirmed. The court said: "What the petitioner proposes in effect is that the industrial court cancel the existing contract between the respondent shipping companies and the Katubsanan sa Mamumuo, and compel those companies to have the stevedoring work on board their vessels done by stevedores residing in Davao city to the exclusion of those coming from Cebu. This proposal finds no support either in law or in reason. There is no law which grants to the labourers of any section of the Philippines a monopoly over work in that section. A measure of that nature would not only be against public policy as tending to promote sectionalism and disunity, but would also conflict with the equal protection clause of the Constitution. It would also interfere with the citizen's right to freedom of contract, which is likewise guaranteed by the Constitution. As was said in the case of Pampanga Bus Company, Inc. *v.* Pambusco Employees' Union, Inc., 68 Phil. 541, 543:

"'. . . The general right to make a contract in relation to one's business is an essential part of the liberty of the citizens protected by the due-process clause of the Constitution. The right of a labourer to sell his labour to such person as he may choose is, in its essence, the same as the right of an employer to purchase labour from any person whom he chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression. . . .'

"On the plea that there is not enough work for its own members in the port of Davao, petitioner would exclude labourers from other parts from their right to earn their living in that port. In effect, petitioner proposes to solve all alleged unemployment

[1]Decision G.R. No. 1-3871. Text of the decision received through the courtesy of Mr. Salvador P. Lopez, Acting Permanent Representative of the Philippines to the United Nations. Summary by the United Nations Secretariat.

problems in Davao by ousting members of another labour union from their own employment. Claiming that its members have a right to live, petitioner would yet deny that same right to others. Petitioner's proposal is iniquitous and amounts to nothing more than robbing Peter to pay Paul."

SUBSTITUTION OF ONE BARGAINING AGENCY FOR ANOTHER—DEMANDS OF LABOUR UNION FOR EMPLOYEES WHO HAD BELONGED TO ANOTHER UNION—SUBSISTENCE OF CONTRACT WITH LATTER UNION—ILLEGALITY OF STRIKE—GOOD FAITH IN CONTRACTUAL RELATIONS—FREEDOM OF CONTRACT—LAW OF THE PHILIPPINES

MANILA ORIENTAL SAWMILL COMPANY *v.* NATIONAL LABOUR UNION AND COURT OF INDUSTRIAL RELATIONS

Supreme Court of the Philippines[1]

24 March 1952

The facts. On 4 May 1950, the United Employees Welfare Association entered into an agreement of working conditions with the petitioner pursuant to a settlement concluded for one year, in case No. 173-V of the Court of Industrial Relations. On 14 August 1950, thirty-six of the thirty-seven members of the United Employees Welfare Association tendered their resignations from the same union and joined the local chapter of the respondent National Labour Union. The following day, the President of the respondent union sent a letter to petitioner containing seven demands allegedly on behalf of the members of its local chapter who are employed by the petitioner, to which the latter answered stating that the labourers on whose behalf the letter had been written were already affiliated with the United Employees Welfare Association.

On 22 August 1950, the respondent union reiterated its demands. In reply, counsel for petitioner sent a letter stating that petitioner could not recognize the alleged local chapter of the respondent union until and after the agreement of 4 May 1950 was declared null and void by the Court of Industrial Relations. When, thereupon, the members of the respondent union struck, petitioner filed a petition in the Court of Industrial Relations to declare the strike illegal.

On 8 September 1950, the Court of Industrial Relations issued an order denying petitioner's prayer that the strike be declared illegal and setting the case for hearing on the demands prayed for by respondent union. A motion for reconsideration of this order, filed by the petitioner, was denied by the Court of Industrial Relations *in banc.* The petition for review was based on the claim that the order of respondent court of 8 September 1950 was null and void because, in refusing to declare the strike staged by the members of the respondent union illegal notwithstanding the agreement entered into between the labour union to which the employees who struck formerly belonged and petitioner, which is still valid and subsisting, it violated the constitutional precept underlying the freedom of contract.

Held: That the order appealed from shall be reversed. The judge said that it was evident that the purpose of the transfer of the employees was merely to disregard and circumvent the contract entered into between the same employees and the petitioner on 4 May 1950, knowing full well that that contract was effective for one year, and was entered into with the sanction of the Court of Industrial Relations. "If this move were allowed, the result would be a subversion of a contract freely entered into, without any valid and justifiable reason. Such act cannot be sanctioned in law or in equity, as it is in derogation of the principle underlying the freedom of contract and the good faith that should exist in contractual relations.

"A labour organization is wholesome if it serves its legitimate purpose of settling labour disputes. That is why it is given personality and recognition in concluding collective bargaining agreements. But if it is made use of as a subterfuge, or as a means to subvert valid commitments, it outlives its purpose, for far from being an aid, it tends to undermine the harmonious relations between management and

[1]Decision G.R. No. 1-4330. Text of the decision received through the courtesy of Mr. Salvador P. Lopez, Acting Permanent Representative of the Philippines to the United Nations. Summary by the United Nations Secretariat.

labour. Such is the move undertaken by the respondent union. Such a move cannot be considered lawful and cannot receive the sanction of the court. Hence, the strike it has staged is illegal.

"The manifest object of the act is to prevent industrial strife, confusion and unrest. Industrial peace is promoted by collective agreements obtained for employees through the medium of their bona fide labour organizations or other proper representatives, free from employer interference. And this is particularly so in the instant case, where the employer is a bus company, operating a business affected with a public interest, under a public franchise. I cannot conceive it to have been the intent of the legislature to permit employees, where a valid existing contract is involved and under the circumstances presented here, to substitute one bargaining agency for another whenever it suits their purpose, or the purpose of a rival labour organization, during the life of that contract. If employees are to enjoy actual liberty of contract through their labour organizations or other bona fide representatives, and their contracts are to be effective, their obligations may not be repudiated simply by the process of changing their representatives, and in their own interest they should not seek to do so . . ."

ELIGIBILITY TO THE OFFICE OF MAYOR—DISQUALIFICATION OF A PERSON SENTENCED FOR *ESTAFA*—EFFECT OF PARDON IN CASE OF OFFENCES AGAINST PROPERTY—INTERPRETATION OF SECTION 99 OF ACT No. 180—OFFENCES AGAINST PROPERTY AND OTHER OFFENCES—LAW OF THE PHILIPPINES

SIMPLICIO PENDON *v.* JULITO DIASNES

Supreme Court of the Philippines[1]

28 August 1952

The facts. The defendant, Julito Diasnes, was elected municipal mayor of Dumangas, Iloilo, in the general election of 13 November 1951. The plaintiff sought to declare him ineligible to this office because he had been found guilty of *estafa* and sentenced to one year and one day of imprisonment by the court of first instance of Iloilo in 1932, a sentence which was fully extinguished. But the defendant alleged that he had been granted absolute pardon by the Governor-General sometime in 1934. The court of first instance declared the defendant eligible, a judgement against which the plaintiff appealed.

Only oral evidence was presented to prove the alleged pardon, as copies of it, as well as the original, were said to have been unavailable, and the question raised by the appellant dealt with the admissibility and sufficiency of this evidence. The defendant tried to prove the unavailability of any copy of the pardon and introduced secondary evidence of the nature and contents of the pardon.

Held: That the judgement of the lower court should be affirmed. The court said: "The proofs of the defendant, including the certificates, are admissible in evidence and competent, and constitute sufficient foundation for the introduction of secondary evidence of the nature and contents of the pardon. Such nature and contents were testified to by the defendant and other witnesses who claimed to have seen or helped procure the pardon, and found by the trial court to be as averred in the answer.

"These findings are conclusive as far as this court is concerned, the appellant having elevated the case to the Supreme Court for review on the express statement that only questions of law would be raised. What is more, if we are to believe, as the court below believed, that executive clemency was extended to the defendant, the pardon could not have been other than plenary and absolute, considering the purpose for which it was issued—namely, to enable the beneficiary to exercise the right of suffrage.

"The other contention is 'that the court below erred in not holding that pardon does not remove the incapacity or disqualifications as a voter in matters of convictions of crime against property'. This question stemmed from the Section 99 of Republic Act No. 180 as amended by Republic Act No. 599 which provides:

"The following persons shall not be qualified to vote:

"'(*a*) Any person who has been sentenced by final judgement to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon.

[1]Decision G.R. No. 1-5605. Text received through the courtesy of Mr. Salvador P. Lopez, Acting Permanent Representative of the Philippines to the United Nations. Summary by the United Nations Secretariat.

"'(*b*) Any person who has been declared by final judgement guilty of any crime against property.

"'(*c*) Any person who has violated his allegiance to the Republic of the Philippines.

"'(*d*) Insane or feeble-minded persons.

"'(*e*) Persons who can not prepare their ballots themselves.'"

The court then referred to the case of Cristobal *v.* Labrador et al., 71 Phil. 34, in which the same problem was posed and in which the court held that "An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction", and continued as follows:

"The lower court seems to have taken for granted, perhaps for the sake of argument, that paragraph (*b*) intended to disqualify from voting any person who has been convicted of any crime against property.

"As a matter of fact, that, in our opinion, is not the legislative intent . . . Paragraph (*b*) must be construed in conjunction with paragraph (*a*). Thus construed, it modifies that part of paragraph (*a*) which refers to sentences for less than a year and not that which refers to the nature of the crime committed. Paragraph (*a*) is comprehensive, making no distinction between crimes against property and other classes of crimes. By the terms of paragraph (*a*), all persons convicted of crime of whatever nature and sentenced to one year or more are disqualified to vote. But it makes two exceptions, each of which is independent of the other—to wit: (1) when the penalty imposed is less than one year and (2) when pardon is granted. Paragraph (*b*) qualifies or further limits the first exception, but not the second. It creates an exception to the exception of paragraph (*a*) that persons sentenced to less than one year may vote. It is not meant to say that conviction for a crime against property bars the convict from voting irrespective of the penalty and irrespective of whether or not pardon has been granted. Construing paragraphs (*a*) and (*b*) together, as stated, they should read thus: Absolute pardon for *any* crime for which one year of imprisonment or more was meted out restores the prisoner to his political rights. Where the penalty is less than one year, disqualification does not attach, except when the crime committed is one against property, in which case, the prisoner has to have a pardon, as in the cases provided in paragraph (*a*), if he is to be allowed to vote . . .

"Carried to its logical conclusion, the appellant's interpretation of Section 99 of Republic Act No. 180 as amended would lead to absurd consequences. Under this interpretation, the right to vote of a person who has been sentenced to one month for stealing one peso is beyond restoration by the chief executive, while one who has been found guilty of the most heinous crime in the statute book and sentenced to death could recover his political rights through executive clemency.

"But, it would be asked, why should paragraph (*b*) discriminate against crimes against property? And why should it confine itself to crimes punishable with less than one year imprisonment?

"The answer is that major crimes always involve a high degree of moral turpitude. When it comes to lesser crimes, or rather crimes punishable with lighter penalty, the concept is reversed. Petty thefts and petty deceits and embezzlement always involve dishonesty and are reprehensible, while assaults and battery, calumnies, violations of municipal ordinance and traffic regulations, are, more likely than not, the products of violent passion or emotion, negligence or ignorance of law . . ."

POLAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

Constitution

Constitution of the Polish People's Republic, of 22 July 1952. Extracts from this Constitution are reproduced in this *Yearbook.*

Legislation

Act of 1 August 1952, concerning elections to the *Sejm* of the People's Republic of Poland. Extracts from this Act are reproduced in this *Yearbook.*

Act of 28 April 1952 regulating labour conditions in Polish merchant vessels engaged in international navigation. A summary of this Act is reproduced in this *Yearbook.*

International Agreements

In 1952, Poland signed and ratified the convention of 21 March for the suppression of the traffic in persons and of the exploitation of the prostitution of others. The Act ratifying the convention, dated 29 February 1952, is published in *Dziennik Ustaw* No. 13, of 26 March 1952, position 78. The official declaration with regard to the convention, dated 10 July 1952, is published in *Dziennik Ustaw* No. 36, of 13 August 1952, position 254.

[1]This note is based on texts and information received through the courtesy of the Polish delegation to the United Nations.

CONSTITUTION OF THE POLISH PEOPLE'S REPUBLIC[1] of 22 July 1952

CHAPTER I

POLITICAL STRUCTURE

Art. 1. 1. The Polish People's Republic is a State of People's Democracy.

2. In the Polish People's Republic, the power belongs to the working people of town and country.

Art. 2. 1. The working people exercise the authority of the State through their representatives elected to the *Sejm* of the Polish People's Republic, and to the people's councils, on the basis of universal, equal and direct suffrage by secret ballot.

2. The people's representatives in the *Sejm* of the Polish People's Republic, and in the people's councils, are responsible to their constituents and may be recalled by them.

CHAPTER II

SOCIAL AND ECONOMIC STRUCTURE

Art. 7. 1. The Polish People's Republic promotes, on the basis of socialized means of production, trade, communications and credit, the economic and cultural life of the country in accordance with the national economic plan and, in particular, through the expansion of socialist State industry, which is the decisive factor in the transformation of social and economic relations.

2. The State has the monopoly of foreign trade.

3. The principal aim of the planned economic policy of the Polish People's Republic is the constant development of the productive forces of the country, the continuous raising of the standard of living of the working people, and the strengthening of the power, defence capacity and independence of the Fatherland.

Art. 8. The national wealth—that is, the mineral deposits, waters, State forests, mines, roads, rail, water and air transport, means of communication, banks, State industrial establishments, State farms and State machine stations, State commercial enterprises and communal enterprises and utilities—is the subject of special care and protection by the State and by all citizens.

[1]Polish text in *Dziennik Ustaw* (Journal of Laws), No. 33, of 23 July 1952. English translation in *Constitution of the Polish People's Republic*, 1953, received through the courtesy of Mr. Henryk Birecki, Permanent Representative of Poland to the United Nations. An English translation is also to be found in: Interparliamentary Union, *Constitutional and Parliamentary Information* (published by the Autonomous Section of Secretaries-General of Parliaments), Geneva, 15 June 1952, pp. 122–138.

Art. 9. 1. The Polish People's Republic strengthens, according to plan, the economic bond between town and country founded on brotherly co-operation between workers and peasants.

2. For this purpose, the Polish People's Republic secures a continuous increase in the output of State industry, serving to meet the all-round needs of the rural population in their capacity as producers and consumers; at the same time exerting a planned influence on the constant growth of production of agricultural commodities which supplies industry with raw materials and the urban population with foodstuffs.

Art. 10. 1. The Polish People's Republic protects the individual farms of working peasants and assists them with a view to safeguarding them against capitalist exploitation, to increasing production, to raising the technical level of agriculture and to improving their welfare.

2. The Polish People's Republic gives special support and all-round aid to the co-operative farms set up, on the basis of voluntary membership, as forms of collective economy. By applying methods of the most efficient collective cultivation and mechanized work, collective farming enables the working peasants to reach a turning point in production, and contributes to the complete elimination of exploitation in the countryside and to a rapid and considerable improvement in the level of its prosperity and culture.

3. The principal forms of State support and help for co-operative farms are the State machine stations, which make it possible to employ modern technology, and State credits on easy terms.

Art. 11. The Polish People's Republic promotes the development of various forms of the co-operative movement in town and country and gives it every help in the fulfilment of its tasks, while extending special care and protection to co-operative property, as constituting social property.

Art. 12. The Polish People's Republic recognizes and protects, on the basis of existing laws, individual property and the right to inherit land, buildings and other means of production belonging to peasants, craftsmen and persons engaged in domestic handicrafts.

Art. 13. The Polish People's Republic guarantees to citizens full protection of personal property and the right to inherit such property.

Art. 14. 1. Work is the right, the duty and a matter of honour for every citizen. By their work, by the observance of work discipline, by work emulation and the perfecting of methods of work, the working people of town and country add to the strength and power of the fatherland, raise the level of prosperity of the people and expedite the full realization of the socialist system.

2. Work champions enjoy the respect of the whole nation.

3. The Polish People's Republic gives increasing practical effect to the principle: "From each according to his ability; to each according to his work."

CHAPTER VI

THE COURTS AND THE PUBLIC PROSECUTOR'S OFFICE

. . .

Art. 50. 1. Judges and people's assessors are elected.

2. The procedure of election and the term of office of judges and assessors of *voivodeship* and district courts are established by law.

3. The procedure of appointment of judges of special courts is established by law.

Art. 51. 1. The Supreme Court is the highest judicial organ and supervises the activity of all other courts concerning the pronouncement of judgement.

2. The procedure for the exercise of supervision by the Supreme Court is established by law.

3. The Supreme Court is elected by the Council of State for a term of five years.

Art. 52. Judges are independent and subject only to the law.

Art. 53. 1. Cases in all courts of the Polish People's Republic are heard in public. The law may specify exceptions to this principle.

2. The accused is guaranteed the right to legal defence. He may have a defence counsel, either of his own choice or appointed by the court.

CHAPTER VII

FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Art. 57. The Polish People's Republic, by consolidating and multiplying the gains of the working people, strengthens and extends the rights and liberties of the citizens.

Art. 58. 1. Citizens of the Polish People's Republic have the right to work—that is, the right to employment paid in accordance with the quantity and quality of work done.

2. The right to work is ensured by the social ownership of the basic means of production, by the development of a social and co-operative system in the countryside, free from exploitation; by the planned growth of the productive forces; by the elimination of sources of economic crises and by the abolition of unemployment.

Art. 59. 1. Citizens of the Polish People's Republic have the right to rest and leisure.

2. The right to rest and leisure is assured to manual and office workers by reduction of working hours through the application of the eight-hour working day and shorter work time in cases specified by law, by the institution according to law of days off work and by annual holidays with pay.

3. The organization of workers' holiday schemes, the development of the tourist movement, of health resorts, sports facilities, houses of culture, clubs, recreation rooms, parks and other leisure time facilities, create possibilities for healthy and cultural relaxation for an increasing number of working people in town and country.

Art. 60. 1. Citizens of the Polish People's Republic have the right to health protection and to aid in the event of sickness or incapacity for work.

2. Effect is being given to this right on an increasing scale through:

(i) The development of social insurance for manual and office workers to cover sickness, old age and incapacity for work, as well as through the expansion of various forms of social assistance;

(ii) The development of the state-organized protection of the health of the population, the expansion of sanitation services and the raising of the health standards in town and country, consistent improvement of safety conditions, protection and hygiene of work, a wide campaign for the prevention of and fighting disease, increasing access to free medical attention, the development of hospitals, sanatoria, medical aid centres, rural health centres, and care for the disabled.

Art. 61. 1. Citizens of the Polish People's Republic have the right to education.

2. This right is ensured on an increasing scale by:

(i) Universal, free and compulsory primary schools;

(ii) A constant development of secondary schools, providing general or vocational education, and of schools of academic level;

(iii) The help of the State in raising the skill of citizens employed in industrial establishments and other places of employment in town and country;

(iv) A scheme of State scholarships, the development of hostels, boarding schools and students' homes, together with other forms of material aid for the children of workers, working peasants and intelligentsia.

Art. 62. 1. Citizens of the Polish People's Republic have the right to benefit from cultural achievements and to participate in the development of national culture.

2. This right is ensured on an increasing scale by developing and making accessible to the working people in town and country libraries, books, press, radio, cinemas, theatres, museums and exhibitions, houses of culture, clubs and recreation rooms; by a general fostering and promoting of the cultural creative activity of the people and of the development of creative talents.

Art. 63. The Polish People's Republic fosters the all-round development of science based on the achievements of the most advanced thought of mankind and of Polish progressive thought—the development of science in the service of the nation.

Art. 64. The Polish People's Republic takes care of the development of arts and letters, which express the needs and aspirations of the nation and which are in accord with the best progressive traditions of Polish creative thought.

Art. 65. The Polish People's Republic extends special protection to the creative intelligentsia—to those working in science, education, literature and art, as well as to pioneers of technical progress, to rationalizers and inventors.

Art. 66. 1. Women in the Polish People's Republic have equal rights with men in all spheres of public, political, economic, social and cultural life.

2. The equality of rights of women is guaranteed by:

(i) Equal rights with men to work and pay according to the principle "equal pay for equal work", the right to rest and leisure, to social insurance, to education, to honours and decorations, to hold public appointments;

(ii) Mother and child care, protection of expectant mothers, paid holidays during the period before and after confinement, the development of a network of maternity homes, crèches and nursery schools, the extension of a network of service establishments and restaurants and canteens.

Art. 67. 1. Marriage and the family are under the care and protection of the Polish People's Republic. The State gives particular care to families with many children.

2. A child born out of wedlock suffers no loss of rights.

Art. 68. The Polish People's Republic gives particularly careful attention to the education of youth and guarantees them the most extensive possibilities for development.

Art. 69. 1. Citizens of the Polish People's Republic, irrespective of nationality, race or religion, enjoy equal rights in all spheres of public, political, economic, social and cultural life. Infringement of this principle by any direct or indirect granting of privileges or

restriction of rights, on account of nationality, race or religion, is punishable by law.

2. The spreading of hatred, or contempt, the provocation of strife or the humiliation of man on account of national, racial or religious differences are forbidden.

Art. 70. 1. The Polish People's Republic guarantees freedom of conscience and religion to its citizens. The church and other religious bodies may freely exercise their religious functions. It is forbidden to prevent citizens from taking part in religious activities or rites. It is also forbidden to coerce anybody to participate in religious activities or rites.

2. The church is separated from the State. The principles of the relationship between church and State are, together with the legal and patrimonial position of religious bodies, determined by law.

3. The abuse of the freedom of conscience and religion for purposes prejudicial to the interests of the Polish People's Republic is punishable.

Art. 71. 1. The Polish People's Republic guarantees its citizens freedom of speech, of the press, of meetings and assemblies, of processions and demonstrations.

2. The making available to the working people and their organizations of the use of printing shops, stocks of paper, public buildings and halls, means of communication, the radio and other indispensable material means, serves to give effect to this freedom.

Art. 72. 1. In order to promote the political, social, economic and cultural activity of the working people of town and country, the Polish People's Republic guarantees to its citizens the right of association.

2. Political organizations, trade unions, associations of working peasants, co-operative associations, youth, women's, sports and defence organizations, cultural, technical and scientific associations, as well as other working people's social organizations, unite the citizens for active participation in political, social, economic and cultural life.

3. The setting up of, and participation in, associations the aims or activities of which are directed against the political or social system or against the legal order of the Polish People's Republic are forbidden.

Art. 73. 1. Citizens have the right to approach all organs of the State with complaints and grievances.

2. Citizen's complaints and grievances are to be examined and settled in an expeditious and just manner. Those guilty of protraction or of displaying a soulless and bureaucratic attitude towards citizens' complaints and grievances will be held responsible.

Art. 74. 1. The Polish People's Republic guarantees to its citizens inviolability of the person. A citizen may be deprived of his freedom only in cases specified by law. A detained person must be set free unless, within forty-eight hours from the moment of his detention, a warrant of arrest issued by the court or the procurator has been served on him.

2. The law protects the inviolability of the home and the privacy of correspondence. Search of the home is permissible only in cases specified by law.

3. Property may be seized only in cases established by law, by virtue of a final judgement.

Art. 75. The Polish People's Republic grants asylum to citizens of foreign countries persecuted for defending the interests of the working people, for struggling for social progress, for activity in defence of peace, for fighting for national liberation or for scientific activity.

Art. 76. It is the duty of every citizen of the Polish People's Republic to abide by the provisions of the Constitution and of the laws, to maintain socialist work discipline, to respect the rules of social intercourse and to discharge conscientiously their duties towards the State.

Art. 77. 1. It is the duty of every citizen of the Polish People's Republic to safeguard and strengthen social property, which is the unshakable foundation of the development of the State, the source of the wealth and might of the country.

2. Persons who commit sabotage or subversion, or inflict damage, or who otherwise injure social property, are punishable with all the severity of law.

Art. 78. 1. To defend the country is the most sacred duty of every citizen.

2. Military service is an honourable patriotic duty of citizens of the Polish People's Republic.

Art. 79. 1. Vigilance against the enemies of the nation and the diligent guarding of State secrets is the duty of every citizen of the Polish People's Republic.

2. High treason—espionage, impairing the armed forces, desertion to the enemy—is punishable as the gravest of crimes with all the severity of law.

CHAPTER VIII

PRINCIPLES OF ELECTORAL LAW

Art. 80. Elections to the *Sejm* and to the People's councils are universal, equal, direct and carried out by secret ballot.

Art. 81. Every citizen who has reached the age of eighteen, irrespective of sex, nationality, race, religion, education, length of residence, social origin, profession or property, has the right to vote.

Art. 82. Every citizen who has reached the age of eighteen is eligible for election to the people's councils, and every citizen who has reached the age of twenty-one is eligible for election to the *Sejm*.

Art. 83. Women have all electoral rights on equal terms with men.

Art. 84. Citizens serving in the armed forces have all electoral rights on equal terms with civilians.

Art. 85. Electoral rights are denied only to insane persons and to persons deprived by Court decision of public rights.

Art. 86. Candidates for the *Sejm* and candidates for the people's councils are nominated by political and social organizations in town and country.

Art. 87. It is the duty of deputies to the *Sejm* and of members of people's councils to report to the electors on their work and on the activity of the body to which they have been elected.

Art. 88. The procedure for nomination of candidates and for holding elections, as well as the procedure for the recall of deputies to the *Sejm* and of members of people's councils, are established by law.

. . .

ACT CONCERNING ELECTIONS TO THE *SEJM* OF THE PEOPLE'S REPUBLIC OF POLAND[1]

of 1 August 1952

CHAPTER I

GENERAL PRINCIPLES

Art. 1. 1. Every Polish citizen who is eighteen years old on the day of the election has the right to vote, irrespective of sex, nationality, race, religion, education, length of residence in his constituency, social origin, occupation or property status.

2. Women have all electoral rights on equal terms with men.

3. Members of the armed forces have all electoral rights on equal terms with civilians.

. . .

Art. 3. Every person who has the right to vote and has reached the age of twenty-one years may stand for election.

Art. 4. Each elector shall have one vote.

Art. 5. A vote may be cast only by the elector in person.

[1]Polish text in *Dziennik Ustaw* (Jonrnal of Laws) No. 35, position No. 246, of 5 August 1952. Text received through the courtesy of Mr. Henryk Birecki, Permanent Representative of Poland to the United Nations. English translation from the Polish text by the United Nations Secretariat.

CHAPTER 9

POLLING PROCEDURE

. . .

Art. 52. 1. The chairman of the polling district electoral commission shall ensure order during the poll and maintain the secrecy of the ballot for which purpose he may make the appropriate procedural orders.

2. The proper State authorities shall place at the disposal of the chairman such guards as he may request.

3. It shall be forbidden to provoke a disturbance at the polling station during the poll.

Art. 53. 1. Before the opening of the poll the polling district electoral commission shall ascertain that the ballot box is empty, that electoral registers and the necessary quantity of voting papers are available, and that screens have been placed in the polling station to ensure the secrecy of the ballot, and shall then close the ballot box and imprint thereon the seal of the commission.

2. After the ballot box is sealed it shall not be opened until the closing of the poll.

. . .

ACT CONCERNING SERVICE ON BOARD POLISH MERCHANT SHIPS IN THE FOREIGN TRADE[1]

of 28 April 1952

SUMMARY

This Act governs the service relations of members of the crews of merchant ships sailing in the foreign trade under the Polish flag. In the part dealing with the rights of members of the crew it is stated that a member of the crew shall receive pay for each day of vacation leave equal to his average daily wage. The Council of Ministers shall by ordinance specify the other cases in which a member of the crew shall retain the right to his average wage or part thereof, despite the fact that he is not working.

A member of the crew shall have a right to free medical attendance, both on board and ashore. For any period of incapacity attested by medical certificate during which a member of the crew is not receiving wages from the shipowner, he shall receive sickness benefit under the provisions of social insurance. If a member of the crew is incapacitated for work while outside Poland, he shall receive a sickness allowance from the ship-owner for a period of twelve weeks. In exceptional cases the allowance may be continued for a longer period of illness if the member of the crew cannot be repatriated for treatment in Poland in view of his state of health, as attested by a certificate from a medical practitioner designated by the Polish consul. The rate of the allowance shall be prescribed by the Minister of Shipping in agreement with the Minister of Finance and the Central Board of the Trade Union of Shipping Workers.

A member of the crew shall have the right to annual vacation leave at the end of one year's continuous service. The Act determines the length of the vacation leave which is from 14 to 30 calendar days depending on the length of service. When on vacation leave, members of the crew shall have priority for admission, together with their families to the workers' holiday facilities in the vacation homes, on payment at the prescribed rates. For each statutory non-working day spent at sea, the member of the crew shall receive a free half-day ashore. In the case of long voyages, the Ministry of Shipping may authorize up to one free day ashore for every statutory non-working day spent at sea. While they are in Polish ports and while they are in the reserve, members of the crew shall, on payment, be provided with suitable board and lodging if they need them and shall enjoy the recreational facilities of the seamen's homes.

The right to an old age pension shall accrue to members of the crew after twenty-five years of service as a seafarer, at the age of sixty years for men and fifty-five years for women.

The part dealing with hours of work specifies this term as meaning the period of time for which a member of the crew is required to carry out the work assigned to him in his post in accordance with the standard hours of work applying to him. The standard hours of work shall be prescribed by ordinance of the Council of Ministers in agreement with the Central Council of Trade Unions, upon proposals made by the Minister of Shipping. The Act lists the cases in which the master of the ship may prolong the standard hours of work; the order prolonging the hours of work shall be entered in the log book, with the reasons therefor.

The part dealing with safety and hygiene provides that every ship shall make the necessary arrangements for safe and hygienic working conditions and that every member of the crew shall be assured of care for his health. The competent Ministers shall make occupational safety and hygiene regulations for shipping and safety and hygienic conditions shall be supervised by the labour inspection authorities.

In the part dealing with young persons and women, it is stated that the engagement for service on ships of persons under eighteen years of age is prohibited. Women members of the crew shall enjoy the special maternity protection prescribed in the provisions governing the employment of women. Pregnant women shall be transferred to the reserve from the fourth month of pregnancy. An earlier transfer to the reserve shall take place if the woman so requests or a medical certificate so requires.

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[1] Polish text of the Act in *Dziennik Ustaw*, No. 35, of 22 May 1952. A translation of the complete text of the Act is published in: International Labour Office, *Legislative Series* 1952—Pol. 2. Summary by the United Nations Secretariat.

PORTUGAL

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

1. Act No. 2053, of 22 March 1952 (extended to the overseas territories by ministerial order No. 14062, of 22 August 1952). This Act is published in the *Diário do Govêrno* No. 66, of 22 March 1952, and the ministerial order, in *D.G.* No. 185, of 22 August 1952.

This is entitled "Act to prevent desertion of families" and provides severe penalties for persons with family responsibilities, either material or moral, who evade their obligations. The offences punishable under the Act comprise: desertion of the home; refusal by parents, guardians, married persons or other persons having custody of minors, to provide maintenance for the spouse or for children; and failure to provide moral support for the family.

Under the Act, certain circumstances (e.g. the wife's pregnancy) aggravate the offence, while others, if sufficiently serious, exempt from liability.

2. Legislative decree No. 38768, of 28 May 1952. This legislative decree is published in *D.G.* No. 118, of 28 May 1952.

This decree extends the regulations prescribed in article 4 (paragraphs 1 and 2) of Act No. 1952 (published in *D.G.* No. 57, of 10 March 1937; the principal enactment governing the terms of contracts of employment) to seafarers; it classifies them, according to the circumstances, into salaried and wage-earning employees and makes them eligible for the benefits granted by that Act.

3. Legislative decree No. 38778, of 11 June 1952. This decree is published in *D.G.* No. 129, of 11 June 1952.

This decree amends article 4 of decree No. 31107, published in *D.G.* No. 15, of 18 January 1941, prescribing the conditions governing the marriage of members of the armed forces who are on active service.

4. Legislative decree No. 38783, of 16 June 1952. This decree is published in *D.G.* No. 132, of 16 June 1952.

This is a measure to aid the individual craftsman and is designed to protect small and medium-sized businesses against growing industrial concentration. For the purpose of the regulations it defines "independent household and family work" as, "work carried on in a person's own residence, or in premises attached thereto, by members of the family who whilst sharing the common home and board, carry on trade for the account of the head of the family or his wife".

To protect and encourage artisans working only with their own small means, the decree grants them considerable exemptions.

5. Decree No. 38964, of 27 October 1952 (extended to the overseas territories by ministerial order No. 14995, of 21 May 1953). This decree is published in *D.G.* No. 241, of 27 October 1952, and the ministerial order, in *D.G.* No. 106, of 21 May 1953.

This decree regulates the admission of juveniles to public entertainments and makes the attendance of children under the age of six years at cinematograph performances unlawful. It divides entertainments into three categories: for children between the ages of six and thirteen years; for children between thirteen and eighteen; and for adults over eighteen. Children in the first category may be admitted only to suitable performances, which may in no circumstances continue beyond 8 o'clock in the evening. It sets up two bodies responsible for classifying entertainments: the Entertainments Censorship Committee and the Juvenile Literature and Entertainments Committee; the latter, as its name indicates, also has certain functions relating to reading matter intended for young persons.

II. JUDICIAL DECISIONS

According to the Portuguese legal system, decisions rendered by the Supreme Court of Justice are the only judicial decisions that are binding on the lower courts. In 1952 neither the Supreme Court nor the other courts gave any rulings that constitute precedents or novel departures in the matter of human rights.

III. INTERNATIONAL AGREEMENTS

1. Legislative decree No. 38793, of 21 June 1952, published in *D.G.* No. 137, of 21 June 1952, approved for ratification the Paid Vacations (Seafarers) Convention (Revised) adopted at the 32nd session of the International Labour Organisation which met at Geneva on 8 June 1949 (Convention 91).

2. Legislative decree No. 38800, of 25 June 1952, published in *D.G.* No. 140, of 25 June 1952, approved for ratification Convention No. 92, the Accommodation of Crews Convention (Revised) adopted at the same session of the International Labour Organisation and on the same date (Convention 92).

[1] Information received through the courtesy of the Portuguese Embassy, Washington.

ROMANIA

CONSTITUTION OF THE ROMANIAN PEOPLE'S REPUBLIC[1]

of 24 September 1952

CHAPTER I

THE SOCIAL STRUCTURE

Art. 1. The Romanian People's Republic is a State of working people of town and country.

Art. 2. The foundation of people's power in the Romanian People's Republic is the alliance of the working class with the working peasantry, an alliance in which the leading role is held by the working class.

Art. 3. The Romanian People's Republic came into being and became strong as a result of the liberation of the country by the armed forces of the Union of Soviet Socialist Republics from the yoke of fascism and imperialist domination, as a result of the overthrow of the power of the landlords and capitalists by the masses of the people in town and country headed by the working class under the leadership of the Romanian Communist Party.

Art. 4. In the Romanian People's Republic, all power belongs to the working people of town and country, who exercise it through the Grand National Assembly and the people's councils.

The people's councils are the political foundation of the Romanian People's Republic.

Art. 5. The national economy of the Romanian People's Republic includes three social-economic sectors: the socialist sector, the sector of small-scale production of commodities, and the private-capitalist sector.

Art. 6. The foundation of the socialist social-economic sector is the socialist ownership of the means of production, which exists either in the form of state property (belonging to the whole people) or in the form of co-operative-collective property (property of collective farms or of co-operative organizations).

In the socialist sector of the national economy, the exploitation of man by man is abolished.

The socialist sector, which plays the leading role in the national economy of the Romanian People's Republic, constitutes the basis for the development of the country along the road of socialism. The people's democratic state, proclaiming as its main task the building of socialism, ceaselessly strengthens and widens the socialist sector, and ensures a steady rise in the material well-being and cultural level of the working people.

Art. 7. All the mineral wealth, the factories, plants and mines, forests, waters, sources of natural energy, communications of every kind, rail, river, sea and air transport, banks, post, telegraph, telephone, radio, printing means, cinematography and theatre, state farms, machine and tractor stations, communal enterprises and the nationalised part of the bulk of dwelling houses in the towns, are state property and belong to the whole people.

Art. 8. The land in the Romanian People's Republic belongs to those who till it.

Art. 9. The livestock and implements of collective farms and co-operatives, their products, as well as all their enterprises and buildings, constitute the common property of the collective farms and co-operatives.

Peasants who are members of collective farms are entitled to have as their personal property a dwelling house, a plot of house-hold land, livestock, poultry and minor agricultural implements—in accordance with the rules of the collective farm.

Art. 10. Small-scale production of commodities in the Romanian People's Republic includes small and medium peasant holdings with private land-ownership based on the producer's own labour, as well as the workshops of artisans and handicraftsmen who do not exploit the labour of others. The State protects the right of private ownership of the land of peasants with small and medium holdings, according to the laws in force.

The people's democratic State supports the peasants with small and medium holdings, and the artisans and handicraftsmen, with the aim of protecting them against capitalist exploitation, increasing their production and raising their well-being.

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[1]Romanian text in *Buletinul Oficial* (Official Gazette) No. 1, of 27 September 1952. A complete English translation in: Interparliamentary Union, *Constitutional and Parliamentary Information* (published by the Autonomous Section of Secretaries-General of Parliaments), Geneva, 15 January 1953, pp. 26–44. Permission to reproduce this translation was granted by Mr. Emile Blamont, President of the Autonomous Section of Secretaries-General of Parliaments, whose courtesy is gratefully acknowledged.

Art. 11. The private-capitalist sector in the Romanian People's Republic includes *kulak* holdings, private commercial enterprises, small non-nationalized industrial enterprises based on the exploitation of wage labour.

The people's democratic state consistently pursues a policy of restricting and dislodging the capitalist elements.

Art. 12. The personal property right of the citizens of the Romanian People's Republic in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises, in articles of domestic and personal use, as well as the right of citizens to inherit personal property, is protected by law.

Art. 13. In the Romanian People's Republic, foreign trade constitutes a state monopoly.

Art. 14. The economic and cultural life of the Romanian People's Republic develops on the basis of the state national-economic plan, in the interests of building socialism, of steadily raising the material and cultural standards of the working people, of strengthening the national independence of the country and its defensive capacity.

Art. 15. In the Romanian People's Republic, work is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: "He who does not work, neither shall be eat." In the Romanian People's Republic there is carried into effect on an ever wider scale the principle of socialism: "From each according to his ability; to each according to his work."

CHAPTER II

THE STATE STRUCTURE

Art. 16. The state system of the Romanian People's Republic is the system of people's democracy, representing the power of the working people.

Art. 17. The Romanian people's democratic State

(*a*) Defends the independence and sovereignty of the Romanian people, the gains of the working people of town and country, the rights, liberties and power of those who work against the enemies of the working people;

(*b*) Ensures the strengthening and development of the productive forces of the country by means of socialist industrialization, the liquidation of economic, technical and cultural backwardness, the gradual socialist transformation of agriculture on the basis of voluntary agreement of the working peasants;

(*c*) Organizes and develops planned economy, basing itself on State and co-operative enterprises;

(*d*) Organizes the defence of the Republic against external enemies and directs the armed forces of the Romanian People's Republic; the armed forces of the Romanian People's Republic defend the borders of the country, the independence, sovereignty and security of the Romanian people, and peace;

(*e*) Safeguards the internal security of the citizens, renders harmless and suppresses the enemies of the people;

(*f*) Directs the monetary and credit system, drafts and fulfils the state budget, determines the taxes, levies and revenues needed for the requirements of the State;

(*g*) Administers the banks and the state industrial, agricultural and trading enterprises and institutions;

(*h*) Directs public education of all grades;

(*i*) Ensures a steady rise in the well-being and health of the masses of the people in town and country;

(*j*) Ensures the development of the culture of the Romanian people and of the culture of the national minorities, socialist in content, national in form;

(*k*) Watches over the application and observance of the Constitution and the laws of the Romanian People's Republic—the expression of the will and interest of the working people.

The exact observance and application of the Constitution and the laws of the country—compulsory throughout the territory of the Republic—are the main duty of every state institution and of every citizen.

Art. 18. The Romanian People's Republic consists of the following administrative-territorial divisions.

[An enumeration of these divisions, including the Magyar Autonomous Region, follows.]

Art. 19. The Magyar Autonomous Region of the Romanian People's Republic consists of the territory inhabited by the compact Magyar Szekely population and has its autonomous administrative body elected by the population of the Autonomous Region . . .

Art. 20. The laws of the Romanian People's Republic, the decisions and directives of the central organs of the state, are compulsory on the territory of the Magyar Autonomous Region.

Art. 21. The Statute of the Magyar Autonomous Region is elaborated by the People's Council of the Autonomous Region and submitted for approval to the Grand National Assembly of the Romanian People's Republic.

CHAPTER VI

THE COURTS AND THE PROCURATOR'S OFFICE

. . .

Art. 68. In the Romanian People's Republic, judicial proceedings are conducted in the Romanian language; in regions and districts inhabited by a

population of non-Romanian nationality, the use of the own language of that population is ensured.

Persons not knowing the language in which the judicial proceedings are conducted are guaranteed the opportunity of acquainting themselves, through an interpreter, with the material of the case, and likewise the right to use their own language in court and in the conclusions to the case.

Art. 69. In all courts, cases are heard in public unless otherwise provided for by law.

The accused is guaranteed the right to defence.

Art. 70. Judges are independent and are subject only to the law.

. . .

CHAPTER VII

FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Art. 77. Citizens of the Romanian People's Republic are ensured the right to work—that is, the right to guaranteed employment and payment for their work in accordance with its quantity and quality.

The right to work is ensured by the existence and development of the socialist organization of the national economy, the steady and systematic growth of the productive forces in the Romanian People's Republic, the elimination of the possibility of economic crises and the abolition of unemployment.

Art. 78. Citizens of the Romanian People's Republic have the right to rest and leisure.

The right to rest and leisure is ensured by the establishment of an eight-hour day for factory and office workers; by the reduction of the working day to less than eight hours for certain trades in which conditions of work are arduous, and to four hours where conditions of work are particularly arduous; by the institution of annual vacations with full pay for all factory and office workers, and by the provision of rest-homes, sanatoria and cultural establishments for the accommodation of the working people.

Art. 79. Citizens of the Romanian People's Republic have the right to maintenance in old age and also in case of sickness or disability.

This right is ensured by the extensive development of social insurance of factory and office workers at state expense, free medical service for the working people, and by the provision of health resorts for the use of the working people.

Art. 80. Citizens of the Romanian People's Republic have the right to education.

This right is ensured by universal, compulsory and free elementary education; by a system of state stipends for deserving students and pupils of higher educational establishments and intermediate and elementary schools; and by the organization in industrial enterprises, state farms, machine and tractor stations and collective farms of free vocational training for the working people.

Education of all categories is provided for by the State.

The State takes care of the development of science, literature and art.

Art. 81. The working people, citizens of the Romanian People's Republic, irrespective of their nationality, race or sex, are ensured full equality of rights in all spheres of economic, political and cultural activity.

Any direct or indirect restriction of the rights of the working people, citizens of the Romanian People's Republic, the establishment of any direct or indirect privileges for citizens on account of their race or nationality, as well as any manifestation of chauvinism, race hatred, national hatred or nationalist chauvinistic propaganda, is punishable by law.

Art. 82. In the Romanian People's Republic, the national minorities are guaranteed the free use of their own language, tuition of all categories in their own language, and books, newspapers, and theatres, in their own language. In administrative divisions inhabited also by populations of a nationality other than the Romanian, all organs and institutions shall use orally and in writing the language of the respective nationalities as well, and shall appoint officials from among the ranks of the respective nationality or of other local inhabitants conversant with the language and the way of life of the local population.

Art. 83. Women in the Romanian People's Republic have equal rights with men in all spheres of economic, political, government and cultural activity.

Women have equal rights with men to work, payment for work, rest and leisure, social insurance and education.

The State protects marriage and the family, and defends the interests of mother and child. The State grants aid to mothers of large families and unmarried mothers, and maternity leave with full pay, and provides maternity homes, crèches and day-nurseries.

Art. 84. All citizens of the Romanian People's Republic are guaranteed freedom of conscience.

Religious cults are free to organize themselves and may function freely. All citizens of the Romanian People's Republic are guaranteed freedom of religious worship.

The school is separated from the church. No religious creed, congregation or community may open or maintain institutions of general education, but only special schools for training the personnel of the cult.

The manner of organization and functioning of religious cults is regulated by law.

Art. 85. In conformity with the interests of the working people and in order to strengthen the system of people's democracy, the citizens of the Romanian People's Republic are guaranteed by law:

(*a*) Freedom of speech;

(*b*) Freedom of the press;

(*c*) Freedom of assembly, including the holding of mass meetings;

(*d*) Freedom of street processions and demonstrations.

These rights are ensured by placing at the disposal of the working masses and their organizations, printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites for the exercise of these rights.

Art. 86. In conformity with the interests of the working people and in order to develop the political and public activity of the masses of the people, citizens of the Romanian People's Republic are guaranteed the right to unite in public organizations, trade unions, co-operative societies, women's and youth organizations, sports organizations and cultural, technical and scientific societies.

Any association of a fascist or anti-democratic character is prohibited. Participation in such associations is punishable by law.

The most active and conscious citizens in the ranks of the working class and of other sections of the working people unite in the Romanian Workers' Party, the vanguard of the working people, in their struggle to strengthen and develop the people's democratic system and to build the socialist society.

The Romanian Workers' Party is the leading force of the organizations of the working people as well as of the state organs and institutions. All organizations of the working people in the Romanian People's Republic rally around it.

Art. 87. Citizens of the Romanian People's Republic are guaranteed inviolability of the person.

No person may be placed under arrest except by decision of a court or of the procurator, in conformity with the provisions of the law.

Art. 88. The inviolability of the homes of citizens and privacy of correspondence are protected by law.

Art. 89. The Romanian People's Republic affords the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for scientific activity, or for participating in the struggle for national liberation or the defence of peace.

Art. 90. It is the duty of every citizen of the Romanian People's Republic to abide by the Constitution and to observe the laws of the people's democratic State; to safeguard, fortify and develop public socialist property; to maintain labour discipline; actively to contribute to the strengthening of the power of people's democracy and to the economic and cultural advancement of the country.

Art. 91. Military service is compulsory. Military service in the armed forces of the Romanian People's Republic is an honourable duty of the citizens of the Romanian People's Republic.

Art. 92. To defend the motherland is the sacred duty of every citizen of the Romanian People's Republic. Treason to the motherland, violation of the oath of allegiance, desertion to the enemy impairing the defence capacity of the State, espionage, constitute the gravest of crimes against the people and State and are punishable with all the severity of the law.

CHAPTER VIII

THE ELECTORAL SYSTEM

Art. 93. The deputies to the Grand National Assembly and to the people's councils are elected on the basis of universal, equal and direct suffrage by secret ballot.

Art. 94. All working people, citizens of the Romanian People's Republic, who have reached the age of eighteen, irrespective of race or nationality, sex, religion, education, profession or domicile, have the right to vote in the election of deputies, with the exception of insane persons, of persons who have been sentenced by a court of law to deprivation of electoral rights, and of persons declared unworthy by law.

Any working person, a citizen of the Romanian People's Republic who has reached the age of twenty-three and who has the right to vote is eligible for election to the Grand National Assembly.

Art. 95. All working people, citizens of the Romanian People's Republic, participate in elections on an equal footing, each citizen being entitled to one vote.

Art. 96. Women have the right to elect and be elected to the Grand National Assembly and the people's councils, on equal terms with men.

Art. 97. Citizens serving in the armed forces of the Romanian People's Republic have the right to elect and be elected on equal terms with all working people, citizens of the Romanian People's Republic.

Art. 98. The deputies to the Grand National Assembly and to all people's councils are elected by the working people, citizens of the Romanian People's Republic, by direct vote.

Art. 99. Voting at elections of deputies is secret.

Art. 100. Candidates are nominated by election districts, in accordance with rules established by law.

The right to nominate candidates is secured to all organizations of the Romanian Workers' Party, trade unions, co-operatives, youth organizations and other mass organizations and cultural societies.

Art. 101. It is the duty of every deputy to report to his electors on his work and on the work of the elected body to which he belongs.

The deputy may be recalled at any time upon decision of a majority of the electors in the manner established by law.

. . .

ACT No. 9 CONCERNING THE ELECTION OF DEPUTIES TO THE GRAND NATIONAL ASSEMBLY[1]

of 25 September 1952

CHAPTER I

THE ELECTORAL SYSTEM

Art. 1. Under article 93 of the Constitution of the Romanian People's Republic,[2] deputies to the Grand National Assembly are elected on the basis of universal, equal and direct suffrage by secret ballot.

Art. 2. Under article 94 of the Constitution of the Romanian People's Republic, all working people, citizens of the Romanian People's Republic who have reached the age of eighteen, irrespective of race or nationality, sex, religion, education, profession or domicile, have the right to vote in the election of deputies, with the exception of insane persons, or persons who have been sentenced by a court of law to deprivation of electoral rights, and of persons declared unworthy by law.

Art. 3. Any working person, a citizen of the Romanian People's Republic who has reached the age of twenty-three and who has the right to vote is eligible for election to the Grand National Assembly.

Art. 4. No person sentenced for a criminal offence to deprivation of electoral rights may elect or be elected for such time as the deprivation of such rights is ordered by the sentence of the court.

Art. 5. The following are *unworthy* to elect or be elected:

(*a*) Former land-owners, former industrialists, former bankers, former wholesale traders, profiteers, owners of private commercial enterprises and of small industrial enterprises which are not nationalized, based on the exploitation of hired workers;

(*b*) Persons convicted of war crimes or crimes against peace and mankind.

Art. 6. Under article 95 of the Constitution of the Romanian People's Republic, all working people, citizens of the Romanian People's Republic, participate in elections on an equal footing, each citizen being entitled to one vote.

Art. 7. Under article 96 of the Constitution of the Romanian People's Republic, women have the right to elect and be elected to the Grand National Assembly on equal terms with men.

Art. 8. Under article 97 of the Constitution of the Romanian People's Republic, citizens serving in the armed forces of the Romanian People's Republic have the right to elect and be elected on equal terms with all working people, citizens of the Romanian People's Republic.

Art. 9. Under article 98 of the Constitution of the Romanian People's Republic, deputies to the Grand National Assembly are elected by the working people, citizens of the Romanian People's Republic, by direct vote.

Art. 10. Under article 99 of the Constitution of the Romanian People's Republic, voting at elections of deputies is secret.

Art. 11. Persons resident in the territory of the Romanian People's Republic who are not citizens of the Romanian People's Republic are not entitled to elect or be elected to the Grand National Assembly.

Art. 12. Under article 100 of the Constitution of the Romanian People's Republic, candidates for deputy are nominated by election districts in accordance with the rules established by this Act.

CHAPTER IX

PREPARATIONS FOR ELECTIONS

Art. 61. The executive committees of people's councils, in communes, town wards and towns in which there are polling areas, shall ensure that polling stations are provided with special rooms for

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[1] Romanian text in *Buletinul Oficial* of the Grand National Assembly No. 1, of 27 September 1952, received through the courtesy of the Romanian Legation, Washington. English translation from the Romanian text by the United Nations Secretariat.

[2] See the preceding text for the electoral provisions of the Constitution.

voting, close to and in direct communication with the offices of the electoral commission for the polling area or shall arrange for a sufficient number of polling booths to be installed in the offices of the electoral commission for the polling area.

Each polling area shall likewise be provided with the necessary number of ballot boxes, of the pattern approved by the Central Electoral Commission, and with a sufficient number of pencils.

CHAPTER X

ELECTIONS

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Art. 72. The presence of any person other than the voter in the polling room or polling booth is prohibited.

. . .

REPORT OF THE STATE PLANNING COMMITTEE AND THE CENTRAL STATISTICAL BOARD WITH REGARD TO THE RESULTS OBTAINED IN IMPLEMENTING THE STATE PLANS FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE ROMANIAN PEOPLE'S REPUBLIC IN 1952[1]

EXTRACTS

IX. SOCIAL AND CULTURAL ACTIVITIES AND IMPROVEMENTS OF THE STANDARD OF LIVING

In the course of 1952, considerable progress has been made in raising the cultural standard of the masses, in education at all levels, and in science, literature and art.

Under the anti-illiteracy campaign, 277,000 persons completed educational courses in 1952, the planned target being exceeded by 25.9 per cent.

As compared with the preceding year, the number of schools offering seven-year courses was increased by 172, the number of classes by 875 and the number of pupils in classes 5 to 7 by over 17,000.

There were more than 200,000 pupils in intermediate technical schools, teachers' training schools, secondary schools and special two-year schools.

Day higher education courses and workers' engineering training courses were attended by 55,700 students, an increase of 3,300 over the number of students in 1951.

In 1952, 7,500 young people completed day courses in institutions of higher education and 23,500 in intermediate technical schools. Eight thousand, six hundred and thirty primary and secondary school teachers were trained by the teachers' training schools in 1952, 84 per cent more than in 1951.

In the course of 1952 new institutions of higher education were established.

In 1952, the total number of books and pamphlets printed increased by 12.7 per cent and the number of books and pamphlets printed in the languages of the national minorities was 40.6 per cent greater than the number in 1951.

More films were made and the mass production of projectors was begun.

Cinema, theatre and opera performances were attended by approximately 62 million persons in the course of the year.

In 1952, the increase in the number of new radio licence holders was three times as great as in 1951.

In 1952, further progress was made in the protection of public health.

In the Ministry of Health hospitals alone 9,152 beds were made available; the Comänesti hospital was made available for workers in the coal fields, and there was an increase in the number of maternity homes and anti-epidemic centres.

The production of medicines and of medical instruments and apparatus was 28.4 per cent greater than production in 1951.

As a result of the higher material and cultural standards of life and the improvement of medical services for the people, there was a decline in the general mortality rate and the infant mortality rate fell 11 per cent as compared with 1951.

Water supply, sewage and gas services were extended to serve the population in 1952, and large-scale sanitation and health works were undertaken.

In 1952, state expenditure on education and culture alone rose by over 2.2 thousand million lei: similarly budgetary provision for workers' health services and for maternal and child welfare was increased by 19.5 per cent as compared with 1951.

The State has provided working people with financial assistance from the state social insurance funds, which have increased by 9 per cent over the

[1] Romanian text in *Scanteia* No. 2564, of 23 January 1953, received through the courtesy of the Romanian Legation, Washington. English translation from the Romanian text by the United Nations Secretariat.

preceding year; considerable sums have likewise been expended for the provision of holidays.

In 1952, pensions totalling over 580,000,000 lei were paid by the State.

The number of workers sent for holidays and treatment in health resorts increased by 19.6 per cent in 1952 as compared with 1951, and the number of children sent to mountain and seaside camps increased by 14 per cent.

DECREE No. 106 ESTABLISHING STATE ALLOWANCES FOR FAMILIES HAVING FOUR OR MORE CHILDREN[1]

of 27 April 1950

SUMMARY

To assist large families and the families of single mothers, a system of state family allowances has been established by decree of the Presidium of the Grand National Assembly; the allowances are payable to families with four or more children where one or both parents earn their livelihood by their labour, as

(*a*) Wage earners;

(*b*) Members of collective farms;

(*c*) Members of individual agricultural undertakings exempt from the farm tax; and to

(*d*) Single mothers who are wage earners, members of collective farms or individual agricultural undertakings exempt from the tax on farm income, irrespective of the number of children.

The state family allowance is granted to the families specified above in respect of each child up to the age of five years and thereafter on a scale depending on the number of children, in respect of each child, beginning with the fourth, in the care of the family, and to the mothers specified under (*d*) in respect of every child beginning with the first.

The allowance is granted in respect of children of a single mother until the child reaches the age of twelve years.

The ages until which children are deemed to be in the care of the family are as follows:

Fifteen years in the case of children of rural families; Eighteen years in the case of children of urban families.

The allowance will be granted to the families referred to in (*a*) where the parents are wage earners employed at a grade not higher than grade 8.

In addition to the above-mentioned allowances, a lump state allowance of 20,000 lei is granted to mothers who are members of families of wage earners, farmers who are members of collective farms or poor farmers exempt from the tax on farm income, on the birth of the tenth or a subsequent child provided that eight of their children are living.

The family allowances provided for in this decree are granted only to families whose children receive no scholarships or other state allowances.

Applications and all supporting documents presented to establish entitlement to a state allowance under this decree are exempt from stamp duty.

The amount of the allowance will be fixed by decision of the Council of Ministers.

Regulations governing the application of this decree will be laid down by decision of the Ministry of Labour and Social Welfare.

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[1]Romanian text of the decree in *Buletinul Oficial* No. 39, of 29 April 1950. Summary received through the courtesy of the Romanian Legation in Washington. English translation from the Romanian text by the United Nations Secretariat.

DECREE CONCERNING CHILD WELFARE[1]

of 7 March 1952

SUMMARY

Under this decree, the Ministry of Health is required to take action in 1952 to provide a further 1,200 hospital beds for children in the new industrial centres, to organize children's surgical and orthopaedic units in hospitals and surgical wards for adults, and to set up children's dietetic services in contagious diseases hospitals.

It is the duty of the Ministry of Education to take action for the proper application in pre-school establishments and schools of the programme prepared jointly with the State Health Inspectorate, and to ensure a balance between education, extra-curricular activities and recreation, avoiding any excessive strain on the children.

In order to ensure the organization and satisfactory working of the crèches and day nurseries, undertakings and institutions employing women workers are required to set up crèches and nurseries using their own resources, or to co-operate with other undertakings and institutions in organizing crèches and nurseries on an area basis.

Collective farms, state farms ,and machine and tractor stations, assisted by organs of the state administration, people's councils and mass organizations, are to set up seasonal day nurseries and to take steps to ensure their efficient operation.

In order to ensure the expansion and proper development of children's camps and colonies, the executive committees of the people's councils are to organize such camps and colonies in their respective areas.

With the assistance of the trade unions, undertakings are to organize summer camps and colonies in suitable places in the area in which the undertaking concerned is situated.

Summer camps and colonies and any other form of summer holiday organization for pre-school and school children are to be provided with qualified staff.

The decree of the Council of Ministers makes further provision for ensuring the appropriate development of child welfare activities.

In order to ensure the provision of supplies for and the efficient operation of children's institutions, ministries, state committees and economic organizations are required to provide such institutions with adequate supplies of food, articles of everyday use and fuel.

To further the intellectual and moral development of children, the Directorate of Publications, Printing and Distribution of Books and Periodicals is required to take specified action to promote the publication of works concerning children.

The Society for the Dissemination of Science and Culture and the Committee for Cultural Foundations are to prepare courses of lectures on child welfare.

[1]Romanian text of the decree in *Buletinul Oficial* No. 13, of 17 March 1952. Summary received through the courtesy of the Romanian Legation, Washington. English translation from the Romanian text by the United Nations Secretariat.

DECREE CONCERNING THE EXPANSION OF COAL PRODUCTION AND THE IMPROVEMENT OF THE STANDARD OF LIVING OF WORKERS IN THE COAL INDUSTRY[1]

of 3 July 1952

SUMMARY

The life of the miners has changed radically as compared with the situation under the bourgeois-landlord regime. Their real wages have increased. Even before the end of 1951, accommodation with a total floor space of 175,000 square metres had been made available, and a campaign for the construction of dwellings for miners has been launched under the five-year plan.

Workers and their families enjoy the benefits of holidays, recreational organizations, medical care and cultural centres. In the present year alone, more than 7,000 miners have been sent to the seaside or to health resorts. The supply of food and industrial products has been substantially improved through

[1]Romanian text in *Buletinul Oficial* No. 38, of 30 July 1952, received through the courtesy of the Romanian Legation, Washington. English translation from the Romanian text by the United Nations Secretariat. This decree was issued by the Council of Ministers of the Romanian People's Republic and the Central Committee of the Romanian Workers' Party.

the establishment of eighty-nine state shops in the mining centres.

Large economic and cultural investments have been made in the coal industry. Thus, in the three years of planned economy, economic and social-cultural investments to the amount of approximately 500 millions of lei have been made. In 1952 alone, such investments will amount to 375 million lei. For the following years, too, the state plan provides for considerable investments both for the mechanization of production and for social and cultural purposes.

Raising the Standard of Life

. . .

3. In order to ensure a permanent labour force for the coal industry 9,000 apartments, including 5,000 in Valea Jiului, will be constructed under the five-year plan, together with homes for 9,000 tenants.

The dwellings will be built in the vicinity of the coal mines. Premises for shops selling foodstuffs and manufactured articles will be constructed close to the dwellings, as well as social and cultural and health institutions such as schools, clubs, cinemas, gardens, crèches, libraries, stadiums, polyclinics, hospitals and baths.

The Ministry of Construction and Industrial Construction Material, the Ministry of Petroleum and Coal and the People's Councils concerned will be responsible for the implementation of the programme.

4. Land for gardens will be made available by the people's councils to coal miners who do not possess kitchen gardens attached to the houses in which they live.

The land will be made available on the basis of certificates issued by the coal mine concerned. An area of up to 0.1 of a hectare will be provided for each family. The land will be exempt from all taxes.

5. Special shops selling food and manufactured articles exclusively to workers, officials, engineers and technicians of the coal industry will be set up under a plan approved by the Council of Ministers.

The Ministry of Petroleum and Coal and the Ministry of Internal Trade will take the necessary action for this purpose within a period of three months.

Protection of Labour

1. To improve safety measures and the protection of labour the Ministry of Petroleum and Coal will prepare a study of mine equipment, ventilation, transport and lighting before the end of 1952.

It will also take measures by 1 October 1952 for all coal mining undertakings to post regulations regarding equipment and shot-firing in places of work.

2. The Ministry of Health will set up a network of underground first-aid posts and surface first-aid stations, as well as fully equipped dispensaries, and will ensure that these are in operation in all coal mines by 1 August 1952.

3. In order to take precautionary measures for preventing and controlling fires, explosions and technical breakdowns, the Ministry of Petroleum and Coal will submit a plan to the Council of Ministers by 1 September 1952 for the better organization and extension of mine rescue parties, which will be available at short notice in all coal mines when there is a risk of fire-damp and in all large coal mines. The rescue parties are to be provided with all the necessary equipment and with personnel trained in its use.

4. In the case of miners transferred to surface work owing to age or as a result of occupational disease, the difference between their former wages and their present wages will be made up by the state social insurance.

5. In case of occupational disease or accident, workers in the coal industry will be entitled to receive medicines and treatment free of charge; medicines will be supplied through the Ministry of Health and the cost will be borne by the state social insurance fund as provided by law.

SAAR

ACT TO APPROVE THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENTERED INTO BY THE MEMBERS OF THE COUNCIL OF EUROPE, DATED 4 NOVEMBER 1950, AND THE PROTOCOL THERETO DATED 19 MARCH 1952[1]

of 13 June 1952

The Diet,

Considering that according to the Constitution of the Saar the State is established on a foundation of freedom, humanity, law and morality,

Convinced that the respect of these fundamental rights and freedoms is the sole guarantee of the maintenance of democracy,

In view of the importance of uniformly guaranteed fundamental rights and freedoms in a European community,

Has adopted the following Act, which is hereby promulgated:

Art. 1. The Diet of the Saar hereby approves the Convention for the Protection of Human Rights and Fundamental Freedoms entered into by the members of the Council of Europe, dated 4 November 1950, and the Protocol thereto, dated 19 March 1952.

Art. 2. The President of the Council of Ministers is hereby instructed to ratify the said Convention and the Protocol thereto and publish the same in the *Amtsblatt des Saarlandes*.

[1]German text in the *Amtsblatt des Saarlandes* No. 32, of 21 July 1952, received through the courtesy of the French delegation to the United Nations. English translation from the German text by the United Nations Secretariat. See the text of the Convention with introductory note in *Yearbook on Human Rights for 1950*, pp. 418–426, and the Protocol of the Convention in this *Yearbook*, p. 411.

ACT CONCERNING POLITICAL PARTIES[1]

of 18 March 1952

Art. 1. 1. A political party shall, for the purposes of this Act, be defined as an association of persons who, in pursuance of a published programme, contribute, by constitutional and democratic methods, to the shaping of public life as a whole and to the formation of the political desires of the people. A group the activity of which is limited to the protection of particular economic, social or cultural interests shall not be considered a political party.

2. The formation and the activities of political parties shall be regulated by this Act. The provisions of article 1(1), (2) and (4), article 3(1), article 4(1), (2) (phrase 1) and (4), article 5(1), (2) and (3) and article 8 of the Act of 13 July 1950, concerning Associations[2] shall also apply in this connexion. The Minister of the Interior shall be responsible for such matters and lower administrative authorities shall no longer be responsible.

Art. 2. 1. Political parties may be formed freely.

2. A constituent meeting of a party may only be held if convoked by a founding committee consisting of not less than fifty persons who have resided continuously in the Saar for over one year.

3. The directing committee of a party must consist of at least nine members; it shall be responsible for the registration of the party in accordance with the regulations. The party may not begin its activities until it has been so registered.

[1]French and German texts in *Bulletin officiel de la Sarre–Amtsblatt des Saarlandes*, No. 16, of 4 April 1952. A complete English translation may be found in: Interparliamentary Union, *Constitutional and Parliamentary Information* (published by the Autonomous Section of Secretaries-General of Parliaments), Geneva, 15 June 1952, pp. 139–141. Permission to reproduce this translation was granted by Mr. Emile Blamont, President of the Autonomous Section of Secretaries-General of Parliaments, whose courtesy is gratefully acknowledged. Article 9 of the Act provides that all provisions repugnant to this law shall cease to be in force. Article 10 provides that the Government of the Saar shall issue the legal and administrative provisions necessary for the application of this Act.

[2]See *Yearbook on Human Rights for 1950*, pp. 238–239.

4. A proposed new party must give itself a title clearly differentiated from that of already existing parties.

Art. 3. 1. In addition to the documents required by article 5(1) and (2) of the Act of 13 July 1950, concerning associations (*Bulletin officiel*, p. 839) the following must accompany any request for registration:

(*a*) The party's programme, which must comprise a statement of its position in relation to all the fundamental questions to which community life within the framework of the State and the limits of the Constitution gives rise;

(*b*) An undertaking signed by all members of the directing committee to respect the Constitution and, without regard to the special interests of the party, to oppose within their sphere of influence every tendency aiming at the overthrow of the institutions of the State or of the democratic order established by the constitution of the Saar; and

(*c*) An attestation signed by all members of the directing committee giving an assurance that the party is not and has no intention of becoming a branch of any group the centre of which is established outside the Saar and the aim of which is to overthrow the institutions of the State or the democratic order established by the Constitution of the Saar, that it is not dependent upon any such group in any other manner, and that it neither receives nor is ready to accept direct or indirect subsidies emanating from organizations or persons established outside the Saar.

2. In addition to cases in which the conditions laid down in articles 1 and 2 and in paragraph (1) of this article are not fulfilled, the Government may also refuse to register any party which it has good reason to suppose does not recognize or aims at overthrowing the institutions of the State or the democratic order established by the Constitution of the Saar. An appeal may be made against any such decision before the Constitutional Tribunal.

3. The Government must take a decision within a period of one month dating from the presentation of a request for registration.

Art. 4. 1. Any party which, by reason of its aims or of the attitude of its supporters, seeks to belittle or to discredit the Constitution, to damage free and democratic government, to overthrow it, or to endanger the constitutional existence of the Saar shall be considered anti-constitutional.

2. A party which forms connexions or relations of the kind referred to in article 3(1)(*c*) shall also be so considered.

Art. 5. 1. When the aims and activities of a party become anti-constitutional or illegal, the Minister of the Interior may lodge a complaint before the Constitutional Tribunal requesting that the dissolution of the party be pronounced.

2. The Constitutional Tribunal may, by provisional decision, prohibit the activities of the party for a period of two months, order its assets to be sequestrated and appoint an administrator. The Constitutional Tribunal must if possible give its decision on the complaint before the expiration of two months. If for special reasons this is not possible, the Tribunal may continue these provisional arrangements from month to month giving a separate decision and stating its reasons therefor on each occasion.

3. When the Tribunal decides that a party shall be dissolved, it must at the same time announce the manner in which the assets of the party are to be disposed of.

Art. 6. 1. Any person who attempts to contravene or to evade this Act with the aim of founding a political party or similar organization or who attempts to change an existing organization into a political party, shall be punished with a fine or with imprisonment for not more than six months. A person who joins an organization founded or converted for the purpose of contravening or evading this Act, or who takes part in any activity on behalf of such an organization, shall be liable to the same penalties.

2. Any person who takes action directly or indirectly in support of the political aims pursued by a party the activities of which have been provisionally prohibited in accordance with article 5(2) shall be punished with a fine or with imprisonment for not more than six months.

3. Any person who, after the dissolution of a political party by decision of the Tribunal, endeavours to ensure its continuance, to replace it by an equivalent organization or to enable it to continue its activities in any way, shall be punished with a fine or with imprisonment.

Art. 7. The provisions of this Act, except in so far as they refer to the founding of a party, shall also apply to parties' which have already been authorized.

Art. 8. Until such time as the Constitutional Tribunal has been constituted, the procedure provided for in articles 3 and 5 shall be within the jurisdiction of the Superior Administrative Tribunal.

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ACT CONCERNING THE INSPECTION OF CINEMATOGRAPH FILMS IN THE SAAR[1]

of 20 June 1952

Art. 1. (1) Cinematograph films may not be publicly exhibited or distributed for the purpose of public exhibition unless they have been approved by the official Inspection Board. The exhibition of a film in a club, society or other private association shall be deemed to be equivalent to a public exhibition.

(2) No approval shall be required for the exhibition of a film for exclusively scientific or artistic purposes in a public educational or research institution or in an educational or research institution recognized as a public institution.

(3) A film consisting of text only, and a foreign-language version of a film produced within the country, shall be subject to the provisions of this Act.

Art. 2. A film produced within the country and not approved for exhibition may, unless approval has been withheld under article 4(1) hereof, be approved, on application, for distribution abroad.

Art. 3. (1) An application for the approval of a film shall be required to be submitted in writing. The application shall specify the person entitled to apply, the name and head office of the producing company and the title and length of the film.

(2) The submission of the commentary or accompanying text and, in the case of a sound film, of the spoken text, including the words of songs, if any, may be required.

Art. 4. (1) Approval shall be withheld if it appears from the inspection of the film that its exhibition is likely to endanger vital interests of the State, law and order, or public security, to offend religious, moral or artistic susceptibilities, to have a coarsening or demoralizing effect, or to jeopardize the prestige of the State of the Saar or its relations with foreign States.

(2) Approval may be withheld if, owing to technical defects, poor synchronization or inadequate subtitling, a film fails to meet the legitimate requirements of the public.

Art. 5. (1) In examining a film the Inspection Board shall also consider whether it furthers the idea of democracy or of human rights and whether it qualifies for recognition as conducive to popular education and culture. A film so recognized shall be classed as "recommended for tax relief".

(2) In examining a film, the said board shall further consider whether it is suitable for exhibition on solemn holidays.

(3) On request, the Inspection Board shall also be under a duty to decide whether a film is suitable for use as an instructional film for teaching purposes.

Art. 6. If some of the events depicted in a particular film are such that approval should be withheld in respect thereof, then the film in question shall not be approved unless the parts objected to are cut out of the prints distributed for exhibition and are delivered to the Inspection Board, and unless a guarantee is given to the Inspection Board that the parts objected to will not be disseminated. The Board shall, however, be empowered to withhold approval in respect of the entire film if the parts objected to constitute the main content of the film or if their removal would upset its logical sequence.

Art. 7. (1) A film the unrestricted exhibition of which is barred on any of the grounds for refusal specified in article 4 may be approved for exhibition to specified audiences or on restrictive conditions. The non-public nature of such exhibition shall, however, be required to be guaranteed in each case.

(2) The provisions of paragraph (1) shall not apply to a film in respect of which approval has been withheld on the grounds that it is likely to endanger vital interests of the State or public security, or to offend religious susceptibilities.

Art. 8. (1) If a film is not approved for exhibition to children or young persons under the age of eighteen years it may not be exhibited to the said persons. The decision to grant or withhold approval shall be made by the Inspection Board by virtue of its general authority; the assent of the applicant shall be required if the approval is subject to the stipulation that individual parts of the film shall not be exhibited (article 6).

(2) Apart from the grounds specified in article 4, a film shall not be approved for exhibition to children and young persons if there is reason to suppose that it may have a detrimental effect on their civic education or on their moral, intellectual or physical development or may excessively stimulate their imagination.

(3) The Inspection Board may, in special cases, make its approval of a film for exhibition to young persons subject to the stipulation that it shall be exhibited only to persons aged not less than fourteen, not less than sixteen or not less than eighteen years.

(4) A prohibition against the exhibition of a film to young persons shall not apply to married women under the age of eighteen years.

(5) The operator of a cinematograph theatre or the responsible organizer of a cinematograph show

[1] German text in *Amtsblatt des Saarlandes* No. 55, of 6 December 1952. English translation from the German text by the United Nations Secretariat.

shall be bound, where applicable, to inform the public in announcements, theatre entrances, advertising, posters, handbills, advertisements in newspapers and periodicals, and in any other advertising media used, that young persons in specified age groups will not be admitted.

(6) No child under the age of six years, even if accompanied by an adult, may attend an exhibition of cinematograph films.

Art. 9. (1) The inspection of a film shall cover its pictorial sequences, its title and its commentary, or accompanying text, whether spoken or written. The songs and dialogues of a film of an opera or operetta shall be deemed to be accompanying text. The principles of article 8(2) shall also be applied in the examination of the title. Only the approved title may be used in an announcement of a film or in any other publicity relating thereto. No reference may be made in publicity matter to an earlier prohibition, if any, to which a film has been subject.

(2) Approval shall be required for any publicity matter relating to the exhibition of a film if the publicity matter is displayed on, in or in front of business premises or in any other place accessible to the public and for publicity through the distribution of printed matter (handbills) and the like.

(3) All provisions applicable to a film and to its inspection shall apply, *mutatis mutandis*, to the relevant publicity.

Art. 10. The Film Inspection Board of the Saar shall be competent to grant or withhold approval of a film. The Board's decisions, which shall be made by a simple majority, shall be valid throughout the territory of the Saar. If the votes should be equally divided the chairman shall have a casting vote.

Art. 11. (1) The Film Inspection Board shall consist of a chairman and six ordinary members appointed by the Minister of Culture, Instruction and Popular Education. The members shall be so selected as to include:

One representative of cultural life,

One representative of the youth welfare movement or of the teaching profession,

One representative of the Catholic Church,

One representative of the Evangelical Church,

One representative of the cinematograph exhibitors,

One representative of the Ministry of the Interior.

Where matters related to the fundamental outlook of the Jewish population are involved, a representative of the Community of Synagogues of the Saar shall be co-opted to assist the Board in reaching a decision. Women shall be given consideration in the selection of the Board's ordinary members. An alternate shall be appointed for each member . . .

Art. 12. If the Film Inspection Board withholds its approval in respect of a film or declines to class it as provided in article 5, the applicant shall have the right to appeal against the decision within two weeks after the date of notification.

Art. 13. (1) The chairman of the Film Inspection Board shall also have the right to appeal against a decision of the Board within two weeks after the date thereof.

(2) The Government of the Saar shall have the right to appeal against a decision of the Film Inspection Board at any time.

(3) Approval granted shall lapse in the event of an appeal under either paragraph (1) or paragraph (2) hereof.

(4) If the Board declines to grant recognition as referred to in article 5, an appeal may be lodged even if the film has been approved by the Censorship Board.

Art. 14. Appeals shall be adjudicated by the National Board of Film Inspectors, which shall comprise a chairman appointed as a public official, and eight ordinary members. The provisions of article 11 shall apply, subject to the further provision that two additional members shall be appointed by the *Landtag* from among its members.

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EL SALVADOR

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

By decree No. 805 of 26 September 1952, published in *Diario Oficial* No. 182 of the same date, the Legislative Assembly of El Salvador suspended the safeguards of Articles 154, 158(1), 159 and 160 of the Political Constitution for a period of thirty days. These safeguards include freedom of residence and movement; freedom of expression and dissemination of opinion; secrecy of correspondence; and freedom of association and assembly. The complete text of these articles is to be found in *Yearbook on Human Rights for 1950*, pp. 256–257.

A new Electoral Act was adopted on 25 February 1952. Extracts from this Act are published in this *Yearbook*.

By decree No. 630 of 27 March 1952, the Legislative Assembly adopted an Act concerning collective agreements. This Act was promulgated by the President of the Republic on 2 April 1952 and published in *Diario Oficial* No. 71, of 17 April 1952.

The Act supersedes a previous law promulgated by the Revolutionary Government Council on 9 August 1950 and published in *Diario Oficial* No. 171 of the same date. The purpose of the new Act is to simplify and facilitate the making of collective agreements and to broaden its application.

The laws on labour and social security in force in El Salvador are published in the following volume: *Recopilación de leyes y reglamentos sobre trabajo y seguridad social*, published by the Ministry of Labour and Social Welfare, San Salvador, 1951. This volume includes all laws adopted prior to June 1951, including the laws on trade unions and the general inspectorate of labour of 1950, and the law on hours of work and weekly holidays of 1951, which were adopted following the promulgation of the Constitution of 7 September 1950.

[1] This note is based on information received through the courtesy of Dr. Alejandro Escalante Dimas, Legal Adviser to the Salvadorean Ministry of Culture.

ELECTORAL ACT[1]

of 25 February 1952 as amended 7 March 1952

PART I

PURPOSE OF THE ACT

Art. 1. The elections of the President and Vice-President of the Republic, of deputies to the Constituent Assembly and to the Legislative Assemblies, and of members to the municipal bodies shall be governed by the provisions of this Act.

PART II

Chapter I

RIGHT TO VOTE AND TO BE ELECTED

Art. 2. The suffrage is a right and a duty of citizens, which may not be delegated or renounced, and which all persons recognized as electors by this Act are expected by the State to exercise. The suffrage shall be exercised by direct, equal and secret ballot in the manner provided by this Act.

Art. 3. All Salvadorean citizens shall be electors. To exercise the suffrage a person must be inscribed on the electoral rolls and must present the voting identity card established by this Act at the polls.

Art. 4. To be eligible for public election a person must meet the conditions laid down in the Constitution[2] and must have been entered as an elector and as a candidate on the corresponding rolls.

Art. 5. For the purpose of article 40 of the Constitution,[3] any person who has resided or has been domiciled in the corresponding electoral district for at least one year immediately preceding his inscription as a candidate shall be deemed to be a resident of that district.

[The next chapters deal with the Central Electoral Board, the departmental electoral boards and electoral

[1] Spanish text in *Diario oficial* No. 40, of 27 February 1952; amendment *ibid.* No. 47, of 7 March 1952. English translation from the Spanish text by the United Nations Secretariat.

[2] See articles 22–34 of the Constitution of 7 September 1950, published in *Yearbook on Human Rights for 1950*, p. 254.

[3] *Ibid.*

juntas. Part III deals with the electoral rolls and other procedural matters. Part IV deals with the procedures governing the time and place of elections.]

PART V

Single Chapter

ELECTORAL PROPAGANDA

Art. 61. Electoral propaganda may be undertaken freely in conformity with the provisions of article 32 of the Constitution.[1] Such propaganda may be made through the media of periodicals, publications, leaflets, posters or political speeches.

Art. 62. Electoral propaganda must conform to standards of decency and civic dignity; any person who uses insulting or slanderous language or causes public disorder shall be liable under the general laws.

Art. 63. Popular meetings or public demonstrations may be held for the purpose of electoral propaganda if the legal representatives of a registered political party have obtained permission from the departmental Governors in the capitals of the provinces and from the mayors in the other districts. Such permission must be requested at least seventy-two hours before such meetings or demonstrations are to be held. In the written application, the day, hour, place and approximate duration of the meeting or demonstration shall be indicated. If a public parade is contemplated, the route which this parade will follow shall also be indicated.

The application for permission to hold such meetings or demonstrations shall contain the undertaking of the party to maintain order during the meeting or demonstration and to respect the relevant statutory provisions and any additional measures that the competent authorities may decide upon in the interest of public order and safety.

The authorities shall not allow electioneering meetings or demonstrations in the following cases:

(*a*) If another party has been previously permitted to hold a public meeting, a demonstration or a parade at the same date, time and place; and

(*b*) If the written application does not contain the undertakings to which this article refers.

[1] See articles 22–34 of the Constitution of 7 September 1950, published in *Yearbook on Humau Rights for 1950*, p. 254.

Art. 64. It is unlawful to participate in public meetings or demonstrations for purposes of electoral propaganda in a state of intoxication; to carry arms and other objects capable of causing injury; to display posters or banners containing subversive, insulting or provocative terms; or to disfigure the walls of houses with slogans referring to a political party or a candidate. Offenders shall be liable to the penalties provided for in this Act.

Art. 65. Propaganda for electoral purposes is prohibited in the places of worship of any religion; and propaganda making use of ceremonies or meetings of a religious character is likewise prohibited. Offenders shall be liable to the corresponding penalties.

Art. 66. The Central Electoral Board may request the Ministry of the Interior to cancel the registration of a political party when it has been proven before the departmental electoral board that this party is responsible for major disturbances of public order and for offences against this Act which might impair the electoral procedure.

PART IX

ELECTORAL SAFEGUARDS

Art. 91. No one is obliged to disclose the manner in which he voted; nor may he be required by the judicial or administrative authorities to do so.

Art. 92. The electoral authorities may request the assistance of the armed forces to preserve order and to enforce compliance with any decisions they may take within the limits of their competence. Such requests shall be made in writing to the commanding officers concerned.

Art. 93. Concentration of troops is prohibited within the area of 200 metres from the premises in which elections are being held. This prohibition does not apply to the armed detachments which are directed by the competent electoral authority to maintain order on the days when and in the places where elections are being held.

Art. 94. On polling days, the sale and distribution of alcoholic beverages and the wearing of arms of any type by voters shall be prohibited.

Any person violating this article shall be liable to the penalties laid down by law.

SAUDI ARABIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

No new developments in the field of human rights are to be recorded. Islamic law is still considered the foundation of all fundamental human rights upon which the social structure is built.

[1]Information received through the courtesy of Mr. Jamil M. Baroody, Alternate Representative of Saudi Arabia to the United Nations.

SWEDEN

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

1. Royal decree of 30 June 1952[2] provided that, as from 12 July 1952, Danish, Finnish and Norwegian citizens arriving in Sweden from Denmark, Finland or Norway shall be exempt from the obligation of holding passports upon their arrival and during their stay in Sweden for the period (at present three months) during which a residence permit is not required. Swedish citizens have likewise been exempted from the obligation of holding a passport when proceeding to Denmark, Finland and Norway. Corresponding decrees were issued in these countries. In a protocol of 14 July 1952, provision is made for the accession of Iceland to this arrangement under similar conditions.

2. A new Merchant Seamen Act was adopted on 30 June 1952,[3] and entered into force on 1 January 1953. This Act was drafted in consultation with the other Scandinavian countries and with due regard to international agreements. The changes in the new Act are mainly intended to improve the conditions of employment and the economic rights of seamen. The Act contains *inter alia* a new provision to the effect that if a seaman is given notice of dismissal after having been employed for six months on a vessel with a crew of ten or more persons, he has the right to have the matter of his dismissal discussed by a board consisting of the master as chairman and two members from the crew. The right to inflict disciplinary punishment on a seaman, which by the previous Act was conferred on the ship's master, is now transferred to a board as described above. The new Act contains a provision with regard to economic rights under which a Swedish national employed on board a ship has, under certain circumstances, the right to a free passage to Sweden after two years' service in foreign waters at the joint cost of the shipowner and the State. Another innovation is the provision that in the event of the death of a Swedish national employed on board a ship the surviving wife and children under the age of sixteen of the deceased are entitled to relief equivalent to one month's wages.

The rights available in connexion with sickness have been extended in several respects. In principle every seaman who at the time of leaving employment is unable to work owing to illness or injury, has the right to receive sick-pay for a certain period following the cessation of his employment. As far as foreign voyages are concerned, the period during which a seaman below the rank of officer is entitled to receive sick-pay has now been extended from one to two months. It is also provided that a seaman who is sick or injured at the time of leaving his service shall have the right to free medical care at the owner's expense for a certain specified period regardless of the cause of his leaving the service.

3. Under a royal decree of 30 June 1952[4] regarding loans for study purposes guaranteed by the State to "refugee students", it is provided that guarantees of this kind shall be given to refugee students studying at a Swedish university or a higher educational institution of equivalent rank, who have shown an aptitude for study, who are in need of credit for study purposes, and who have declared that they intend to remain in Sweden upon completion of their training. In other respects, these guaranteed loans, which are not necessarily repayable during the period of study, are granted on basically similar terms as they are to Swedish students.

4. Pursuant to resolutions considered by the Swedish *Riksdag* in 1952, the *Riksdag* has requested the Government to conduct an inquiry into the possibility of improving the procedure in cases of administrative deprivations of liberty. It was recommended in the resolutions that a general survey of the existing rules in this field should be undertaken on the basis of article 5 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms.[5] In its report on this subject, the responsible committee of the *Riksdag* stated that, although such anomalies as might exist became evident only in exceptional cases, the demand for improved guarantees of security in cases of adminis-

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[1] Note received through the courtesy of the Royal Ministry for Foreign Affairs, Stockholm.

[2] See *Svensk Författningssamling* No. 525.

[3] *Ibid.*, No. 530.

[4] See *Svensk Författningssamling* No. 570.

[5] See *Yearbook on Human Rights for 1950*, p. 418. Sweden ratified this convention on 4 February 1952. It also made a declaration in accordance with article 25 of the Convention thereby recognizing the competence of the European Commission of Human Rights to receive petitions from any person, non-governmental organization or group of individuals claiming to be the victims of a violation by one of the contracting parties of the rights set forth in the Convention. See also p. 409 of this *Yearbook*.

trative deprivations of liberty was nevertheless so well founded that it should be secured as soon as possible through a reform of the relevant procedural regulations. The Government has decided to carry out the inquiry requested by the *Riksdag*.

II. JUDICIAL DECISIONS

Two decisions of the Supreme Court made on 12 June and 8 November respectively are summarized below.

JUDICIAL DECISIONS

RIGHT OF A FATHER TO SEE HIS CHILD—ADOPTION—LAW OF SWEDEN

In re WIESLAW JERZY KUDYNOWSKI

Supreme Court[1]

12 June 1952

The facts. Under the parentship code [föräldrabalken] of 10 June 1949, chapter 6, section 10, a father or mother who is not awarded the custody of a child must not be deprived of the opportunity to see the child unless there are special reasons why he or she should not do so. Wieslaw Jerzy was born of a marriage which was later dissolved. In dissolving the marriage, the court gave its approval to an agreement entered into between the spouses under which the care of the child was given to the mother although the father was to be allowed to see his son at certain fixed times. Subsequently the mother re-married, and her second husband applied to the court for permission to adopt Wieslaw Jerzy. The former husband contested this application, on the ground that as the natural father of the boy he should be able to exercise control over his development and upbringing.

Held: That permission for adoption should be refused particularly since no special reason existed which would cause the natural father to be deprived of the right previously awarded to see his son.

[1]Summaries of this and the following case received through the courtesy of the Royal Ministry for Foreign Affairs, Stockholm.

RIGHT OF A FATHER TO SEE HIS CHILD—ADOPTION—LAW OF SWEDEN

IN RE ASA BIRGITTA ERIKSSON

Supreme Court

8 November 1952

The facts. The general background is the same as in the preceding case, with the exception that the divorce decree granted in this case did not contain special provisions regarding the divorced husband's right to see his daughter. The first husband, however, declared himself unwilling to give his consent to the adoption requested by the second husband, on the ground that he would thereby be deprived of the possibility of meeting his daughter in the future.

Held: That approval of the application for adoption should be withheld particularly since no special reasons existed depriving the natural father of his legal right to see his daughter.

SWITZERLAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. FEDERAL LEGISLATION

A. Civil and Political Rights

Federal Act of 29 September 1952 concerning the acquisition and loss of Swiss nationality. Excerpts from this Act are reproduced in the present *Yearbook*.

B. Welfare and Social Insurance

Federal Act of 20 June 1952 regulating the payment of family allowances to agricultural workers and to peasants of mountain districts. This Act was published on 26 June 1952 in the *Recueil officiel des lois et ordonnances de la Confédération suisse*, 1952, pp. 843–850. Under the provisions of the first section of this Act, any person in an agricultural undertaking who, as a wage-earning employee, engages in agricultural, forestry or domestic work for a remuneration, and any independent peasant in a mountain district whose chief occupation is farming and whose income does not exceed 3,500 francs per annum, is entitled to family allowances. Family allowances for agricultural workers consist of a household allowance and a children's allowance. The allowance to which peasants in mountain districts are entitled is a children's allowance. The children's allowance may be claimed in respect of legitimate children, children born out of wedlock, the children of the recipient's spouse, and adopted children. The other sections of the Act relate to organization, financial matters and disputed claims, and contain penalty and final clauses. Regulations to give effect to the Act were issued on 11 November 1952, with effect from 1 January 1953.

Order of the Federal Council of 29 August 1952, concerning the application of the Geneva Convention to the army. This order is published in the *Recueil officiel des lois et ordonnances*, 1952, p. 640, and became effective on 10 September 1952. It provides that the Federal Military Department, in agreement with the Federal Department of Finance and Customs, will take the necessary measures in peacetime to apply to the army the Geneva Conventions for the Protection of Victims of War.[2]

C. Protection of Life and Health

Ordinance of 11 November 1952 concerning occupational diseases. This ordinance was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 920–922. For the purpose of the application of the Federal Sickness and Accident Insurance Act, it enumerates the "designated" substances the production or use of which causes certain serious diseases. This ordinance became effective on 1 January 1953.

Federal Act of 3 October 1951 concerning narcotic drugs.[3] This Act was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 241–251, and came into force on 1 June 1952. It was followed by regulations issued on 4 March 1952. The Act provides for control measures to be applied to narcotic drugs. It specifies the substances which are deemed to be narcotic drugs and includes provisions relating to the manufacture, dispensing, acquisition and use of narcotic drugs. The remaining sections of the Act relate to the Swiss Central Department responsible for suppressing the illicit traffic in narcotic drugs, and also contain penalty and final clauses. The cantons are required to enact legislation necessary for the enforcement of the Act and of the regulations made thereunder, to designate the authorities and bodies empowered to grant licences to firms and persons wishing to manufacture, prepare or trade in narcotic drugs, to receive reports of drug addiction and take the necessary action, to enforce controls, to prosecute offenders, to sequester goods, to withdraw licences, and to supervise the competent authorities and bodies.

Federal order of 3 October 1951 concerning measures to improve housing conditions in mountain districts. This order was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 71–77, and became effective on 1 February 1952. Regulations were

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[1] This note is based on texts and information received through the courtesy of the Federal Political Department of the Swiss Confederation. The Secretariat also expresses its gratitude to the cantonal authorities for their co-operation in the matter of cantonal legislation.

[2] See excerpts from these conventions in *Yearbook on Human Rights for 1949*, pp. 299–309.

[3] See a translation of the complete text of this Act in: United Nations, *Laws and Regulations*, promulgated to give effect to the provisions of the Convention of 13 July 1931 . . . as amended by the Protocol of 11 December 1946, New York, 1952 (Doc. E/NL 1952/33–34, 11 April 1952).

issued on 17 March 1952 to give effect to the order. Under the terms of the order, the Confederation, by granting subsidies, participates in the measures taken by the cantons to improve housing conditions in mountain districts. The Federal subsidies are granted only for simple, suitable constructions, erected at reasonable cost and likely to provide low-income families with wholesome living conditions. Housing for large families will receive preference.

D. Economic Protection

Ordinance of 26 September 1952 concerning the employment of officials in the administrative services of the Confederation. Excerpts from this ordinance are reproduced in the present *Yearbook*.

Ordinance of 26 September 1952 concerning the employment of employees in the administrative services of the Confederation. Excerpts from this ordinance are reproduced in the present *Yearbook*.

Ordinance of 26 September 1952 concerning the employment of railway officials. Its provisions are analogous to those of the preceding ordinance.

Order of the Federal Council, dated 26 September 1952, to amend the ordinance concerning the employment of workers in the administrative services of the Confederation (Regulations for Workers). This order was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 785–802 and came into force on 1 October 1952. It amends certain provisions of the Regulations for Workers of 28 December 1950. It does not, however, affect the articles of the Regulations for Workers of December 1950 which were published in the *Yearbook on Human Rights for 1950*.[1]

Federal Act of 12 June 1951, concerning the maintenance of rural real property. This Act was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 415–430, and came into force on 1 January 1953 pursuant to the Order of the Federal Council of 18 April 1952. Its purpose is to protect rural real property, to encourage the utilization of the soil, to strengthen the existing bond between family and land, and to promote the establishment and maintenance of agricultural undertakings. Under the Act, the right of pre-emption is granted the descendants, spouse, father and mother of the seller of an agricultural property, the cantonal authorities being authorized to extend this right to the seller's sisters and brothers and, if these are dead, to their descendants. The cantonal authorities may apply for an injunction in respect of any contract of sale, if the buyer acquires the land or property with the obvious intention of speculating or profiteering, if he already owns agricultural property assuring him and his family of an adequate livelihood, or if an agricultural property will become unproductive as a result of the sale. An agricultural property, or any part thereof, may not be leased for less than three years without the authorization of the competent authorities. The Act also provides safeguards against forced sales harmful to the economy and grants the owner of an agricultural property the right to apply for a settlement with his creditors by offering them a lien on his property. The authorities dealing with settlements with creditors may, instead of granting a stay of proceedings, place the property under supervision pending a settlement, and decide whether the owner's application is receivable. The Act also contains provisions relating to competence and to the procedure to be followed in dealing with an application for a settlement.

[1] Pp. 272–273.

II. Ratification of International Instruments

Federal order, dated 11 April 1951, respecting the international convention concerning the organization of the employment service. The convention was approved and the Federal Council was authorized to ratify it by decision of the National Council of 19 December 1950 and by order of the Council of States of 11 April 1951. The order was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 121–122.

International sanitary regulations (Regulation No. 2 of the World Health Organization). The regulation was signed at Geneva on 25 May 1951 and was approved without reservation by the Federal Council on 17 October 1952. It was published in the *Recueil officiel des lois et ordonnances*, 1952, pp. 861–897 and came into force on 1 October 1952.

III. Cantonal Legislation

A. Civil and Political Rights

Neuchâtel

Act of 5 February 1952 amending the Act concerning the exercise of political rights. This Act was approved by the Federal Council on 31 March 1952 and came into force on 21 April 1952.

Solothurn

Order of the Cantonal Council of 23 January 1952 concerning the right of suffrage and eligibility of women in parochial elections, ratified by the referendum of 20 April 1952.

This order supplements article 50 of the Municipalities Act, which relates to parishes, a paragraph 2 to the effect that "the right of suffrage and eligibility in elections to any authority, office, position and deputation may be introduced by municipal regulation for women of Swiss nationality who are not less than 20 years of age and who are settled or reside in the commune".

Order of the Cantonal Council of 19 February 1952 concerning the right of suffrage and eligibility of women in parochial elections, ratified by the referendum of 20 April 1952. This order supplements article 60 of the cantonal constitution by three paragraphs which provide that the right of suffrage and eligibility in parochial elections may be granted by statute to women of Swiss nationality who are not less than twenty years of age and who are settled or reside in the commune. A woman who acquired Swiss nationality by marriage and who was not born and brought up in Switzerland does not acquire this right until five years have elapsed after her marriage.

Vaud

Order of 29 September 1952 provisionally regulating the application of the federal Act concerning the acquisition and loss of Swiss nationality.[1] The order came into force on the same day as the Federal Act.

B. Welfare and Social Insurance

Basle-Town: Act of 14 February 1952 to amend the Cantonal Old Age and Survivors' Insurance Act. The Act increases the benefits payable by the canton. Regulations amending the regulations of 5 October 1950 were issued on 7 April 1952.

Obwalden: Act of 11 May 1952 to amend the Act concerning the application of the Federal Old Age and Survivors' Insurance Act.[2]

Schaffhausen: By-laws of the Cantonal Insurance Fund, dated 8 December 1952.

The following cantons have enacted legislation to give effect to the Federal Unemployment Insurance Act of 22 June 1951:[3]

Appenzell (Inner Rhodes): Regulations concerning the Federal Unemployment Insurance Act of 7 April 1952.

Basle-Rural: Act of 14 March 1952 to apply the Federal Unemployment Insurance Act.

Fribourg: Act of 21 May 1952 to apply the Federal Unemployment Insurance Act and regulations of 14 October 1952.

Regulations of 14 October 1952 concerning the organization and procedure of the Cantonal Unemployment Insurance Appeals Commission.

Grisons: Unemployment Insurance Act of 26 October 1952.

Nidwalden: Act of 5 July 1952 to apply the Federal Unemployment Insurance Act and the Federal Employment Service Act.

Obwalden: Act of 11 May 1952 to apply the Federal Unemployment Insurance Act and the Federal Employment Service Act.

St. Gall: Act of 7 April 1952 on unemployment insurance, assistance to the unemployed and the employment service; the relevant regulations were issued on 8 December 1952.

Solothurn: Act of 9 November 1952 to apply the Federal Unemployment Insurance Act and the Federal Employment Service Act; the relevant regulations were issued on 19 December 1952.

Ticino: Unemployment Insurance Act of 25 February.

By-laws of the Cantonal Public Unemployment Insurance Fund of 15 April 1952.

Regulations of 2 May 1952 to give effect to cantonal and federal legislation relating to unemployment insurance.

Vaud: Act of 8 September 1952 concerning measures to prevent unemployment.

Order of 19 December 1952 to give effect to the Act of 8 September 1952 concerning measures to prevent unemployment.

C. Protection of Minors and of the Family

Fribourg: Order of 31 October 1952 to increase family allowances for wage-earning employees.

Lucerne: Ordinance of 4 September 1952 concerning the cantonal allowance for large families.

Nidwalden: Regulations of 29 April 1951 to give effect to the Act concerning the promotion of post-school vocational training for young persons. A young person who is learning a trade or business, or an industrial, agricultural or domestic occupation, or who is being trained in the medical, nursing or related profession, or who continues his education in any such trade, business, occupation or profession in a school or by means of courses is entitled to a grant.

Obwalden: Ordinance of 23 August 1952 concerning the attendance of minors at cinema performances. Under article 7 of the ordinance of 22 December 1924, it was unlawful for a person under eighteen years of age to attend cinema performances even if accompanied by his parents or other adults. Under the new ordinance, any person whose age may be questioned, more particularly any person between the ages of eighteen and twenty, who attends a cinema, must produce an official certificate stating his age.

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[1] See p. 261 of the present *Yearbook*.

[2] See *Yearbook on Human Rights for 1948*, pp. 190 and 193, *idem for 1949*, pp. 193 and 194, *idem for 1950*, pp. 268 and 269, *idem for 1951*, pp. 324, 325 and 328.

[3] See *Yearbook on Human Rights for 1951*, pp. 328 and 329.

D. Protection of Life and Health

The following cantons have enacted legislation to improve housing conditions in mountain districts:

Lucerne: Ordinance of 29 May 1952.

Nidwalden: Ordinance of 5 July 1952.

Obwalden: Ordinance of 19 December 1952.

Valais: Order of 25 June 1952; the relevant regulations were issued on 28 August 1952.

The following cantons have enacted legislation to give effect to the Federal Narcotic Drugs Act:[1]

Basle-Town: Cantonal Ordinance of 13 July 1952.

Neuchâtel: Regulations of 11 July 1952.

Obwalden: Ordinance of 25 November 1952.

St. Gall: Cantonal Ordinance of 8 July 1952.

Aargau: Order of 3 June 1952 based on the ordinance concerning measures to combat communicable diseases.

Basle-Town: Ordinance of 17 February 1931, as supplemented by further provisions dated 11 November 1952, concerning anti-tuberculosis measures.

Neuchâtel: Order of 4 July 1952 to amend the regulations concerning measures to combat communicable diseases.

Act of 21 May 1952 concerning the treatment, supervision and institutional care of alcoholics. This Act came into force on 1 October 1952, on which date the relevant regulations also became effective.

Under this Act the Department of the Interior may take preliminary measures in respect of an alcoholic and, if he fails to comply with its recommendations, transmit his case file, after notification, to the State Council; the latter may advise him to undergo treatment in an institution and, if he refuses, order him to undergo treatment, designate the institution and specify the duration of the treatment. If the treatment proves ineffective, the State Council will transmit the case file to the guardianship authority of the district in which the alcoholic is domiciled, who may order him to be committed to an institution. He may not be kept in the institution for more than three years without a further decision by the guardianship authority. An appeal from the latter's decisions may be lodged with the supervising guardianship authority. Both the patient and the department are competent to lodge an appeal.

Zug: Regulation of 24 October 1952 concerning the medical service.

[1] See p. 256 of the present *Yearbook*.

E. Education

Aargau: Ordinance of the *Grand Conseil* of 11 March 1952 concerning the establishment and construction of cantonal vocational training schools.

Neuchâtel: Act of 18 December 1952 to amend the Primary Education Act.

Ticino: Act of 27 February 1952 to establish the cantonal school for male nurses.

F. Economic Protection

The following cantons have enacted legislation to give effect to the Federal Employment Service Act of 22 June 1951:[2]

Appenzell (Inner Rhodes): Act of 7 April 1952.

Basle-Rural: Act of 4 September 1952.

Basle-Town: Act of 22 November 1951, the relevant regulations were issued on 6 May 1952.

Lucerne: Ordinance of 21 July 1952.

Schwyz: Act of 12 March 1952 concerning measures to combat a crisis and concerning public works. Under the Act the canton is to grant subsidies for voluntary work held to be in the public interest. The canton will also participate in the financing of vocational training courses.

[2] See *Yearbook on Human Rights for 1951*, p. 329. See Section B on the preceding page for Nidwalden, Obwalden, St. Gall and Solothurn.

ORDINANCE ON EMPLOYMENT OF OFFICIALS IN THE ADMINISTRATIVE SERVICES OF THE CONFEDERATION[1]

(Regulations for Officials)

of 26 September 1952

SUMMARY

The normal working week for officials is forty-seven hours during summer time and forty-four hours during winter time. The normal working day, in general is eight hours. In mountain districts, the working day may in exceptional circumstances be increased to nine hours during the summer months. The days of rest shall be Sundays and public holidays observed in their place of residence. When work cannot be interrupted on Sundays and holidays owing to the exigencies of the service, the department shall determine the compensation to be granted to its officials for days of rest missed. The departments shall also be competent to issue regulations regarding the professional training of their officials.

Any official wishing to hold public office is required to request permission to do so through official channels. The conditions under which such permission is granted shall be stated. If permission is refused, restricted or withdrawn, the official concerned shall be informed of the reasons for such action.

The ordinance deals further with salary grades, maximum and minimum salary rates, family allowances, compensation for overtime and special services, and right to payment in case of absence for sickness or accident. Assistance to officials in case of accidents while on duty, involving bodily injury, disablement or death, is likewise regulated by this ordinance.

[1] French text of the ordinance in *Recueil officiel des lois et ordonnances*, 1952, pp. 675–714, received through the courtesy of the Federal Political Department of the Confederation. English summary by the United Nations Secretariat. This ordinance came into force on 1 October 1952.

ORDINANCE ON EMPLOYMENT OF EMPLOYEES IN THE ADMINISTRATIVE SERVICES OF THE CONFEDERATION[1]

(Regulations for Employees)

of 26 September 1952

SUMMARY

This ordinance provides that any Swiss national with an unblemished record who is not under a disability or deprived of his civic rights may become an employee in the administrative services of the Confederation. Aliens may be employed in special cases only if the office can prove to the department concerned that the recruitment of such person is a matter of necessity. As a general rule, married women may not become employees in the administrative services. In exceptional and specially deserving cases and with the consent of the personnel office, a married woman may become a non-permanent employee. The employment of married women shall be specially regulated in each case.

The normal working week is forty-seven hours during the summer time and forty-four hours during the winter time. The days of rest shall be Sundays and public holidays observed in their place of residence. When work cannot be interrupted on Sundays and holidays owing to the exigencies of the service, the department shall determine the compensation to be granted to its employees for days of rest missed.

The departments may, in agreement with the personnel office, take measures with a view to facilitating further professional training of employees.

The right of association is guaranteed to employees within the limits set by the Federal Constitution. Employees may not, however, belong to any association which makes provision for or resorts to strikes by persons in the service of the Confederation or which in any other manner pursues aims or employs methods which are illegal or dangerous to the State. The application of this provision shall rest entirely with the Federal Council.

An employee may not strike or incite anyone in the service of the Confederation to strike. Associations and co-operative societies may not deprive an employee of membership or injure his material interests for

[1] French text of the ordinance in *Recueil officiel des lois et ordonnances*, 1952, pp. 744–784, received through the courtesy of the Federal Political Department of the Confederation. English summary by the United Nations Secretariat. This ordinance came into force on 1 October 1952.

non-participation in a strike. Any conventions and statutory or other provisions contrary to these prohibitions are null and void.

The ordinance deals further with salary grades, maximum and minimum salary rates, family and overtime allowances. Employees are entitled to annual holidays of between two and three weeks for temporary employees and between two and four weeks for permanent employees depending on age, grade and the number of years of service. Admission of employees to the federal insurance fund, assistance in case of accidents during work resulting in bodily injury, disability or death and assistance to employees who have forfeited their right to statutory benefits receivable from the staff assistance fund, because their employment has been terminated through their fault, are likewise regulated by this ordinance.

FEDERAL ACT CONCERNING THE ACQUISITION AND LOSS OF SWISS NATIONALITY[1]

of 29 September 1952

I. ACQUISITION AND LOSS BY THE OPERATION OF LAW

. . .

B. Loss by the Operation of Law

By change of status

Art. 8. 1. The natural child, if still a minor, of a Swiss mother and an alien father shall lose Swiss nationality upon the marriage of his father and mother if he thereby acquires, or already possesses, the nationality of his father.

2. A natural child who follows the status of a person who loses Swiss nationality by virtue of the foregoing paragraph shall lose the said nationality with that person if he simultaneously acquires, or already possesses, the person's foreign nationality.

By marriage

Art. 9. 1. A Swiss woman who marries an alien shall lose her Swiss nationality if she acquires the nationality of her husband by the marriage, or already possesses his nationality, and fails to make a declaration at the time of the announcement or solemnization of the marriage expressing her wish to retain Swiss nationality.

2. The declaration, which shall be in writing, shall, if made in Switzerland, be made in the presence of the registrar of births, marriages and deaths responsible for announcing or solemnizing the marriage, and, if made abroad, in the presence of a Swiss diplomatic or consular representative.

. . .

[1] French text in *Recueil des lois fédérales* No. 53 (31 December 1952), p. 1115. English translation from the French text by the United Nations Secretariat. A translation of the complete text will be found in *Laws concerning nationality*, (published by the United Nations, Legislative Series) 1954.

II. ACQUISITION AND LOSS BY DECISION OF THE AUTHORITIES

A. Acquisition by Naturalization or Reinstatement

(a) *Ordinary Naturalization*

. . .

Double Nationality

Art. 17. Any person who proposes to obtain naturalization shall refrain from doing anything with a view to retaining his nationality. If the applicant may reasonably be expected to renounce his foreign nationality, he shall be required to do so.

(b) *Reinstatement*

. . .

Married Women

Art. 19. 1. A woman who lost Swiss nationality through marriage or through being included in her husband's renunciation of Swiss nationality may be reinstated:

(*a*) Upon the dissolution of the marriage by the death of the husband, annulment or divorce, or upon judicial separation for an indefinite period or *de facto* separation for at least three years;

(*b*) If for valid reasons she failed to make the declaration referred to in article 9;

(*c*) If she is stateless.

2. The application for reinstatement shall be submitted, in the circumstances described in paragraph (*a*), within a period of ten years, reckoned from the date on which the particular circumstances arose, and, in the circumstances described in paragraph (*b*), within a period of one year from the date

at which the impediment was removed, provided that not more than ten years have elapsed since the solemnization of the marriage. If a refusal is likely to cause hardship, an application submitted after the expiry of these time limits may be entertained, even if submitted by virtue of paragraph (*a*) and even though the prescribed time limit had expired at the time of the entry into force of this Act.

Children covered by Reinstatement

Art. 20. 1. In any case where a woman is reinstated by virtue of article 19 (*a*), her minor children may, if resident in Switzerland, be included in such reinstatement with the consent of their legal representative.

2. If a woman is reinstated by virtue of article 19 (*c*), her minor children may, if also stateless, be included in such reinstatement with the consent of their legal representative. Thereafter, the provisions of the second and third paragraphs of article 5 shall apply to those children.

. . .

(c) *Facilitated Naturalization*

. . .

Children of Mother who acquired Swiss Nationality at Birth

Art. 27. 1. The children of a mother who acquired Swiss nationality at birth may, if they have been living in Switzerland for not less than ten years, be granted facilitated naturalization on condition that they are resident in Switzerland and submit an application before completing their twenty-second year.

2. They shall acquire the cantonal and communal citizenship which the mother possesses or last possessed, and, *ipso facto*, Swiss nationality.

Children of a Swiss Mother

Art. 28. 1. The minor children of a woman who retained Swiss nationality when marrying an alien or when her husband renounced Swiss nationality may be granted facilitated naturalization:

(*a*) If they reside in Switzerland and the parents' marriage was dissolved by the death of the father, annulment or divorce, or if a permanent judicial separation order has been obtained or if the parents have been living apart for three or more years;

(*b*) If they are stateless. Thereafter, the provisions of the second and third paragraphs of article 5 shall apply to these children.

2. They shall acquire the cantonal and communal citizenship of the mother and, *ipso facto*, Swiss nationality.

. . .

(d) *Common Provisions*

Married Women

Art. 32. 1. A married woman may only be naturalized jointly with her husband. She shall be covered by her husband's naturalization if she consents thereto in writing.

2. The foregoing paragraph shall not apply in any case where husband and wife are subject to a permanent judicial separation order or have been living apart for three or more years.

Children covered by Naturalization or Reinstatement

Art. 33. The minor children of an applicant are, as a general rule, covered by his naturalization or reinstatement.

Minors

Art. 34. 1. The naturalization or reinstatement of any minor shall be applied for by his legal representative. If the minor is under guardianship, the consent of the guardianship authorities shall not be required.

2. Any applicant who is a minor but over the age of sixteen years shall declare in writing his desire to acquire Swiss nationality.

. . .

D. Loss by Decision of the Authorities

(a) *Renunciation*

Application for Leave to Renounce and Decision

Art. 42. 1. Leave to renounce Swiss nationality shall be granted to any Swiss national, provided that he does not reside in Switzerland, is not less than twenty years of age and possesses, or has the assurance of acquiring, a foreign nationality.

2. The authority of the canton of origin shall be competent to grant leave to renounce.

3. The person concerned shall lose cantonal and communal citizenship, and, *ipso facto*, Swiss nationality, upon receiving notice of the decision to grant him leave to renounce.

Married Women

Art. 43. 1. A married woman may not renounce her Swiss nationality except jointly with her husband. She shall be covered by her husband's renunciation if she consents thereto in writing.

2. She must likewise fulfil the conditions laid down in the first paragraph of article 42. If any of the said conditions is not fulfilled, or if she withholds the comment required by the foregoing paragraph, the

decision on her husband's application for leave to renounce his nationality may be postponed, or the application may be refused.

3. The first paragraph shall not apply where husband and wife are subject to a permanent judicial separation order or have been living apart for three or more years.

4. A Swiss woman married to an alien may renounce Swiss nationality as soon as she acquires, or is assured of acquiring, a foreign nationality.

Children covered by Renunciation

Art. 44. 1. Minor children under the parental authority of the applicant shall be covered by his renunciation; however, children over the age of sixteen years shall be covered only if they consent in writing.

2. It shall be a further condition that they are resident outside Switzerland and have acquired, or are assured of acquiring, a foreign nationality.

. . .

(b) *Revocation*

Art. 48. The Federal Department of Justice and Police may, with the consent of the authority of the canton of origin, revoke the Swiss nationality and the cantonal and communal citizenship of a person who possesses double nationality if his conduct is seriously prejudicial to the interests or good name of Switzerland.

V. FINAL AND TRANSITIONAL PROVISIONS

. . .

RESTORATION OF SWISS NATIONALITY TO WOMEN WHO ARE SWISS NATIONALS BY BIRTH

Art. 58. 1. Where a woman who was a Swiss national by birth lost her Swiss nationality by marriage to an alien before this Act became operative, her Swiss nationality shall be restored to her free of charge, even though she remains married to an alien, if she applies for the restoration thereof to the Federal Department of Justice and Police within one year from the entry into force of this Act.

2. Any such application by a woman who was a Swiss national by birth and who, by her conduct, has caused serious prejudice to the interests or good name of Switzerland, or who in any other way has shown herself manifestly unworthy of this privilege, shall be dismissed.

3. Appeals against decisions in such cases may be lodged with the Federal Council.

4. Articles 24, 28, 29 and 41 shall apply, *mutatis mutandis*.

SYRIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

Abolition of Titles

1. Legislative decree No. 66, of 16 January 1952 (*Official Gazette* No. 4, of 17 January 1952), relating to the abolition of titles and the restriction of foreign medals, abolishes all civil and honorary titles (such as *pasha*, *bey* and *effendi*) formerly granted to Syrians, and prohibits their use in official communications and ceremonies. It exempts, however, educational titles, titles of religious dignitaries and titles of dignity for present and past presidents and prime ministers. It prohibits Syrians from accepting honorary titles or medals from foreign governments, authorities or organizations without prior permission and enjoins Syrians who had received such titles in the past to apply within six months for *post factum* permission.

Distribution of State Domain to Syrian Citizens

2. Legislative decree No. 96, of 30 January 1952 (*Official Gazette* No. 6, of 31 January 1952) relating to the regulation of acquisition of State domain, was repealed by legislative decree No. 135, of 29 October 1952 (*Official Gazette* No. 64, of 3 November 1952), relating to the same subject.

Legislative decree No. 135 is designed to enable the State to regain control of some of its lands (huge areas of which had come under the control of a small number of citizens without previous authorization from the State) so that these lands may be distributed among the landless *fellahin* (peasants).

Article 5 provides that the methods of distributing, selling and renting State domain shall be regulated by means of decrees to be issued by the Council of Ministers on the recommendation of the Minister of Agriculture.

3. Decree No. 768 of the Ministry of Agriculture, of 3 November 1952 (*Official Gazette* No. 66, of 13 November 1952), relating to the distribution of State land to Syrian citizens provides, in article 1, that every Syrian who has attained the age of eighteen shall be entitled to register in his name a maximum area of fifty hectares of unirrigated State domain which cannot be irrigated from rivers and canals by gravity flow, or a maximum area of ten hectares of State domain which can be irrigated from rivers or canals, or an equivalent proportion of land part of which can be irrigated from rivers and canals without mechanical means.

Article 2 stipulates that priority in the distribution of land shall be accorded to inhabitants of districts densely populated by landless *fellahin*.

Article 4 enumerates categories of persons entitled to preferential treatment, in the following order: married persons who are qualified for the Syrian Family Medal and in possession of means to exploit land; married persons in possession of means to exploit land but not qualified for the Syrian Family Medal; bachelors in possession of means to exploit land; and persons not possessing means of exploitation of land.

A committee is established under article 4 for the purpose of studying applications and preparing lists of those entitled to register State domain in their names. Article 6 entitles applicants excluded from these lists to complain before the *muhafiz* of the area, who shall form a special committee under his chairmanship to consider such complaints.

According to article 10, contracts are made with persons who have acquired land in accordance with the provisions of the decree. Article 12 provides that after the lapse of three years from the date of conclusion of the contract, the representative of the public domain shall undertake the registration of the plot in the name of the person to whom it was originally given, or his heirs, if it is proved that he had complied with the provisions of this decree. If, however, it is proved that the applicant or his heirs had not complied with the provisions of the decree without giving a legitimate reason, he will lose his right for registration of land in his name, according to article 13. Article 14 stipulates that, for the first fifteen years after the acquisition of land under the provisions of this decree, a person cannot sell or otherwise dispose of his land except to mortgage it to the Agricultural Bank.

4. Legislative decree No. 97, of 30 January 1952 (*Official Gazette* No. 6, of 31 January 1952), deals with loans to beneficiaries of the distribution of State domain. In an explanatory memorandum appended to this decree, it is stated that beneficiaries of the distribution of state domain who do not possess the means to cultivate these lands would be compelled to have recourse to loans from usurers at extortionate rates of interest, which in turn would lead to loss

of the lands in question and would thus defeat the purpose of the decree. Accordingly, article 1 empowers the Agricultural Bank to grant short term seasonal loans to such persons. Article 7 empowers the bank, however, to refuse to grant loans in subsequent years to borrowers who did not use a previous loan for the purpose for which it had been granted.

Freedom of Work in Industry

5. Legislative decree No. 47, of 7 August 1952 (*Official Gazette* No. 50, of 21 August 1952), provides for the regulation of industry. In an explanatory memorandum it is stated that "under the system which has hitherto prevailed in the industrial field the individual has enjoyed freedom of work and production and the free exercise of his economic activity in accordance with his interests as he may define them for himself. This uncontrolled system, however, is not adapted to new developments and is not considered to be a good method of organizing economic life or to accord with the public interest, since it is essential that the State, if it wishes to place economic life on a sound basis and to put an end to the crises caused by slackening demand, falling prices and spreading unemployment, should bring industrial establishments under its control and subject them to rules which reflect its desire to direct industrial activity, in a manner appropriate to the needs and interests of the country."

In conformity with these principles, article 1 of the legislative decree makes it unlawful to establish premises to be used for industrial operations or for the exercise of an industrial occupation in the territory of the Syrian Republic without a licence from the Minister of National Economy. Municipalities and other public bodies may not permit the construction of premises for the purpose until the applicant has obtained such licence. The following articles deal with the procedure to be followed by the applicant wishing to obtain a licence, the particulars to be indicated in the application and the action to be taken by the Minister. Industrial establishments existing in Syria at the time of the publication of this legislative decree shall be deemed to be licensed automatically. Nevertheless, their proprietors shall, within six months from the date on which this decree comes into force, submit to the Ministry of National Economy in the capital, or to the Offices for Economic Affairs in the *mouhafazats*, applications for certificates of registration to be issued by the Directorate of ndustry.

Compulsory Labour

6. Legislative decree No. 133, of 29 October 1952 (*Official Gazette* No. 66, of 13 November 1952), on the co-ordination of individual labour and the imposition of compulsory labour, provides in article 1 that compulsory labour may be exacted in the following cases: (*a*) for the execution of works connected with education, national defence and health; (*b*) to contend with public calamities and (*c*) in a state of war or emergency.

Article 10 states that, where in these cases the site of compulsory labour is such that the persons concerned are obliged to eat or sleep away from home, the responsible authority shall provide transportation, lodging and food in addition to the remuneration payable.

Under article 11, the provisions of the Labour Code regarding the hours of work, the employment of women, pregnant women and minors, industrial accidents and occupational diseases shall apply to persons required to perform compulsory labour. It also provides that the State shall pay for medical care for the duration of the compulsory labour.

Article 12 empowers persons from whom compulsory labour is required to lodge objections regarding the correctness of the order requiring such labour from them. According to article 13, compulsory labour in connexion with national calamity may be exacted whenever needed; otherwise, the duration of compulsory labour for any person shall not exceed two months on each occasion. Persons who have already performed compulsory labour shall not be called upon for further work in connexion with education, national defence or health until one year has elapsed.

Article 14 exempts from compulsory labour public employees, persons charged with other official duties incompatible with the exacting of compulsory labour, and other categories of persons engaged in official services under certain circumstances.

Article 16 provides that persons called upon for compulsory labour shall automatically be reinstated at the end of their service in their previous posts in public or private undertakings, on the same terms and with the same rights as before; the period of compulsory labour shall not be regarded as an interruption of employment and shall be included in their length of service.

According to article 26, the special provisions on martial law shall apply in the case of war or a state of emergency.

Education

7. Legislative decree No. 175, of 17 March 1952 (*Official Gazette* No. 18, of 27 March 1952), concerning private schools, defines these schools, in article 1, as "non-governmental educational institutes which are established and maintained by Syrian individuals, groups or associations". This decree prohibits the establishment of private schools without prior authorization by the Minister of Education (article 5) and stipulates that education in all private schools

shall aim at the same objectives as public education (article 3). No private school may offer instruction in anything which may lead to corruption of morals, the weakening of the patriotic spirit, sectarian spirit and schisms among the citizens, or which may be insulting to the dignity of the Syrian people or of the Arab nation, or use education as an instrument for political or partisan propaganda (article 7). Only the State may grant diplomas; private schools may establish certificates indicating the classes attended by the pupils (article 9). Articles 10–14 define the rights of private schools to offer instruction beyond that specified in the official curricula of education. Religious classes and ceremonies in any private school shall be attended only by students belonging to the respective sect or denomination; no student shall be permitted by a private school to attend a class or a religious ceremony of another denomination, or to wear or use insignia conflicting with his beliefs (article 15). Article 26 provides that it shall be mandatory for a private school to admit all applicants without any discrimination among citizens.

Articles 36–37 provide that only men may be directors of boys' schools, only women may be directors of girls' schools or kindergartens (except in special cases permitted by the Minister of Education), and that co-education shall not be authorized save in kindergartens and in special cases determined by the Minister of Education.

Articles 39 and 40 state that directors of private schools shall be Syrian nationals not belonging to any political party or any organization engaged in political activity; teachers in private schools, while not required to be Syrian nationals, must not belong to political parties or organizations.

Under articles 2 and 8, foreign schools shall not be established on the territory of the Republic of Syria, nor shall private schools be established for missionary purposes. Foreign schools existing prior to the present decree shall, within a period of three months, apply for registration to the Ministry of Education; those authorized to continue shall be subject to the provisions of this decree, with the exception of the provisions stipulating that directors of private schools shall be Syrian nationals (article 53).

8. Legislative decree No. 225, of 1 May 1952 (*Official Gazette* No. 28 of 22 May 1952), on vocational training, provides for the establishment of schools offering vocational training on the secondary level in the three branches of crafts, industry and commerce. Instruction in these schools shall be free. Boarding facilities may be provided and shall be free to needy students. Separate schools are maintained for boys and girls.

A special department for vocational training shall be established in the Ministry of Foreign Affairs. A permanent mixed committee, composed of representatives of the Ministries of Education and National Economy, the Chambers of Commerce and Industry and some economic institutions, shall be set up to determine the types of craft or industry in which schooling is particularly needed, to facilitate the training of students in factories or economic institutions, and to ensure the employment of graduates of these schools in preference to others.

The Ministry of Education shall formulate a ten-year programme, to begin in 1952/1953, for the promotion of vocational training, the establishment of schools for this purpose, and the erection of school buildings.

The Ministry shall send abroad study missions consisting of students chosen by competition, or of selected civil servants and teachers, for specialization in the various branches of vocational training.

9. Legislative decree No. 144, of 28 February 1952 (*Official Gazette* No. 16, of 13 March 1952), provides for the establishment and development programme for a college of engineering.

10. Legislative decree No. 231, of 15 May 1952 (*Official Gazette* No. 31, of 5 June 1952), as amended by legislative decrees No. 60, of 26 August 1952 (*Official Gazette* No. 54, of 11 September 1952), and No. 87, of 13 September 1952 (*Official Gazette* No. 56, of 25 September 1952), provides for sending abroad missions for further study. Such missions may be composed of either students or civil servants; civil servants may be granted leave of absence without pay for further study abroad, and students may be given financial aid for further study at the Syrian university; the Ministry of Education may also grant annual financial aid to Syrian students studying abroad at their own expense. Student missions are selected on the basis of competition, but provision is made for students excelling in the public examinations to be exempted from taking part in the competition. Civil servants are chosen either on the basis of competition or selected by special boards appointed by the ministries in which these civil servants are employed. The Ministry of National Defence may send study missions under the authority of special legislation.

11. Legislative decree No. 127, of 20 February 1952 (*Official Gazette* No. 19, of 3 April 1952), empowers the Ministry of Finance to send abroad—by selection or by competition among employees, or by competition among others—missions for specialization and training in banking and other business matters.

12. Legislative decree No. 100, of 31 January 1952 (*Official Gazette* No. 6, of 31 January 1952), prohibits students from joining political parties. This decree makes it illegal for a student attending a university or a public or private school to be a member of any political party or organization, to

engage in any political activity, or to take part in any student strike or unauthorized demonstration. It provides that principals, professors and teachers shall suppress student strikes and shall not incite students to engage in strikes or demonstration. Leaders or responsible officials of political parties or organizations are not allowed to register students as members or to admit them to party meeting places. The decree provides for penalties for offences against these provisions and against incitement of students to engage in strikes or unauthorized demonstrations. Students who are members of political parties or organizations on the date of publication of this decree shall withdraw therefrom within two weeks of the date of the decree, and officials of political parties and organizations responsible for the registration of members shall remove the names of students from their registers within the indicated time limit.

Civil Servants

13. Legislative decree No. 146, of 28 February 1952 (*Official Gazette* No. 12, of 1 March 1952), dealing with family allowances for civil servants, provides that civil servants and temporary employees of the Government hired for periods of one year or more shall benefit from family allowances with respect to unemployed wives and children. In cases of polygamy, however, the husband shall receive allowances with respect to only one wife. Children's allowances extend to adopted as well as to natural children.

14. Legislative decree No. 65, of 16 January 1952 (*Official Gazette* No. 4, of 17 January 1952), empowers the Council of Ministers to dismiss civil servants of any rank, with the sole exception of members of the judiciary, for reasons which the Council of Ministers itself may determine and which it is not required to divulge. The decisions of the Council shall not be subject to appeal, and lawsuits against such decisions shall be summarily dismissed by courts.

15. Legislative decrees Nos. 67 and 68, of 19 January 1952 (*Official Gazette* No. 5, of 24 January 1952), entitle the Government to refuse, under certain circumstances, the resignations tendered by civil servants and provide for penalties for any civil servant who quits work before the decree accepting his resignation has been issued.

16. Legislative decree No. 102, of 3 February 1952 (*Official Gazette* No. 9, of 14 February 1952), prohibits the participation of civil servants in politics and enjoins them to sever, within a period of fifteen days, their connexions with political parties and organizations. The provisions of legislative decree No. 65 relating to dismissal of civil servants shall apply to civil servants who do not comply with this provision.

Treason and Espionage

17. Legislative decree No. 5, of 26 June 1952 (*Official Gazette* No. 42, of 10 July 1952), provides that defendants in cases of treason and espionage may not enjoy the aid of legal counsel during preliminary hearings, and stipulates that the choice of legal counsel by the defendant during the court proceedings, in cases of treason and espionage, shall require the court's approval of the chosen counsel. The court's decision in this regard shall not be subject to appeal.

THAILAND

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

The Constitution of 10 December 1932, which, after having been abrogated in 1949 and again put into force on 26 November 1951, was amended in 1952. The Constitution as amended was promulgated on 12 March 1952. The provisions on human rights of this Constitution are reproduced in this *Yearbook*.

A new Nationality (and Naturalization) Act was promulgated on 31 January 1952. A ministerial regulation was issued under this Act on 9 June 1952. A summary of this Act and this regulation are reproduced in this *Yearbook*.

An Alien Registration Act was promulgated on 29 January 1952. On 13 February 1952 a ministerial regulation was issued under this Act fixing the annual fee for delivery of a card of residence at an amount not exceeding 400 baht.

A royal decree reserving certain occupations and professions to Thai nationals was issued on 8 September 1952.

During 1952, Thailand did not conclude treaties or agreements which have a bearing on human rights.

No judgements which constitute important developments in the field of human rights were given by national courts in the course of the year 1952.

[1]This note is based on texts and information prepared by the Legislative and Juridical Council and received through the courtesy of the Ministry of Foreign Affairs of Thailand.

CONSTITUTION OF THE KINGDOM OF THAILAND[1]

of 10 December 1932, as amended up to and including 12 March 1952

GENERAL PROVISIONS

Sect. 1. The Kingdom of Thailand is one and indivisible.

The Thai people, of whatever race or religion, are equally entitled to the protection of this Constitution.

Sect. 2. The sovereign power emanates from the Thai people. The King, who is the Head of the State, exercises it in conformity with the provisions of this Constitution.

CHAPTER I

THE KING

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Sect. 5. The King professes the Buddhist faith and is the upholder of religion.

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CHAPTER II

RIGHTS AND DUTIES OF THE THAI PEOPLE

Sect. 24. Subject to the provisions of this Constitution, all persons are equal before the law. Titles acquired by birth, by bestowal or in any other way do not confer any privilege whatsoever.

Sect. 25. Every person enjoys full liberty to profess any religion; to adhere to any religious sect or religious creed; and to exercise the form of worship in accordance with his own belief, provided that it is not contrary to his civic duties or to public order or good morals.

[1]English text in *The Siam Directory*, B.E.2494-95 (1951-52), Bangkok. According to this Directory, pp. A 60-63, the Temporary Constitutional Act, by which a constitutional monarchy was established in Thailand, was promulgated on 27 June 1932 and was superseded by the Permanent Constitution of 10 December 1932. On 8 November 1947, a new Government was established. A newly elected Constituent Assembly which was to draft a Constitution completed its work on 20 October 1948 and Parliament adopted this Constitution on 28 January 1949. The Council of Regency promulgated it in the name of the King on 23 March 1949. The provisions on human rights of this Constitution are published in *Yearbook on Human Rights for 1949*, pp. 205-211. After the *coup d'état* of 28 November 1951, the President of the National Assembly received the Constitution of 1932, as amended, from the King on behalf of the Thai People on 8 March 1952. See also *Yearbook on Human Rights for 1951*, p. 335. According to information received through the courtesy of the Legislative and Juridical Council of Thailand, the Constitution now in force was promulgated on 12 March 2495 B.E. (1952).

In exercising the liberty as mentioned in the foregoing paragraph, every person shall be protected against any act of discrimination by the State which is derogatory to his rights or detrimental to his due benefits, on the ground of his professing a religion, adhering to a religious sect or religious creed or of his exercising a form of worship different from those of others.

Sect. 26. Subject to the provisions of law, every person enjoys full liberty of property, speech, writing, publication, education, public meeting, association and forming a political party.

Sect. 27. Every person enjoys full liberty of the person.

No arrest, personal restraint or personal search under any circumstances whatsoever may be made except by virtue of the power provided by law.

Sect. 28. No forced labour may be exacted except by virtue of the power provided by law.

Sect. 29. The right of private property is guaranteed by the State. Expropriation of private property by the State is prohibited unless necessary for the purpose of public utility, direct defence of the country or for the exploitation of natural resources or other State's interests, in which case just compensation shall be paid to the owners thereof or to other persons entitled thereto who suffer loss thereby.

Sect. 30. The dwelling of a person is inviolable.

The right of a person to peaceful habitation and possession of his dwelling is guaranteed. Entry into a person's dwelling without his consent or a search thereof may not be made except by virtue of the power provided by law.

Sect. 31. Subject to the provisions of law every person enjoys full liberty in the choice of his residence within the kingdom and in the choice of his occupation.

Persons of Thai nationality shall not be deported from the kingdom.

Sect. 32. All persons, whether individually or jointly, enjoy the right of submitting petitions in conformity with the rules and procedure laid down by law.

Sect. 33. Family right is guaranteed.

Sect. 34. The right of a person to sue any branch of the Government which is a juristic person for acts done by its officials, as principal or employer, is guaranteed.

Sect. 35. No person may exercise the rights and liberties under this Constitution against the nation, the faith, the Crown, or the Constitution.

Sect. 36. Members of the armed forces and police force, and other permanent government and municipal officials, enjoy the same rights and liberties accorded to nationals by the Constitution unless they are subject to restrictions imposed by law, by-laws or regulations issued by virtue of law in so far as it concerns political activities, efficiency or discipline.

Sect. 37. Every person has the duty of preserving the form of democratic government with the King as the Head of the State and has the duty to respect the law, to defend the country and to assist the government by paying taxes and performing such other duties as are provided by law.

CHAPTER III

DIRECTIVE PRINCIPLES OF STATE POLICY

Sect. 38. The State shall preserve the national independence and co-operate with other nations in promoting world peace.

Sect. 39. The State shall maintain armed forces for the purpose of safeguarding the national independence and national interests.

Sect. 40. The State shall keep internal order for the purpose of promoting public peace and prosperity.

Sect. 41. The State shall encourage private economic initiative and shall take measures to co-ordinate the operation of public utilities and private economic enterprises.

Sect. 42. The State shall promote and maintain education.

It is the exclusive duty of the State to set up an educational system. All educational establishments shall be under the control and supervision of the State.

The State shall make arrangements to enable academic institutions to manage their own affairs within the limits prescribed by law.

Sect. 43. The State shall promote public health activities including maternity and child-welfare.

The prevention and suppression of epidemics shall be undertaken by the State for the benefit of the people without charge.

Sect. 44. The provisions in this chapter are intended for the general guidance of legislation and administration in accordance with defined policies and do not give rise to any cause of action against the State.

CHAPTER IV

THE ASSEMBLY OF THE PEOPLE'S REPRESENTATIVES

Sect. 45. The Assembly of the People's Representatives shall be composed of members who are elected by the people.

Sect. 46. The qualifications of the electors and of the candidates for election, the mode of election and the number of the members of the Assembly of the People's Representatives shall be in accordance with the provisions of the electoral law.

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Sect. 67. No enactment of law inflicting criminal punishment shall be made to have a retroactive effect.

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CHAPTER VI

THE COURTS

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Sect. 101. No new court may be established to try any special case or action in lieu of the ordinary courts established by law which have jurisdiction over such a case or action.

Sect. 102. No law may be promulgated which changes or modifies the existing constitution of the courts or the law of procedure for the purpose of applying it to try a special case.

Sect. 103. Judges are independent in conducting trial and giving judgement in accordance with the law.

Sect. 104. The King appoints, transfers and dismisses judges.

Sect. 105. Before submission to the King, the appointment, transfer and dismissal of judges shall first be approved by the Judicial Commission, in accordance with the law governing judicial service.

The promotion of judges in rank and salary shall first receive the approval of the Judicial Commission, in accordance with the law governing judicial service.

CHAPTER IX

TRANSITORY PROVISIONS

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Sect. 115. Subject to section 116, at the initial stage within the period of ten years as from the date of the enforcement of this Constitution the Assembly of the People's Representatives shall be composed of two categories of membership equal in number.

(1) Members of the first category are those elected by the people in accordance with the provisions of section 45 and section 46.

(2) Members of the second category are those who have already been appointed by the King on the date of the enforcement of this Constitution.

During the time when members of the first category have not assumed their office, the Assembly of the People's Representatives shall temporarily be composed of the members of the second category.

Sect. 116. After this Constitution has been in force for five years, if the people who are entitled to vote for candidates in any province shall have passed their examination in primary education set by the Ministry of Education in excess of half of their total number, the members of the second category shall retire in a number equal to the number of the members of the first category eligible for that particular province. The mode and procedure of retirement will be determined by the regulations laid down by the Assembly of the People's Representatives.

While there are still members of the second category according to this section, if a vacancy occurs among them by reasons other than retirement under the first paragraph, the King will appoint a qualified person who is not disqualified to be a candidate for membership in the Assembly of the People's Representatives to fill the vacancy.

For the purpose of retiring members of the second category in accordance with the first paragraph, the Council of Ministers shall declare on the first of January each year the number of persons entitled to vote who have passed their primary education set by the Ministry of Education.

Sect. 117. When members of the second category retire under section 116, an equal number of members of the first category shall be elected to replace them by the first of April, and the retiring members of the second category shall vacate their seats on the day when the elected members of the first category assume their office.

Sect. 118. If the Assembly is dissolved while there still remain members of the second category, the election shall be held only for members of the first category.

Sect. 119. Subject to section 50 (2), (3), (4) and (5) of the Constitution of the Kingdom of Thailand B.E. 2475, members of the second category hold their seats throughout the period prescribed in section 115, but no meeting of the Assembly of the People's Representatives may be held during the dissolution of the Assembly under section 65.

Sect. 120. Before the passing of the electoral law under this Constitution, the electoral law in force on the date of the enforcement of this Constitution shall apply.

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NATIONALITY (AND NATURALIZATION) ACT OF 31 JANUARY 1952 WITH MINISTERIAL REGULATIONS OF 9 JUNE 1952[1]

SUMMARY

Under the Nationality (and Naturalization) Act of 31 January 1952, an alien woman who marries a Thai national acquires Thai nationality. A Thai woman who marries an alien loses Thai nationality provided that she can acquire the nationality of her husband in accordance with the laws of the latter's country and provided further that she has made a declaration before the marriage registrar of her intention of relinquishing Thai nationality.

A child of an alien father who is born in Thailand and has thereby acquired Thai nationality may, after having attained twenty years of age renounce Thai nationality to acquire the nationality of his father, in accordance with the laws of the latter's country.

A Thai national who also possesses the nationality of another country and wishes to relinquish Thai nationality may apply to the Ministry of the Interior, who makes the final decision on this application. A Thai national who has become a national of another country by naturalization loses Thai nationality. An alien may acquire Thai nationality by order of the Minister of the Interior, if he fulfils certain conditions, among which knowledge of reading and writing in the Thai language is required. A Thai by naturalization can be deprived of Thai nationality if it was obtained by fraud or concealment of facts; if according to available evidence the naturalized person has retained his former nationality; if he has committed an act endangering the safety of the State, or contrary to the national interests, the honour of Thailand or the prosperity of the country; or if he has lived abroad seven years or more without having a domicile in Thailand. Before his naturalization is revoked, a committee comprised of members of certain specified governmental agencies shall study the case, and if it considers that the person ought to be deprived of his nationality, shall make a recommendation to this effect to the Minister of the Interior. If the Minister revokes the nationality of such a person, this decision may be extended to the latter's wife and minor children provided that they have acquired Thai nationality as a result of his naturalization.

A Thai national who has lost Thai nationality may recover it by order of the Minister of the Interior. Application for restoration of Thai nationality must be granted if the applicant is a Thai woman who has lost her nationality by marriage to a foreigner and if her marriage has been dissolved for any reason whatsoever; the same applies to a person who has lost Thai nationality while a minor, as a result of loss of nationality by either his father or mother provided that the application for recovering Thai nationality is submitted to the Minister of the Interior within two years of the date of his attaining majority.

[1]English translation (from the Thai version) of the Act and the Regulation in *Royal Thai Government Gazette*, vol. 69, parts 10 and 37–42 respectively, of 2495 B. E. (1952). Section 7 of the Nationality (and Naturalization) Act of 1952 was amended by the Nationality Act (No. 2), of 24 January 1953.

TURKEY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I. LEGISLATION

Property Rights

Act No. 5917, adopted on 16 April 1952 and promulgated and put into effect on 24 April 1952, protects the interests of the owners of real property. Article 1 of the Act provides that if a third party infringes or interferes with the rights attaching to real property owned by an individual or body corporate, the individual or body concerned is entitled to apply to the administrative authority (prefect or sub-prefect at the place where the real property is situated) for an order restraining the infringement or interference. The competent authorities are under a duty to restore the property to its owner.

Right of Residence; Right to Nationality

Act No. 431, promulgated on 3 March 1924, abolished the caliphate in Turkey and ordered the expulsion of all members of the Ottoman dynasty from the territory of the Turkish Republic.

Act No. 5958, adopted on 16 June 1952 and promulgated and put into effect on 23 June 1952, amended Act No. 431 and gave most of the members of the family of the former dynasty the right to return to Turkey, to reside there, to acquire Turkish nationality and to acquire property in accordance with the ordinary law. Under the Act, only male members of the Ottoman dynasty and of the caliphate, and their descendants, are prohibited from entering Turkey or crossing Turkey in transit.

Restoration of Rights suspended for Political Reasons

After the armistice of 1919, the new Turkish State fought against both the foreign invader and the supporters of the monarchy and caliphate.

During that period, the Ankara Government required all persons holding administrative office in the areas under occupation or under the control of the Sultan to assist the new Government and to support the liberation movement, which was a militant national movement. After the liberation, it was decided that those who had not obeyed the Ankara Government's injunction, that is to say those who had not taken part in the national struggle, could no longer hold public office. Consequently, such persons forfeited their right to a civil service pension. Act No. 5989, adopted on 21 November 1952 and put into effect on 28 November 1952, gave such former servants of the State the right to a pension calculated on the basis of their service up to the date of the order of dismissal.

Protection of the Individual against Improper Action on the Part of the Authorities

Article 37, paragraphs (*c*) and (*d*), of Act No. 5887, the Revenue Duties Act, adopted on 25 February 1952 and promulgated and put into effect on 29 February 1952, provides that all decisions concerning the rectification or invalidation of erroneous operations by the bankruptcy and distraining authorities and all further operations resulting from the rectification or invalidation of such operations are exempt from revenue duties.

Article 61, paragraph (*c*), of the same Act also provides for exemption from duty in respect of erroneous operations on the part of the land registration and cadastral survey authorities.

Freedom of the Press

The press legislation of 1946[1] has been repealed and replaced by the Act concerning the press of 15 July 1950, as amended by Acts No. 6026 and No. 6051 of 23 January and 13 February 1953 respectively. Certain articles of this Act are published in this *Yearbook*. The following are the main provisions of the legislation currently in force:

Under the legislation of 1946, the publication of newspapers and periodicals required prior authorization. The Press Act of 1950 abolished this provision and requires only a declaration by the publisher.

The former legislation provided that the publication of newspapers and periodicals could be suspended, following a ruling by the competent court, if, at the request of the competent authority, the identity of the authors of anonymous articles or of articles appearing under pseudonyms was not revealed. The relevant provisions of the Act currently in force prescribe a fine only.

According to the provisions of the previous Act, any person who published articles offensive to the

[1] This note was prepared by Mr. Bahri Savci, lecturer in the Faculty of Political Science, Ankara, on behalf of the Turkish United Nations Group for the defence and protection of human rights and fundamental freedoms.

[1] See *Yearbook on Human Rights for 1946*, pp. 302–303.

national sentiment or distorting facts in the national history; any person supplying or wittingly publishing false or distorted news or news liable to disturb the public order or to undermine general confidence in the State and the police force; or any person revealing, in his articles, information relating to the investigation into a matter of State security, was penally liable. The relevant provisions were appended as an annex to the chapter of the Penal Code dealing with those offences. The new Act has abolished the said annex.

Furthermore, in the case of press offences such as impugnment of a person's honour, defamation of character and aspersions liable to damage a person's reputation or property, legal proceedings may be instituted only with the written consent of the injured party.

Pursuant to the provisions relating to the suspension of the publication of newspapers following certain press offences, it was possible, under the previous Act, to suspend publication at various stages in the legal proceedings. The new Act has abolished this provision.

The legislation currently in force provides for improvements in the judicial procedure and in the method of instituting proceedings for press offences. In this connexion, it should be noted that the civil courts are now competent to rule on cases which, under the previous Act, came within the jurisdiction of the military courts.

Right of Association

Act No. 5927, adopted on 5 May 1952 and promulgated and put into effect on 13 May 1952, amends article 33 of the Act of 28 June 1938, concerning associations. That article empowered the courts to order the dissolution of associations the establishment of which was prohibited by the Act. The new Act empowers the courts to declare the activities of certain associations unlawful even before a dissolution order has been made.

Protection of Workers

The decree of the Council of Ministers No. 3/14984, of 29 April 1952, extends the application of the provisions of the Labour Code (Act No. 3008 of 1936 amended by Act No. 5518 of 1950[1] so as to cover additional places and forms of employment. There is a list of the places and undertakings to which the provisions of these Acts have been extended.

Right to Compensation in Respect of the Termination of a Contract of Employment

Act No. 5868, adopted on 8 February 1952 and put into effect on 13 February 1952, provides for the payment of compensation to workers who have been employed for more than three years in the same undertaking if their contracts of employment are terminated in the circumstances described in the Labour Code. The amount of the compensation is to be two weeks' wages for each completed year of service.

Right to Education

In the past, children were entitled to education in the State schools, or in private schools governed by the same regulations, as from the age of seven years. Under two new Acts, adopted on 6 June 1952 and promulgated and put into effect on 23 June 1952, children who have reached the age of six years by the end of September are to be admitted to the primary schools. In this way the right to education is extended from the point of view of time.

Maternity Insurance and Assistance

Act No. 4772, of 20 February 1951, amended by Act No. 5664 of 1952, contains provisions relating to industrial accidents, occupational diseases and maternity insurance in Turkey. This Act was further amended by Act No. 5929, adopted on 9 May 1952 and promulgated and put into effect on 16 May 1952. Under the new Act, the period of service which qualifies a female employee for maternity insurance, or a male employee for maternity assistance in respect of his wife, is fixed at sixty days.

Training and Employment of Workers: Rational Utilization of Manpower

In its programme of economic and social recovery and development, the Turkish Government stresses vocational training and the placement of the available manpower and the planned supply of and demand for labour. Accordingly, the Government has concluded with the International Labour Office an agreement under which a centre for the Near and Middle East has been established at Istanbul to work along these lines. The agreement was ratified by Act No. 5947, adopted on 6 June 1952 and promulgated and put into effect on 13 June 1952.

Labour Relations in Journalism

Hitherto, intellectual and artistic workers were not entitled to the benefit of the provisions of the Labour Code. To remedy this defect, Act No. 5953, adopted on 16 June 1952 and promulgated and put into effect on 20 June 1952, includes in the definition of the term "journalist" a large number of persons employed by periodical publications, including the editors-in-chief and administrative managers, and guarantees the rights and specifies the duties of such employees and their employers as follows.

A. *Rights of Journalists*

A journalist is bound by a written contract in his relations with his employer, who has to give notice if he wishes to terminate the contract. In such cases,

[1] See *Yearbook on Human Rights for 1951*, p. 338.

the journalist is also entitled to compensation varying in amount according to length of service. As a general rule, the journalist is also under a duty to give a month's notice if he wishes to terminate the contract, though there are certain exceptions to this rule, as for example where the periodocal in question undergoes a manifest change in character or political trend, if the change is likely to prejudice the journalist's repute and interests.

The new Act also guarantees to journalists a salary increase of 2 per cent per annum, continued payment of salary in various forms and in various proportions during military service, and payment of salary in case of arrest or imprisonment on account of an article published in the periodical by which the journalist concerned is employed. Lastly, the Act provides for the payment of a death benefit to the family of a journalist who dies, the amount of the benefit to be three times the journalist's monthly salary.

The Act also provides for rest days and annual holidays with pay. The duration of the annual paid holiday varies from four to six weeks, according to length of service.

In addition, journalists may form trade unions in accordance with Act No. 5018, of 27 June 1945, and are entitled to the benefit of the provisions of the Labour Code, Act No. 4772 of 1944, relating to industrial accidents, occupational diseases and maternity insurance, Act No. 5417, of 31 May 1949, concerning old-age insurance and Act No. 5502 of 1950, concerning sickness and maternity insurance.

B. *Rights of Persons employing Journalists*

Among the safeguards given to employers, particular reference should be made to article 7, relating to the notice which a journalist has to give in order to terminate his contract of employment. If a journalist is held in detention for an offence committed in connexion with his professional activity, the employer is not obliged to pay the journalist's salary during the period of detention if the offending article was published without the consent of the responsible editor or of the proprietor of the newspaper, or if the article, though approved by the responsible editor, was subsequently falsified, altered, shortened or lengthened.

Right to Health

The regulations promulgated on 9 June 1952 and put into effect on the next day by decree of the Council of Ministers No. 3/14959 amended article 4 of the regulations of 11 August 1942 relating to medical assistance for mine-workers in the Eregli mining district. Under the amended regulations, members of workers' trade unions, as well as the members of their families residing in the area and dependent upon them, may be examined by and receive medical care from the workers' trade union organization without charge.

II. DECISIONS OF THE COUNCIL OF STATE

1. Competence of the Council of State in Matters of Nationality

The competence of the Council of State to deal with nationality questions was the subject of two contradictory decisions by the General Assembly of the Contested Matters Chambers [Chambres du contentieux] of the Council of State (decision of 24 March 1940, based on ordinance No. 921 of the Grand National Assembly, dated 23 December 1935, and decision of the General Assembly of the Contested Matters Chambers of 18 May 1945). Upon reconsideration, the General Assembly of the Contested Matters Chambers held that ordinance No. 921 of the Grand National Assembly did not recognize the Council of State as competent in disputes affecting two persons of foreign nationality. Furthermore, no provision of ordinance No. 921 prevents the Council of State from dealing with a dispute in which a person of Turkish nationality is involved. Consequently, any dispute which arises because the Turkish Government recognizes, or does not recognize, a particular person as a citizen of the Turkish Republic should be considered and settled by the Council of State.

It follows that, in cases where a person of Turkish nationality is involved, disputes relating to nationality are no longer regarded as acts of the Government and that the Council of State has the power to inquire into the right to Turkish nationality.

2. Public Service

The combined chambers gave a ruling to the effect that the Administration cannot set aside the promotion of a civil servant who, after having been irregularly promoted, has been several times promoted in a regular manner. Furthermore, the General Assembly of the Contested Matters Chambers of the Council of State ruled on 14 April 1950 that if, after being irregularly promoted, a civil servant is promoted in a regular manner, the Administration cannot set aside or invalidate the irregular promotion.

Lastly, the Fifth Chamber of the Council of State ruled, on 22 September 1950, that irregular promotions can at any time be invalidated by the Administration.

In order to resolve the conflict evidenced in these contradictory rulings, the General Assembly of the Contested Matters Chambers ruled[1] that an irregular promotion does not give the civil servant concerned an established right. Since, however, such a promotion produces certain effects and consequences in the person, it cannot be admitted that the administration has the right to set aside the irregular promotion. Such action would lead to an indefinite

[1] Decision of the combined chambers No. E 15.K.244 of 26 September 1952.

continuance of the state of uncertainty, an insecurity which would prejudice the effects and consequences of such a promotion, and hence produce a situation incompatible with stability of service, which is an essential principle of administrative law.

The General Assembly therefore ruled that the administration is not entitled to set aside an irregular promotion of a civil servant if the irregular promotion has been followed by promotions effected in accordance with the law.

ACT CONCERNING THE PRESS[1]

of 15 July 1950

. . .

CHAPTER 2

PERIODICALS

. . .

Art. 8. No authorization shall be required for the publication of a periodical, but a declaration shall be submitted stating the following particulars:

1. The name, subject and frequency of publication of the periodical and the address of its editorial office;

2. The names and first names, nationality and addresses of the owner and of the responsible director or directors or legal representative (if any). If the owner is a body corporate, a certified copy of its articles of incorporation or associations shall be attached to the declaration.

The declaration shall be signed by the owner of the periodical and by the responsible director or directors.

. . .

CHAPTER 4

RESPONSIBLITY

Art. 16. Criminal liability for press offences:

1. If an offence is committed through a periodical, the responsible editor of that periodical shall be liable jointly with the artist or writer whose contribution gave rise to the offence.

2. The responsible director shall not be obliged to disclose the names of writers or artists whose contributions are published in a periodical anonymously or under a pseudonym or initials. Nevertheless, if an offending article or sketch constitutes an offence against the Turkish Penal Code (book 2, chapter 1, article 1), the responsible director shall disclose to the public prosecutor of the republic the exact identity of its author within twenty-four hours after receiving a request.

3. If, unaware of its nature, a responsible director has published a news item, article or document constituting an offence, then only the person who supplied the information, statement or document or who wrote the article shall be liable.

4. If an offence is committed through a printed publication which is not a periodical, then the author, publisher, translator or artist of the offending publication shall be criminally liable; if his identity cannot be ascertained or if no charge can be made against him before a Turkish court or if the publication was made without his knowledge and approval, the publisher, or failing him, the printer, or failing the printer, the person who knowingly sold or distributed the same, shall be liable.

Art. 17. If a press offence causes material or moral prejudice, damages shall be payable in the case of periodicals by the owner and, in the case of publications other than periodicals, by the publisher together with the persons criminally liable.

Art. 18. If a person is convicted of a press offence, a verbatim or summarized account of the judicial decision shall be published in the same periodical or if it has ceased to exist in another periodical at the expense of the offender. If proceedings were instituted in consequence of a complaint, the application of the foregoing provision shall depend on the desire of the complainant.

. . .

CHAPTER 8

PROCEDURE IN CASES CONCERNING THE PRESS

Art. 36. Proceedings relating to offences defined in this enactment or to press offences shall, if the offences in question are liable to severe penalties, be heard before the courts specially set up to deal with such cases, if not, before criminal courts of first instance.

In centres where there are three or more judges, cases falling within the competence of the criminal courts of first instance shall be heard before a court composed of the three judges of the highest rank. In case of equality of rank, the rule of seniority shall be followed.

In courts set up in this way the judge of the highest rank or, if the judges are of equal rank, the senior judge shall preside.

[1] Turkish text in *Resmi Gazete* No. 7564, of 24 July 1950. English translation from the Turkish text by the United Nations Secretariat. For a comparison between this Act and the legislation of 1946, see the preceding note on the development of human rights, pp. 272–273.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

REPORT OF THE STATISTICAL BOARD OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UKRAINIAN SSR IN 1952[1]

EXTRACTS

In 1952, Soviet trade continued to develop; trading establishments grew in number, and the turnover in the State and co-operative retail trade of the Ukrainian SSR increased. In consequence of the successes achieved in the development of the national economy, a further—the fifth in succession—reduction in the State retail prices of staple foodstuffs was instituted by the Government and the Central Committee of the All-Union Communist Party (Bolsheviks) on 1 April 1952. The growth of production and the reduction in the State retail prices of consumer goods led to a further increase in the sale of goods to the population.

In 1952, more of the following products were sold to the population than in 1951: fish and fish products, butter, vegetable oils and other edible fats, milk and dairy products, sugar and confectionery products, silk textiles, clothing, knitwear, hosiery, leather footwear, cosmetics, soap, furniture, building materials, bicycles, gramophones, sewing machines, clocks, watches and cameras.

In 1952, the increase in the sale of agricultural products at the collective farm markets continued. There was a considerable increase, as compared with 1951, in the sale of flour, cereals, potatoes and vegetables, meat butter, eggs and honey.

In 1952, the improvement in communal services was continued.

On 1 January 1953, the number of dwellings equipped with gas in the cities of the Ukrainian SSR was 13 per cent greater than on 1 January 1952. In the course of 1952, 10,739 apartments were equipped with gas in Kiev, the capital of the Ukraine.

The municipal electric transportation services increased their efficiency. In 1952, the distance travelled by tramways was 12 per cent and the distance travelled by trolley buses 10 per cent greater than in 1951. The number of passengers carried by the tramways increased by 8 per cent and the number carried by trolley buses by 11 per cent.

In 1952 the average daily supply of water provided by the communal water supply services increased by 10 per cent as compared with 1951, and the supply of water to consumers by 11 per cent.

In 1952, a considerable amount of work was done on the construction, reconstruction, extension and repair of housing, and also on the asphalting of streets and squares and the planting of trees in population centres of the Ukrainian SSR.

During the past year, 72,000 young skilled workers completed training in vocational, railway, mining and factory schools in the Ukrainian SSR and started work in industry, building and transport.

In 1952, more than 400,000 manual and office workers acquired skills or improved their qualifications with the help of individual, group or class instruction given at republican or local enterprises.

Further progress in all fields of socialist culture was registered in the Ukrainian SSR in 1952.

Pupils in the fifth to tenth classes of schools of general education numbered 254,500 more in 1952 than in 1951. During the year, the number of persons studying at young workers' evening schools for general education while continuing to work increased by 10 per cent.

By the end of 1952, the number of students attending institutions of higher learning was 8 per cent greater than in 1951, while the number of those attending technical and other special secondary schools was 11 per cent greater.

The number of volumes in libraries operated by State and public organizations was 25 per cent greater in 1952 than in 1951.

The number of cinema installations increased by 5 per cent in 1952.

In the summer of 1952, about 850,000 children and adolescents were accommodated at Young Pioneer camps, children's sanatoria, and tourist camps, or went to the country for the summer with their kindergartens or children's homes.

The number of hospitals, maternity homes and other medical institutions, as well as of sanatoria and rest homes, was increased still further in 1952. There were 8,700 more beds in hospitals and maternity homes than in 1951.

[1] Russian text transmitted through the courtesy of the Permanent Delegation of the Union of Soviet Socialist Republics to the United Nations, at the request of the Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic. English translation from the Russian text by the United Nations Secretariat.

UNION OF SOUTH AFRICA

LEGISLATION

THE GROUP AREAS AMENDMENT ACT, 1952[1]

Act No. 65, assented to 28 June 1952

Sect. 2.

[Section 2 of the Principal Act divides the population of the Union of South Africa into three distinct groups: (1) a white group, (2) a native group, and (3) a coloured group, and gives a definition of each group. The Amending Act adds to paragraph (*b*) of sub-section (1) a new sub-paragraph by which it includes the following additional category of persons in the definition of the native group]:

"(iii) Any white man between whom and a woman who is, in terms of sub-paragraph (1), a member of the native group, there exists a marriage or who cohabits with such a woman;".

[The Amending Act adds to paragraph (*c*) of sub-section (1) a new sub-paragraph by which it includes the following additional category of persons in the definition of the coloured group]:

"(iii) Any white man between whom and a woman who is, in terms of sub-paragraph (i), a member of the coloured group, there exists a marriage or who cohabits with such a woman."

Sect. 3.

[Section 3 of the Principal Act authorizes the Governor-General, subject to certain conditions, to issue proclamations declaring that the area defined in the proclamation is reserved for occupation or ownership, or both, by members of the group specified therein. The Amending Act modifies some of these conditions and introduces certain additional conditions. No proclamation by the Governor-General may be issued without the prior approval of both Houses of Parliament except if it is issued before the expiration of a period of fifteen years (five years according to the Principal Act) from the date of the promulgation of that Act in respect of certain group areas in the provinces of the Cape of Good Hope or of Natal. The Amending Act, moreover, adds the following sub-paragraph (iii) concerning such proclamation]:

"(iii) If it is issued before the expiration of a period of fifteen years from the promulgation of this Act, in respect of a group area for the white group in the Province of the Orange Free State or the Transvaal."

[Under paragraph (*b*) of sub-section (3), of section 3, no such proclamation by the Governor-General can be issued unless the Minister of the Interior has considered a report by the Land Tenure Advisory Board and has consulted, *inter alia*, the Minister of Mines in cases of areas situated on land which, in terms of any law relating to mining, is proclaimed land or deemed to be proclaimed land or upon which prospecting, digging, or mining operations are being carried on. According to the Amending Act, the Minister of Mines must be consulted also in cases of areas situated "on land on which the board reports that in its opinion there are reasonable grounds for believing that minerals exist in workable quantities".]

Sect. 4.

[This section adds a new section (3 *bis*) to the Principal Act]:

"3 *bis*. (1) The Governor-General may by proclamation in the *Gazette* define any area which he proposes under paragraph (*a*) of sub-section (1) of section (3) to declare as an area for occupation by members of the group specified therein.

"(2) The provisions of sub-section (3) of section 3 shall apply also in relation to any proclamation referred to in sub-section (1) of this section.

"(3) (*a*) No person, other than a statutory body, who is the owner of any land situate in an area defined by a proclamation issued under sub-section (1), shall, until the area in which his land is situate, is proclaimed as a group area for occupation, except under the authority of a permit

"(i) Sub-divide any such land;

"(ii) Use the surface of any such land for any purpose for which it was not being used on the date of the relevant proclamation under sub-section (1), or in the case of land in respect of which any such permit has been issued, for any purpose not authorized by the permit;

"(iii) Enter into any agreement whereby he purports to grant to any person the right to use land in contravention of the provisions of sub-paragraph (ii);

"(*b*) For the purpose of this sub-section 'land' does not include any building or other structure erected on the land.

"(4) The provisions of sub-paragraph (ii) of paragraph (*a*) of sub-section (3) shall not apply in respect of the use of any land for the purpose of prospecting for minerals.

[1] English and Afrikaans texts in *Statutes of the Union of South Africa 1952*, pp. 993–1011. The Principal Act is the Group Areas Act 1950, extracts of which are reproduced in *Yearbook on Human Rights for 1950*, pp. 293–300.

"(5) The Governor-General may by proclamation in the *Gazette* exclude the whole or any portion of an area defined under sub-section (1) from all or any of the provisions of sub-section (3)."

Sect. 5.

[Section 4 of the Principal Act prohibits a disqualified person[1] from occupying, and any other person from allowing a disqualified person to occupy, any land or premises, in any group area to which the proclamation of the Governor-General relates except under the authority of a permit, provided that this prohibition shall not make it unlawful for any disqualified person to occupy land or premises in any group area if such person possesses one of the capacities listed. The Amending Act lists certain additional capacities and lays down other conditions, as a result of which a disqualified person may lawfully occupy land or premises in any group area]:

"(*e*) As a labour tenant as defined in section *forty-nine* of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), or as the husband, wife, minor child or dependant of any such labour tenant: Provided that the provisions of this paragraph shall apply in respect of any group area or any part of any group area only if the Governor-General has, by proclamation in the *Gazette*, declared them to apply in respect of that group area, or that part thereof, and only to the extent and subject to the conditions (if any) which may be specified in the proclamation;

"(*f*) In pursuance of a licence issued to the owner, lessee or occupier of the land or premises under sub-section (4) of section *nine* of the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945)."

Sect. 6.

[Section 8 of the Principal Act prohibits the conclusion of agreements in terms of which any disqualified person or any disqualified company[2] acquires or purports to acquire or would acquire any immoveable property situate in the controlled area,[3] subject to certain exceptions. The Amending Act provides for an additional exception covering agreements "in respect of the acquisition of immoveable property by a statutory body for public purposes".]

Sect. 7.

[The Amending Act provides for the insertion of a new section, 9 *bis*]:

"9 *bis*. (1) If at the commencement of this section a member of any group holds immoveable property in the controlled area and thereafter becomes a member of another group, he shall not hold that property except under the authority of a permit.

"(2) If after the commencement of this section a member of any group acquires immoveable property in the controlled area, and thereafter becomes a member of another group, he shall not hold that property except under the authority of a permit."

Sect. 8.

[Section 10 of the Principal Act prohibits any disqualified person from occupying, and any other person from allowing a disqualified person to occupy, any land or premises in the controlled area except under the authority of a permit, provided that this prohibition shall not render it unlawful for any such disqualified person to occupy land or premises if certain conditions exist or if the disqualified person possesses certain capacities specifically enumerated. The Amending Act inserts new paragraphs (*b bis*) and (*j*) in sub-section (2) in which it prescribes additional conditions and capacities as a result of which a disqualified person may lawfully occupy land and premises in the controlled area.[4] The added text is *mutatis mutandis* the same as that of the two new paragraphs inserted under section 5 of the Amending Act.]

Sect. 11.

[Under section 13 (3) of the Principal Act the Minister of the Interior could not make any determination contrary to any condition in the title-deeds of any buildings erected or completed after a specified date and buildings, land or premises unoccupied at that date, prohibiting or restricting the occupation thereof by persons of one or more racial groups. The Amending Act substitutes for section 13 (5) a new sub-section which provides that any provision in the title-deeds of any building, land or premises in a specified area which prohibits or restricts the occupation thereof by persons of one or more groups shall be suspended in so far as it conflicts with the terms of a determination made under section 13 (3).]

Sect. 12.

[Section 14 of the Principal Act empowers the Minister of the Interior to issue permits for the acquisition or holding of immoveable property in a group area or in the controlled area, or for the occupation of or the granting of permission to occupy any land or premises in a group area, in the controlled area or in a specified area referred to in section 12, subject to certain provisions which are modified by the Amending Act. Paragraph (*b*) of sub-section (2) provides that the Minister shall not issue permits authorizing any person to acquire, hold or occupy any land or premises contrary to any provision in the title deed which prohibits or restricts the acquisition, holding or occupation of the land or premises by persons belonging to any group or class. The Amending Act repeats this provision and inserts a sub-section, 2 *bis*]:

"(2) *bis*. Any provision in the title deed of any building, land or premises which prohibits or restricts the acquisition, holding or occupation thereof by a person belonging to any group or class shall be suspended in so far as it conflicts with the terms of any permit issued under sub-section (1) authorizing any person to acquire, hold or occupy any building, land or premises for so long as the permit remains in force."

Sect. 14.

[Section 23 of the Principal Act prohibits the issue or renewal of licences to carry on any business, trade or

[1] For the definition of "disqualified person", see *Yearbook on Human Rights for 1950*, p. 294.

[2] For the definition of the term "disqualified company", *ibid.*, p. 295.

[3] For the definition of the term "controlled area", *ibid.*, p. 293.

[4] The conditions and qualifications included in paragraphs *b bis* and *j* are also added by the Amending Act to those contained in section 12 of the Principal Act.

occupation to persons whom the officer in charge has reason to believe to be unqualified to lawfully carry on the business, trade or occupation on the premises whereon it is to be carried on unless such person provides proof to the contrary. Any such licence or renewed licence shall be invalid, and if at any time any person who is not qualified to lawfully carry on the business, trade or occupation is in actual control of such business, trade or occupation, the licence shall lapse. Within two months after the issue or renewal of any such licence, any person whatever may note an appeal against the issue or renewal to the magistrate of the district wherein the premises are situate. The same can be done by the person to whom a licence has been refused. The magistrate may, on dealing with such appeal, hear evidence and declare to be invalid any licence issued, or, in cases of refusals of licences, he may order the officer in charge to accept that the proof required has been given. His decisions are subject to appeal. The Amending Act repeals this text and substitutes another which reads]:

"23. (1) No officer entrusted by or under any law with the issue of any licence to carry on any business, trade or occupation shall, except by way of renewal, issue any such licence or authorize the transfer of such a licence to other premises unless the person applying therefor furnishes to such officer a written statement signed by him setting out

(*a*) The title deed description and extent of the premises on which the business, trade or occupation concerned is proposed to be carried on and the nature of the business, trade or occupation;

(*b*) The name of the applicant for the licence or the transfer of a licence to other premises, as the case may be, and the group of which the applicant is a member;

(*c*) The group or groups of which the person or persons who will be in actual control of the business, trade or occupation concerned is or are members;

(*d*) That the applicant and the persons referred to in paragraph (*c*) may lawfully occupy the premises whereon the said business, trade or occupation is proposed to be carried on.

"(2) As soon as possible after a licence as aforesaid has been issued or the transfer thereof to other premises has been authorized, the officer referred to in sub-section (1) shall transmit to the chief inspector referred to in sub-section (1) of section thirty-one, a copy of the statement referred to in sub-section (1) of this section and, if he has any reason to believe that the proposed holder of the licence, or the person or persons who will be in actual control of the business, trade or occupation concerned, may not lawfully carry on the business, trade or occupation on the premises whereon it is to be carried on, also a full report on the grounds of his belief.

"(3) Any such licence issued to, renewed or transferred to other premises in the name of a person who may not lawfully occupy the premises whereon the business, trade or occupation to which the licence relates, is carried on, shall be invalid, and if at any time any person who may not lawfully occupy the premises whereon such business, trade or occupation is carried on, is in actual control of such business, trade or occupation, the licence shall lapse.

"(4) The said chief inspector may at any time during the currency of any such licence apply to the magistrate of the district wherein the premises on which the business, trade or occupation to which the licence relates, is carried on, are situate for an order declaring the said licence invalid or to have lapsed in accordance with the provisions of sub-section (3).

"(5) Any person whatever may, within two months after the issue or transfer to other premises of any such licence, and an applicant for such a licence or the transfer thereof to other premises whose application has been refused in pursuance of the provisions of sub-section (1), may, within two months after such refusal, note an appeal against the issue, transfer to other premises or refusal, as the case may be, to the magistrate of the district wherein the premises referred to in sub-section (1) are situate.

"(6) The magistrate may, on dealing with an application under sub-section (4) or an appeal under sub-section (5)

"(*a*) Hear evidence in regard to the matter before him;

"(*b*) Declare to be invalid or as having lapsed, or cancel any licence issued or renewed by such officer or the transfer of which to other premises has been authorized by the officer, or, in the case of an appeal by the applicant for a licence or the transfer thereof to other premises, order the officer to issue the licence or to authorize the transfer thereof to the other premises; and

"(*c*) Make, *mutatis mutandis*, such order as to the costs of the application or appeal as he could have made if the application or appeal had been a civil trial in his court.

"(7) Such costs shall be taxable, *mutatis mutandis*, in the same manner as costs incurred in connexion with such a trial.

"(8) The court which in terms of sub-section (6) cancels any licence or declares any licence invalid or as having lapsed, shall order the person who carries on the business, trade or occupation to which the licence relates, to vacate the premises on which the said business, trade or occupation is carried on, on or before a date to be specified in such order but not less than fourteen days after the date of the order.

"(9) The decision of the magistrate on any such application or appeal shall be subject to an appeal to the provincial division of the Supreme Court having jurisdiction as if it were a civil judgement of a magistrate's court.

"(10) The provisions of this section shall not apply in relation to a licence in relation to the issue of which the provisions of sub-section (3) of section twenty-four of the Native Trust and Land Act, 1936 (Act No. 18 of 1936) apply."

Sect. 16.

[Section 26 of the Principal Act enumerates the provisions under which the Governor-General shall not issue, withdraw or amend proclamations and the Minister of the Interior shall not make determinations or issue or revoke any permit or amend any of its conditions unless the Minister has considered a report made by the Land Tenure Advisory Board in regard thereto. The Amending Act adds to this list the provisions of the new sub-section (1) of section (3 *bis*) inserted by section 4 of the present Act.]

Sect. 17.

[Section 27 of the Principal Act defines the nature of the advice which the Land Tenure Advisory Board shall give to the Minister of the Interior and provides that in certain cases such advice shall not be formulated or given before the publication by the Board in the newspapers of corresponding public notices, setting forth the matter which is being investigated, while in certain other cases such publication shall be proceeded with if the Minister so directs or some other procedure shall be followed to bring the matter to the notice of interested persons as the Minister may determine. The Amending Act, *inter alia*, adds to the list of subjects with regard to which public notices are required those covered by the provisions of the new sub-section (1) of section (3 *bis*) inserted by section 4 of the present Act.]

NATIVES (ABOLITION OF PASSES AND CO-ORDINATION OF DOCUMENTS) ACT, 1952[1]

Act No. 67, assented to 28 June 1952

. . .

Art. 2. (1) The Minister may by notice in the *Gazette* require every native of a class specified in the notice who has attained the age of sixteen years and is resident in an area defined therein, to appear before an officer during a period and at a time and place so specified, in order that a reference book in such form as the Minister may determine may be issued to such native.

. . .

Art. 3. (1) An officer before whom a native appears in pursuance of a notice under sub-section (1) of section two shall, subject to the provisions of sub-sections (2) and (4)

(*a*) In the prescribed manner take or cause to be taken the finger prints of that native and transmit such finger prints to the bureau; and

(*b*) Issue to that native a reference book in which shall be recorded the appropriate prescribed particulars relating to such native.

(2) If for any reason it is found impracticable to issue a reference book to any native on his appearance in pursuance of such a notice, the officer concerned may direct that native to appear in person within a period determined by him before the native commissioner of the district in which such native resides for the purpose of the issue to him by that native commissioner of such a book.

(3) A native commissioner before whom any native appears in pursuance of such a direction may take and deal with such native's finger prints as if the native had appeared before him on a notice under sub-section (1) of section two and shall, after making such inquiries as he deems necessary, issue to that native a reference book.

(4) If a native who appears before an officer in pursuance of a notice under sub-section (1) of section two, proves to the satisfaction of such officer that he is a chief or headman appointed or recognized under the Native Administration Act, 1927 (Act No. 38 of 1927), or a teacher in possession of a teacher's certificate issued to him by a provincial education department or a professor or lecturer of the South African Native College or any state-aided university or officer or an advocate or attorney admitted to practise as such or a medical practitioner or a dentist or a holder of a letter of exemption issued under section thirty-one of the Native Administration Act, 1927 (Act No. 38 of 1927), or a holder of a certificate of exemption issued under regulation 14 *bis* of the regulations published by proclamation No. 150 of 1934, and in the case of any such last-mentioned native, surrenders the certificate in question to that officer

(*a*) No finger prints shall be taken in the case of any such native, but such native shall, if able to do so, furnish a specimen of his signature to that officer, who shall transmit it to the bureau; and

(*b*) The outside cover of the reference book issued to such native under paragraph (*b*) of that sub-section shall be of a colour different from that of the outside cover of the reference book issued to a native not included in this sub-section.

(5) Whenever a native ceases to hold the qualification by virtue of which he has been dealt with as provided in sub-section (4), the native commissioner

[1]English and Afrikaans texts in *Statutes of the Union of South Africa, 1952*, pp. 1013–1031.

of the area in which such native resides may by notice in writing call upon such native to appear before him at a time and place specified in the notice and may

(*a*) Take such native's finger prints;

(*b*) Seize the reference book previously issued to such native and cancel the same; and

(*c*) Issue to such native a reference book the outside cover of which is of the same colour as in the case of natives not included in the said sub-section and record in that reference book any particulars required to be recorded therein in terms of this Act.

(6) If any native fails to comply with any notice under sub-section (5)

(*a*) He shall be guilty of an offence and liable on conviction to a fine not exceeding ten pounds or imprisonment for a period not exceeding one month; and

(*b*) The native commissioner concerned may cause such native to be arrested and brought before him and thereupon take action as provided in paragraphs (*a*), (*b*) and (*c*) of sub-section (5).

. . .

Art. 8. (1) Any person who after the fixed date

(*a*) Enters into a contract of service (not being a contract which is required to be registered in terms of the regulations made under section twenty-three of the Native Labour Regulation Act, 1911 (Act No. 15 of 1911)), with a native of a class specified in a notice issued under sub-section (1) of section two, who has attained the age of sixteen years, in terms of which such native is to be employed in an area other than an area which has been proclaimed under section twenty-three of the Urban Areas Act; or

(*b*) Enters into a contract of service with a native of the class so specified who has attained the said age and who by virtue of sub-section (2) of section twenty-three of the Urban Areas Act is exempt from the provisions of sub-section (1) of the last-mentioned section,

shall within fourteen days after entering into such contract lodge with the native commissioner of the district in which such native is to be employed and record in the reference book issued to such native, prescribed particulars relating to such contract.

(2) Any such person shall, if such native deserts from his service or if such contract is terminated, advise such native commissioner within fourteen days after such desertion or termination of the date of such termination or desertion and in the event of the termination of such contract also record the date thereof in such native's reference book.

(3) The provisions of sub-sections (1) and (2) shall apply only in respect of any contract entered into for an indefinite period (not being a contract with a native who is a *togt*[1] or casual labourer or works as an independent contractor) or for a fixed period of not less than one month or terminable on not less than one month's notice.

(4) Every owner (as defined in section forty-nine of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), of land as so defined shall within one month after the fixed date furnish to the native commissioner of the district in which that land is situated, the prescribed particulars in respect of every labour tenant or squatter as so defined, who was resident on that land on the said date, and shall thereafter furnish to such native commissioner the prescribed particulars of every native who becomes or ceases to be such a labour tenant or squatter on that land.

(5) Every such owner shall record the prescribed particulars in the reference book of any native in respect of whom particulars are in terms of sub-section (4) required to be furnished to a native commissioner.

(6) Every native of a class specified in a notice issued under sub-section (1) of section two who has attained the age of sixteen years, in respect of whom particulars are not required to be furnished to a native commissioner under sub-sections (1), (2) or (4) shall once every three months furnish the native commissioner of the district in which he is for the time being resident with such particulars in relation to himself as may be prescribed and the native commissioner shall record those particulars in such native's reference book in such manner as may be prescribed.

Art. 9. No native not born in the Union, the Territory of South-West Africa, Basutoland, Swaziland or Bechuanaland shall enter any district, otherwise than in the course of his employment, without the written permission of the native commissioner or assistant native commissioner of the district in which he resides.

Art. 10. (1) After the fixed date, no native under the age of sixteen years shall engage himself to work elsewhere than on the land on which his parent or guardian resides or is employed or (without being under the control of his parent or guardian or a person lawfully exercising authority over him) absent himself from his home, unless he is in possession of a document of identification issued by the native commissioner or assistant native commissioner of the district or the superintendent of any location established under section two of the Urban Areas Act, in which such native's father or guardian resides, indicating that his father or guardian has consented thereto. If any native to whom this section applies has no parent or guardian, any consent required for the purposes of this section may be given by the

[1] A day labourer (Afrikaans word tog = day).

native commissioner or assistant native commissioner of the district in which that native resides, as if he were such native's guardian.

(2) Any native to whom a document of identification has been issued under sub-section (1) shall retain such document for the period during which he is employed or absent from his home, as the case may be, and shall produce such document on demand of any authorized officer.

(3) Any native who fails to comply with any provision of sub-section (1) or (2) may be taken into custody by an authorized officer and on the order of a native commissioner or an assistant native commissioner returned to his father or guardian, from whom the expenditure incurred in returning him may be recovered.

Art. 11. The Minister shall establish a Native Affairs Central Reference Bureau in which all finger prints taken under this Act shall be classified and all particulars contained in reference books shall be recorded or otherwise dealt with in such manner as may be prescribed.

. . .

[Section 15 prescribes punishments for offences committed under this Act. Failure or refusal by any person being a native over sixteen years of age to produce a reference book on demand of an authorized officer is punishable by a fine not exceeding ten pounds or by imprisonment for a period not exceeding one month. Non-possession of a reference book is punishable by a fine not exceeding fifty pounds or by imprisonment for a period not exceeding six months.]

[The schedule attached to this Act lists the laws which are repealed or amended to bring them into harmony with the present provisions.]

NATIVE LAWS AMENDMENT ACT, 1952[1]

Act No. 54, assented to 24 June 1952

Sect. 20.

[The following section is substituted for section 5 of the Native Administration Act, 1927, relating to the constitution or adjustment of native tribes and removal of natives]:

5 (1) (*as amended in 1952*). The Governor-General may:

(*a*) Define the boundaries of the area of any tribe or of a location and may from time to time alter the same and may divide any existing tribe into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe, as necessity or the good government of the natives may in his opinion require;

(*b*) Whenever he deems it expedient in the general public interest, order that, subject to such conditions as he may determine, any tribe, portion of a tribe or native shall withdraw from any place to any other place or to any district or province within the Union and shall not at any time thereafter or during a period specified in the order return to the place from which the withdrawal is to be made or proceed to any place, district or province other than the place, district or province indicated in the order, except with the written permission of the Secretary for Native Affairs: Provided that if a tribe refuses or neglects to withdraw as aforesaid no such order shall be given or, having been given, shall be of any force and effect until a resolution approving of the withdrawal has been adopted by both Houses of Parliament: Provided further that any such order made in respect of a portion of a tribe or a native which is still in force after the expiry of a period of twelve months from the date of service thereof shall be laid upon the tables of both Houses of Parliament within fourteen days after the expiry of such period if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session, and shall, if both Houses of Parliament pass resolutions disapproving thereof during the session in which it is so laid upon the said tables, cease to have effect on the day on which the last of such resolutions is passed.

(2) (*as amended in 1952*) (*a*) Any native who neglects or refuses to comply with any order issued under paragraph (*b*) of sub-section (1) or with any condition thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment, with or without the option of a fine, for a period not exceeding six months.[2]

(*b*) Any native commissioner or magistrate may, upon such conviction, take all such steps as may be necessary to ensure compliance with the order or with any condition thereof and may, by warrant under his hand, direct that any policeman or policemen shall carry out the withdrawal or ensure compliance with the order, if necessary by force.

(*c*) (*as added in 1952*) Any person who obstructs or hinders any native commissioner, magistrate or policeman, or any person assisting such native commissioner, magistrate or policeman in the exercise of

[1] English and Afrikaans texts in *Statutes of the Union of South Africa, 1952*, pp. 781–829.

[2] The fine in the original Act was up to ten pounds and imprisonment up to three months.

his powers under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment for a period not exceeding six months.

(3) (*as added in 1952*) Notwithstanding the provisions of sub-section (2), the Governor-General may order that any native who neglects or refuses to comply with any order issued under paragraph (*b*) of sub-section (1) or with any condition thereof shall be summarily arrested and detained and as soon as possible removed in terms of the order.

(4) (*as added in 1952*) No interdict or other legal process shall issue for the stay of any order or direction issued under paragraph (*b*) of sub-section (1), paragraph (*b*) of sub-section (2) or sub-section (3); nor shall any such order or direction be suspended by reason of any appeal against a conviction under sub-section (2).

(5) (*as added in 1952*) (*a*) The powers vested in the Governor-General under this section shall be in addition to the powers vested in him under section *one;* and

(*b*) The provisions of this section shall be of full force and effect in relation to any native who has been exempted, in terms of section *thirty-one* of this Act or any other law, from any laws specially affecting natives.

Sect. 27.

[The following section is substituted for section 10 of the Natives (Urban Areas) Consolidation Act, 1945, relating to restriction of right of natives to remain in certain areas:]

10 (*as amended and supplemented in 1952*). (1) No native shall remain for more than seventy-two hours in an urban area or in a proclaimed area in respect of which an urban local authority exercises any of the powers to in sub-section (1) of section *twenty-three* or in any area forming part of a proclaimed area and in respect of which an urban local authority exercises any of those powers, unless

(*a*) He was born and permanently resides in such area; or

(*b*) He has worked continuously in such area for one employer for a period of not less than ten years or has lawfully remained continuously in such area for a period of not less than fifteen years and has not during either period been convicted of any offence in respect of which he has been sentenced to imprisonment without the option of a fine for a period of more than seven days or with the option of a fine for a period of more than one month; or

(*c*) Such native is the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Natives Taxation and Development Act, 1925 (Act No. 41 of 1925), of any native mentioned in paragraph (*a*) or (*b*) of this sub-section and ordinarily resides with that native; or

(*d*) Permission so to remain has been granted to him by a person designated for the purpose by that urban local authority.

(2) An officer so designated shall issue to any native who has been permitted to remain in any such area a permit indicating the purposes for which and the period during which such native may remain in that area: Provided that

(*a*) Where a native has been permitted to remain in any area for the purpose of taking up employment, the period of validity of the permit shall be limited to the period during which he remains in the service of the employer by whom he has been engaged;

(*b*) Where a native has been permitted to remain in any area for the purpose of seeking work, the period of validity of the permit issued to such native shall not be less than seven or more than fourteen days, unless such native finds employment before the expiration of his permit, in which case the permit shall remain valid until the expiration of the period during which such native remains in the service of the employer by whom he is engaged.

(3) Any native who, having obtained employment within an area referred to in sub-section (1), has been refused permission to remain in that area, may appeal against such refusal to the chief native commissioner for the area in question, whose decision on any such appeal shall be final, and the native commissioner or magistrate having jurisdiction in that area may, in the event of such an appeal being lodged, in his discretion grant permission to the native concerned to remain in the area in question pending the decision of such chief native commissioner on the appeal.

(4) Any person who contravenes any provision of this section, or who remains in any area for a purpose other than that for which permission so to remain has been granted to him, shall be guilty of an offence.

(5) In any criminal proceedings against a native in respect of a contravention of the provisions of this section, it shall be presumed until the contrary is proved that such native remained in the area in question for a period longer than seventy-two hours.

(6) The Governor-General may, if requested thereto by a resolution adopted at a duly constituted meeting of any urban local authority, by proclamation in the *Gazette* declare that for such period as may be specified in the proclamation the provisions of this section shall not apply in respect of the urban area under the jurisdiction of that urban local authority or in respect of any proclaimed area or part thereof in which that urban local authority exercises any of the powers referred to in sub-section (1) of section *twenty-three.*

Sect. 36.

[The following section is substituted for section 29 of the Natives (Urban Areas) Consolidation Act, 1945, relating to the manner of dealing with idle or undesirable natives]:

29 (*as amended in 1952*). (1) Whenever any authorized officer has reason to believe that any native within an urban area or an area proclaimed in terms of section *twenty-three*

(*a*) Is an idle person in that

(i) He is habitually unemployed and has no sufficient honest means of livelihood; or

(ii) Because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise) he fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or

(iii) He is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or

(iv) He habitually begs for money or goods or induces others to beg for money or goods on his behalf; or

(*b*) He is an undesirable person in that he

(i) Has been convicted of an offence mentioned in the Third Schedule to the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), other than an offence against the laws for the prevention of the supply of intoxicating liquor to natives or coloured persons; or

(ii) Has been convicted of selling or supplying intoxicating liquor, other than kaffir beer, or of being in unlawful possession of any such liquor, or has been convicted more than once within a period of three years of selling or supplying kaffir beer or of being in unlawful possession of kaffir beer; or

(iii) Has been required under paragraph (*c*) of sub-section (1) of section *twenty-three* to depart from a proclaimed area and has failed to depart therefrom, or having been required under paragraph (*e*) of that sub-section to depart from such an area, has failed to depart therefrom within the period specified in terms of that paragraph or has returned thereto before the expiration of the period so specified; or

(iv) Being a female prohibited under paragraph (*d*) of sub-section (1) of section *twenty-three*, from entering any area for any purpose mentioned in that paragraph without the certificates prescribed in that paragraph, has entered that area for such a purpose without the said certificates, or having entered the area, has failed to produce the said certificates on demand by an authorized officer,

he may, without warrant arrest that native or cause him to be arrested and any European police officer or officer appointed under sub-section (1) of section *twenty-two* may thereupon bring such a native before a native commissioner or magistrate, who shall require the native to give a good and satisfactory account of himself.

(2) If any native who has been so required to give a good and satisfactory account of himself fails to do so, the native commissioner or magistrate inquiring into the matter shall declare him to be an idle or an undesirable person, according to the circumstances.

(3) If a native commissioner or magistrate declares any native to be an idle or undesirable person, he shall

(*a*) By a warrant addressed to any police officer order that such native be removed from the urban or proclaimed area and sent to his home or to a place indicated by such native commissioner or magistrate, and that he be detained in custody pending his removal; or

(*b*) Order that such native other than a female referred to in sub-paragraph (iv) of paragraph (*b*) of sub-section (1) be sent to and detained in a work colony established or deemed to have been established under the Work Colonies Act, 1949; or

(*c*) If such native is declared to be an idle person, order that he be sent to and detained for a period not exceeding two years in a farm colony, work colony, refuge, rescue home or similar institution established or approved under section *fifty* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911), and perform thereat such labour as may be prescribed under that Act or the regulations made thereunder for the persons detained therein; or

(*d*) If such native agrees to enter and enters into a contract of employment with such an employer and for such a period as that native commissioner or magistrate may approve, order that such native enter into employment in accordance with the terms of that contract and, if he deems fit, that such native be detained in custody pending his removal to the place at which he will in terms of that contract be employed.

(4) An order made under paragraph (*b*) of sub-section (3) shall have the same effect as if it had been made under sub-section (6) of section *fifteen* of the Work Colonies Act, 1949.

(5) In addition to any order made in terms of sub-section (3), the native commissioner or magistrate may further order that the native concerned shall not at any time thereafter, or during the period specified in the order, enter any urban or proclaimed area indicated in the order, not being the area in which he was born and permanently resided at the date of

the order, except with the written permission of the Secretary for Native Affairs.

(6) Any native commissioner or magistrate having jurisdiction in the area in question may suspend the execution of any warrant or order issued in terms of sub-section (3) for any period and on any conditions determined by him.

(7) If any native enters any urban or proclaimed area in contravention of an order made under sub-section (5), he shall be guilty of an offence, and the court convicting him of such offence shall by warrant order that, after he has paid any fine or served any period of imprisonment to which he may be sentenced in respect of that offence, he be dealt with as provided in paragraph (*a*) or (*b*) of sub-section (3).

(8) Any dependant of any native who is ordered to return home or is removed to any place may at the request of the urban local authority or of such native or dependant be removed, together with his personal effects, at the public expense, to the said native's home or the place to which he has been ordered to be removed.

(9) A native commissioner or magistrate inquiring into any matter under this section

(*a*) May authorize the finger prints of any native who, in terms of this section, is required to give a good and satisfactory account of himself, to be taken.

(*b*) May from time to time adjourn the inquiry and may in such case order that the native concerned be detained in a goal or in a police cell or lock-up or other place which such native commissioner or magistrate considers suitable, or release him on bail, *mutatis mutandis*, as if he were a person whose trial on a criminal charge in a magistrate's court is adjourned;

(*c*) Shall keep a record of the proceedings and may, in his discretion, summon to his assistance two natives to sit and act with him as assessors in an advisory capacity.

(10) The provisions of the law relating to appeals and to any form of review in criminal cases shall, *mutatis mutandis*, apply in respect of any order made under paragraph (*b*) or (*c*) of sub-section (3) as if such order were a sentence passed by a magistrate's court in a criminal case.

PROCLAMATION No. 276 OF THE GOVERNOR-GENERAL CONCERNING CONTROL OF MEETINGS, GATHERINGS OR ASSEMBLIES, AND PROHIBITION OF INCITEMENT OF NATIVES, IN NATIVE AREAS[1]

dated 27 November 1952

SUMMARY

This proclamation prescribes, *inter alia*, the following regulations which shall have force of law in all areas referred to in sub-section (i) of section 25 of the Native Administration Act 1927 (Act No. 38 of 1927) and in sub-section (i) of section 21 of the Native Trust and Land Act (Act No. 18 of 1936)—i.e., in all native areas and areas deemed to be native areas:

"1. (i) Any person who, without the permission of the chief or headman, if any, appointed in terms of sub-section (7) or (8) of section 2 of the Native Administration Act, 1927 (Act No. 38 of 1927), and the approval in writing of the native commissioner or, where there is no native commissioner, of the magistrate of the area concerned

"(*a*) Holds, presides at, or addresses any meeting, gathering or assembly at which more than ten natives are present at any time, or

"(*b*) Permits any such meeting, gathering or assembly to be held in his kraal or house or on other premises under his control, shall be guilty of an offence.

"2. Sub-section (i) shall not apply to any meeting, gathering or assembly held for the purpose of

(*a*) A bona fide religious service or a funeral;

(*b*) The regulation of the domestic affairs of any kraal or household;

(*c*) A meeting of the members of a statutory body of persons, held exclusively for the purpose of transacting any business of that body;

(*d*) Instructions imparted under any law;

(*e*) A bona fide sports gathering, concert or entertainment;

(*f*) A wedding;

(*g*) A meeting held by any senator, member of parliament, or provincial council; or

(*h*) Official administrative purposes.

"3. Any person convicted of a contravention of these regulations may be sentenced to pay a fine not exceeding three hundred pounds or in default of payment to be imprisoned for a period not exceeding three years."

[1]English and Afrikaans texts in *Government Gazette* of 28 November 1952. Summary prepared by United Nations Secretariat.

GOVERNMENT NOTICE No. 2753 CONCERNING CONTROL OF MEETINGS, GATHERINGS OR ASSEMBLIES, AND PROHIBITION OF INCITEMENT OF NATIVES IN CERTAIN AREAS[1]

dated 28 November 1952

SUMMARY

The provisions of proclamation No. 276, of 27 November 1952,[2] are applicable also in areas other than native areas or areas deemed to be native areas, provided that in so far as these provisions relate to the control of meetings, gatherings or assemblies, they shall come into operation on a date to be fixed, either generally or in respect of any particular area, by notice in the *Gazette* and that they may, in like manner, be suspended in any area in which they are in force.

[1]English and Afrikaans text in *Government Gazette* of 28 November 1952. Summary by the United Nations Secretariat.

[2]See the preceding text.

JUDICIAL DECISION

PROHIBITION OF ILLICIT CARNAL INTERCOURSE BETWEEN EUROPEANS AND NON-EUROPEANS—DEFINITION OF "EUROPEAN" AND "NON-EUROPEAN"—EVIDENCE CONSIDERED SUFFICIENT IN CASES OF DOUBTFUL RACIAL STATUS—DISCRIMINATORY LEGAL PROVISIONS INTERPRETED FAVOURABLY FOR THE ALLEGED OFFENDERS—ONUS OF PROOF RELATING TO RACIAL CLASSIFICATION RESTS WITH THE CROWN—LAW OF THE UNION OF SOUTH AFRICA

REX *v.* ORMONDE AND ANOTHER[1]

Supreme Court of South Africa

5 December 1951

The facts. The two appellants lived in the area of Cape Town. They were married according to Moslem rites on 6 April 1950, and lived as husband and wife. They were nevertheless charged and tried in the magistrate's court, Cape Town, under the Immorality Act (Act No. 5 of 1927, as amended by Act No. 21 of 1950)[2] "in that upon or about divers occasions during the period 12th day of May 1950, to the 19th August 1950, and at or near Cape Town . . . the accused No. 1, being a European male, did wrongfully and unlawfully have illicit carnal intercouse with the accused No. 2, a non-European female . . . and the accused No. 2, being a non-European female did wrongfully and unlawfully permit the accused No. 1, a European male, to have illicit carnal intercourse with her."

The appellants were found guilty and each of them was sentenced to three months' imprisonment with hard labour suspended for three years on condition that they did not again commit a similar offence. An appeal by them to the Cape Provincial Division was dismissed.

The Immorality Act, 1927 provides in section 1: "Any European male who has illicit carnal intercourse with a native female, in circumstances which do not amount to rape, an attempt to commit rape, indecent assault, or a contravention of Section *two* or *four* of the Girls' and Mentally Defective Women's Protection Act, 1916 (Act No. 3 of 1916), shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years." The same Act provides in section 2: "Any native female who permits any European male to have illicit carnal intercourse with her and any European female who permits any native male to have illicit carnal intercourse with her shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding four years." The Amending Act, which

[1]*1952 (1) South African Law Reports*, 272, A.D. Summary prepared by the United Nations Secretariat.

[2]English and Afrikaans texts of the Immorality Act, 1927, in *Statutes of the Union of South Africa*, 1927-1929, p. 4. Text of the Immorality Amendment Act, 1950 in *Statutes of the Union of South Africa*, 1950, p. 217.

entered into force on 12 May 1950, replaces the word "native" wherever it occurs in the Principal Act, by the word "non-European".

The judgement of the Cape Provincial Division dealt with the following questions: (1) Was the accused No. 2 a European or a non-European? (2) Did the accused No. 1 have reasonable cause to believe that the accused No. 2 was a European? and (3) Was the Moslem marriage valid? The second point was raised because the Immorality Amendment Act, 1950, in its Section 2, adds to the Principal Act the following new sub-section: "2 *bis*. It shall be a sufficient defence to any charge under section *one* or section *two* if it is proved to the satisfaction of the court or jury before whom the case is brought that the person so charged at the time of the commission of the offence had reasonable cause to believe that the person with whom he or she committed the offence was a European if the person so charged is a European, or a non-European if the person so charged is a non-European." The third point was raised because, under section 7 of the Immorality Act, 1927, as revised by section 3 of the Immorality Amendment Act, 1950, "illicit carnal intercourse" means carnal intercourse other than between husband and wife.

The appellants, having obtained leave, appealed to the Supreme Court where they pleaded, *inter alia*, that the lower courts erred in finding it proved that appellant No. 2 was a non-European. The appellant argued: "It was incumbent on the Crown to prove that the female appellant was a non-European. The Immorality Act of 1927, as amended by Act No. 21 of 1950 (section 3), provides that 'European' means a person who in appearance obviously is, or who by general acceptance and repute is a European. 'Non-European' means a person who in appearance obviously is, or who by general acceptance and repute is a non-European. In terms of the definition of 'non-European' in Section 3 of Act 21 of 1950, the Crown had to prove either that the woman was in appearance obviously a non-European or that she was by repute and general acceptance a non-European. The Prohibition of Mixed Marriages Act, 1949 (Act No. 55 of 1949)[1] rules (section 3): "Any person who is in appearance obviously a European or a non-European, as the case may be, shall for the purposes of this Act be deemed to be such, unless and until the contrary is proved." The amended Immorality Act has a similar section—section 7 *bis*—inserted by section 4 of the Amending Act, which reads: "Any person who seems in appearance obviously a European or a non-European, as the case may be, shall for the purposes of this Act be deemed to be such, until the contrary is proved."

Held: That the appeal be granted and the convictions and sentences set aside. The court said: "In order to obtain a conviction, the Crown had to prove a positive—to wit, that she [appellant No. 2] is a non-European in terms of the definition of that word in the Act. The definition is so framed that there must be a great number of people who cannot be proved to be either European or non-European for the purposes of the Act. No doubt that framing was intentional, taking due note of the fact that there is a doubtful class, with one foot on each side of the colour line, in respect of whom a rigid classification or a compulsory choice would be artificial and unreal and therefore likely to cause grave injustice . . . Has the Crown discharged the onus of proving that appellant No. 2 'in appearance obviously is a non-European'? The answer must be 'No'. So far from its being obvious, the magistrate found it necessary to go into various minute indications that seemed to him to reveal some traces of non-European ancestry . . . It is unlikely that she [appellant No. 2] could have moved with appellant No. 1 in his European circles, as he says she did, and have gone with him into European theatres and cafes and into the European portions of trains, if it had been obvious from her appearance that she was a non-European. The impression one gets is that an observer who had nothing more than her appearance to go by, would have been left in doubt as to whether she was a European or a non-European; and that falls short of the test imposed by the Act . . . that still left to the Crown to prove that she is 'by general acceptance and repute a non-European' . . . The evidence of appellant No. 1 . . . shows that she was accepted as a European in other circles. That evidence was not contradicted, and the magistrate does not deal with it beyond saying: 'There was no evidence to satisfy me that . . . accused No. 2 had ever been accepted in a European community . . .'"

The court stated that in the light of these conclusions it was unnecessary to consider the other points that were raised.

[1] Text in *Statutes of the Union of South Africa*, 1949, p. 614.

UNION OF SOVIET SOCIALIST REPUBLICS

REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR 1952[1]

EXTRACTS

VII. Expansion of Trade Turnover

Soviet trade continued to grow in 1952. Owing to the recent progress made in developing industrial and agricultural production, increasing the productivity of labour and lowering production costs, the Government instituted, on 1 April 1952, a further reduction in the state retail prices of consumer goods. This was the fifth reduction since rationing was abolished. The prices of books, including textbooks, were also reduced on the same date. The new price reductions led to a further strengthening of the Soviet rouble, a rise in its purchasing power and a further increase in the amount of goods sold to the population.

In 1952, 10 per cent more goods were sold to the population in State and co-operative trading establishments than in 1951. The sales of the most important single products included in this figure increased as follows: meat, 10 per cent; fish products, 13 per cent; butter, vegetable oils and other edible fats, 17 per cent; eggs, 9 per cent; milk and dairy products, 17 per cent; sugar, 26 per cent; confectionery products, 19 per cent; silk textiles, 20 per cent; clothing, 11 per cent; knitwear, 17 per cent; hosiery, 11 per cent; leather footwear, 15 per cent; furniture, over 20 per cent; soap, 7 per cent; building materials for housing, over 20 per cent; bicycles, 24 per cent; clocks and watches, 20 per cent; television sets, 27 per cent; cameras, 30 per cent; sewing machines, 22 per cent; gramophones, 25 per cent. There was also a substantial increase in the sale to the consumers of domestic refrigerators, vacuum cleaners and washing machines.

1952 saw an increase in the number of state and co-operative trading establishments. About 7,000 new shops were opened during the year. The number of speciality shops in cities, workers' settlements and rural areas rose considerably.

In 1952, the expansion in the sale of products at the collective farm markets was continued, a particularly noteworthy increase taking place in the sale of flour, groats, potatoes, vegetables, poulty, eggs and honey.

VIII. Increase in the Number of Manual and Office Workers and Rise in the Productivity of Labour

At the end of 1952, the total number of manual and office workers employed in the national economy of the USSR was 41,700,000, or 900,000 more than at the end of 1951, the increase in industry, agriculture and forestry, construction and the transport services being 725,000; in educational, scientific-research and medical institutions 115,000; and in catering, and the municipal services—60,000.

In 1952, as in previous years, there was no unemployment in the USSR.

During the past year, a total of 326,000 young skilled workers completed training in vocational, railway, mining and factory schools and started work in industry, building and transport.

In 1952, 7,800,000 manual and office workers acquired skills or improved their qualifications with the help of individual, group or class instruction.

The productivity of labour of industrial workers was 7 per cent higher in 1952 than in 1951, the increase being 10 per cent in the machine-building industry, 8 per cent in the ferrous metals industry, 8 per cent in the non-ferrous metals industry, 4 per cent in the coal industry, 5 per cent in the oil industry and 8 per cent in the chemical industry.

The productivity of labour of construction workers was 7 per cent greater in 1952 than in 1951.

IX. Cultural Development, Public Health and Town Planning

In 1952, further progress was achieved in raising the cultural level of the Soviet people.

By reason of the development of seven-year and secondary education, the number of pupils in the fifth to tenth classes increased by more than 1,500,000

[1]Russian text received through the courtesy of the Permanent Delegation of the Union of Soviet Socialist Republics. English translation from the Russian text by the United Nations Secretariat.

in 1952, while the number of pupils in the eighth to tenth classes increased by one million.

In accordance with the aim of making the transition from the seven-year course to universal secondary education in the capitals and cities of the republics, and in regional, territorial and large industrial centres, the number of pupils in the eighth to tenth classes in these urban areas increased by 44 per cent in 1952.

The number of students in the institutions of higher learning in 1952 totalled 1,442,000 (including correspondence-course students), or 85,000 more than in 1951. The number of students in technical and other special secondary schools was 1,475,000 (including correspondence-course students), or 106,000 more than in 1951.

The total number of graduates of institutions of higher learning and technical schools engaged as specialists in the national economy was 8 per cent greater in 1952 than in 1951.

More workers received education in special higher and secondary educational institutions and in schools of general education while continuing to work. Thus, the number of students taking correspondence courses and attending evening courses at institutions of higher learning was 8 per cent greater than in 1951, the number taking correspondence courses and attending evening courses at technical schools was 11 per cent greater and the number attending courses at schools for young industrial and agricultural workers was 8 per cent greater.

In 1952, over 27,000 post-graduate students were training for scientific work at institutions of higher learning and scientific institutions.

1,776 scientists, engineers, agronomists, writers, artists, workers and front-rank farmers were awarded Stalin prizes for outstanding achievements in science, inventions, literature and the arts.

In 1952, there were 368,000 libraries of various types operated by state and public organizations, with an aggregate total of more than 830 million volumes.

The number of cinema installations increased by 5 per cent in 1952 as compared with the previous year.

In the summer of 1952, 5,500,000 children and adolescents were accommodated at Young Pioneer camps, childrens sanatoria and tourist camps or went to the country for the summer with their kindergartens, children's homes or crèches.

1952 saw a further improvement in medical, sanitary and prophylactic services. The number of hospitals, maternity homes, clinics and other medical institutions, as well as sanatoria and rest homes, was increased. The number of beds in hospitals and maternity homes was over 50,000 greater than in 1951. As compared with that year, the number of physicians increased by 14,000.

The output of the medical industry was 23 per cent greater in 1952 than in 1951. There was a considerable increase in the output of high-efficiency curative and prophylactic medicines, appliances for diagnosis and treatment and medical instruments.

In 1952, considerable work was carried out on the construction of municipal enterprises, the improvement of cities and workers' settlements, the installation of water supply and drainage, the extension of tramway and trolley-bus services, and the installation of gas and municipal heat supply in dwellings, and also on the paving and asphalting of city strets and squares, the planting of trees and shrubs in cities and workers' settlements and the laying-out of boulevards, squares and parks.

X. Growth of National Income and Income of the Population

The national income of the USSR in 1952 was 11 per cent greater than in 1951.

In the USSR the whole national income belongs to the workers. Last year, as in the preceding year, they received approximately three-quarters of the national income for the satisfaction of their personal material and cultural needs, the other quarter remaining at the disposal of the State, the collective farms and the co-operative organizations to be used for the expansion of socialist production and for other governmental and public needs.

The increase in the national income made it possible considerably to improve the living standards of workers, peasants and intellectuals, and to ensure the further expansion of socialist production.

The rise in the living standards of the people of the USSR was evidenced by the growth of monetary and real wages of manual and office workers, and by the higher incomes derived by the peasants both from the commonly conducted collective farm enterprises and from their allotments and individually owned holdings.

In 1952, as in previous years, the population received at the expense of the State allowances and grants under the social insurance system for manual and office workers, pensions from the social welfare funds, accommodation in sanatoria, rest homes and children's institutions free of charge or at reduced rates, allowances to mothers of large families and unmarried mothers, free medical aid, free education and professional and trade instruction, students' grants and a number of other payments and privileges. Moreover, all manual and office workers—that is, about 42 million persons—received at least a fortnight's holiday with pay, and more in the case of workers in

a number of professions. In 1952, these payments and privileges received by the population at the expense of the State amounted to about 129,000 million roubles.

As a result of the reduction in the prices of consumer goods, the increased monetary wages and salaries of manual and office workers, the higher incomes of the peasants in money and in kind, and the increased payments and privileges received by the population at the expense of the State, the *per capita* incomes of manual and office workers were 7 per cent higher in 1952 than in 1951, and the *per capita* incomes of peasants were 8 per cent higher.

ORDER No. 1558 OF THE COUNCIL OF MINISTERS OF THE UNION OF SOVIET SOCIALIST REPUBLICS AND OF THE CENTRAL COMMITTEE OF THE ALL-UNION COMMUNIST PARTY (BOLSHEVIKS) REGARDING A FURTHER REDUCTION OF STATE RETAIL PRICES OF FOODSTUFFS[1]

of 31 March 1952

In view of the progress achieved in 1951 in industry and agricultural production, the increased productivity of labour and the lowering of production costs, the Soviet Government and the Central Committee of the All-Union Communist Party (Bolsheviks) find it possible to institute as from 1 April 1952 a further reduction—the fifth in succession—of state retail prices of staple foodstuffs:

The Council of Ministers of the USSR and the Central Committee of the All-Union Communist Party (Bolsheviks) have decided:

1. To reduce as from 1 April 1952 the State retail prices of foodstuffs as follows:

Baked Bread, Flour and Farinaceous Paste Products

Rye bread	by 12 per cent
Bread made from coarse-milled wheat flour	by 12 per cent
Bread made from graded rye flour	by 15 per cent
Bread made from graded wheat flour, rolls, bread-rings and other bakery products	by 15 per cent
Rye flour	by 12 per cent
Coarse-milled wheat flour	by 12 per cent
Graded rye flour	by 15 per cent
Graded wheat flour and other flour	by 15 per cent
Macaroni, noodles and other farinaceous paste products	by 15 per cent
Yeast	by 20 per cent

Cereals, Rice, Pulses and Concentrated Foods

Semolina, pearl barley and oatmeal	by 20 per cent
Millet, buckwheat, rice, sago, and other cereals and pulses	by 15 per cent
Concentrated foods	by 10 per cent
Starch	by 15 per cent

Grain and Fodder

Rye	by 12 per cent
Wheat, oats, barley and other grains	by 15 per cent
Bran, oil cake, oil meal, combined fodder, hay and straw	by 15 per cent

Meat and Meat Products

Beef, mutton, pork, salami, sausages, sardelles, chickens and other meat products	by 15 per cent
Ducks, geese and turkeys	by 20 per cent
Canned meat, and canned meat and vegetables	by 20 per cent

Fats, Cheese and Dairy Products

Butter	by 15 per cent
Side bacon	by 20 per cent
Milk, dairy products and canned milk	by 10 per cent
Cheese—Soviet, Swiss, Dutch and others	by 20 per cent
Local cheese	by 20 per cent
Vegetable oil	by 20 per cent
Peanut and fruit seed oil	by 30 per cent
Margarine	by 15 per cent
Mayonnaise and other sauces	by 30 per cent
Ice cream	by 15 per cent
Eggs	by 15 per cent

Sugar, Confectionery and Grocery Products

Granulated and lump sugar	by 10 per cent
Wrapped caramels, soft sweets, chocolate and other sugar-containing confectionery products	by 10 per cent
Unwrapped caramels	by 15 per cent
Biscuits, wafers, pound cakes, cream cakes, pastry, gingerbread, rusks and other confectionery products made from flour	by 12 per cent
Preserves, jam and jelly	by 10 per cent
Vitamins	by 10 per cent
Natural tea	by 20 per cent
Natural coffee and cocoa	by 15 per cent
Coffee beverages	by 10 per cent
Salt	by 30 per cent
Vinegar	by 15 per cent

[1]Russian text received through the courtesy of the Permanent Delegation of the Union of Soviet Socialist Republics to the United Nations. English translation from the Russian text by the United Nations Secretariat.

FRUIT

Apples, pears and grapes	by 20 per cent
Fresh frozen fruits and berries	by 20 per cent
Dried fruits and nuts	by 20 per cent

CANNED VEGETABLES AND FRUIT

Canned vegetables: pickles, pepper, green peas, tomatoes and fresh frozen vegetables	by 20 per cent
Canned fruit: fruit salad, purée and paste, pickled vegetables, tomato paste, tomato purée, fruit and tomato sauces	by 10 per cent
Juices: grape, apple, plum and tomato	by 20 per cent

2. To reduce prices accordingly in restaurants, dining rooms and other public catering establishments.

3. To reduce, as from 1 April 1952, the retail prices of books, including textbooks, by an average of 18 per cent.

4. To reduce hotel rates, also as from 1 April 1952, by an average of 15 per cent.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

THE INDEPENDENCE OF THE ENGLISH JUDGES[1]

The immunity of the judge . . . is carried to a very singular degree in our society. Not only is he, subject to good conduct, secure in his office for life, but he is immune for anything he does or says ex cathedra. . . .

The misconduct for which he may be removed, by a solemn Parliamentary process, is rare and improbable, and certainly in two and a half centuries no responsible person has suggested that a judge should be removed because he was a thorn in the side of a Government (as some judges have been).

Probably on no constitutional question would there be greater unanimity throughout the country than upon the independence of the judiciary; and so far as I am aware, no modern constitutional theorist, of any school in the country, has yet suggested that it is anything but desirable, or, indeed, vital.

C. K. ALLEN, Q.C., in *Law and Order*[2]

The complete independence of the English judges is summarized in the quotation from Sir Carleton Allen's stimulating and provocative book; and it may be well to consider how this state of affairs was brought about. The foundation of the judge's independence is the Act of Settlement of 1701, though the famous section 3 of that Act has been repealed. That section read—

"That . . . Judge's Commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established, but upon the address of both Houses of Parliament it may be lawful to remove them."

The law governing the matter is now contained in Section 12 (1) of the Supreme Court of Judicature (Consolidation) Act of 1925, which reads—

"All the judges of the High Court and the Court of Appeal, with the exception of the Lord Chancellor, shall hold their offices during good behaviour subject to a power of removal of His Majesty on an address presented to His Majesty by both Houses of Parliament."

Lords of Appeal in Ordinary are governed by the third paragraph of section 6 of the Appellate Jurisdiction Act of 1876, which provides—

"Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the Crown, but he may be removed from such office on the address of both Houses of Parliament."

The Act of Settlement was one of the results of the English Revolution of 1688. Great and lasting reforms are rarely accomplished overnight. They are more usually the result of long years of struggle and agitation, and the full significance of the Act of Settlement is not to be appreciated without some knowledge of the background of circumstance from which it sprang.

The English Revolution of 1688 was remarkable in its happening as it was tremendous in its consequences. Gilbert Burnet, afterwards Bishop of Salisbury, who accompanied William of Orange when he made his landing near Torbay, spoke of the fall of James II as "one of the strangest catastrophes that is in any history . . . his whole strength, like a spider's web, was . . . irrecoverably broken at a touch". The explanation of what seemed so catastrophic to Burnet lies, of course, in the march of events in the centuries preceding the revolution, and in particular, the events of the seventeenth century. When Macaulay came to speak of the revolution, he called it a "preserving revolution", its purpose being to preserve freedom under the law; and Professor Trevelyan in our own day has spoken of it as a victory of law over arbitrary power, and a "great gain for humanity".

It is also necessary to remember that at the time of the revolution itself, there was a strong and particular conception of liberty in the minds of the English people, a conception that pervaded and profoundly influenced all thought, and indeed all ways of life. In these later times, men are more apt to speak of democracy than of liberty; but in 1688 there was a most powerful "feeling" for liberty that possessed all parts of the national life. It was this "liberty" of which the Marquis of Halifax spoke in his *Character of a Trimmer* when he said that his Trimmer "owns a passion for liberty". It was a liberty protected by law. If the affairs of a man's life were to be regulated in any way by authority, then it must not be by arbitrary authority; it must not depend upon the whim or caprice of any individual, however high he

[1] This article was prepared by the Right Honourable Lord Justice Birkett.

[2] London, Stevens & Sons, Ltd., 1945.

place might be in the State; it was essential that the life of the citizen should be ruled and regulated by known and certain laws, which laws should be administered by courts that could not be overawed or influenced by outside authority of any kind.

This view had, of course, been expressed in many of the great constitutional documents, and it was a perfectly natural thing that the principal outcome of the revolution should be the passing of the Bill of Rights of 1689. Lord Campbell, in his life of Lord Somers, declares that historians have naturally devoted their time and attention to this great constitutional document, and have paid but little attention to the report of the committee, of which Somers was the leading member, which had been appointed "to bring in general heads of such things as were absolutely necessary to be considered for the better securing of our religion, law and liberties". And Hallam, in his *Constitutional History*, said that the Commons "with a noble patriotism, delayed to concur in this hasty settlement of the Crown, till they should have completed the declaration of those fundamental rights and liberties, for the sake of which alone they had gone forward with this great revolution". The report, which is said to have been drawn up by Somers himself, set out twenty-eight heads, dealing with the infringement of existing rights, or detailing new safeguards for public freedom. Not all these matters were subsequently incorporated into the legislation passed by both Houses of Parliament, but the eighteenth head of the report contained the famous words—

"Judges' commissions to be made '*quamdiu se bene gesserint*', and their salaries to be ascertained and established, to be paid out of the public revenue only, and not to be removed nor suspended from the execution of their office but by due course of law."

The Declaration of Rights was drawn up by another committee under the direction of Somers, but, as the title indicates, was confined to the declaratory parts of the report; and some of the matters were included in the Bill of Rights or the Triennial Act; but the provision dealing with the independence of the judges was delayed until the Act of Settlement of 1701.

The Bill of Rights established the supremacy and independence of the English Parliament. Henceforward, all government was to be with the consent of the governed. Despotic and absolute government was at an end. No longer could the King suspend laws that had been passed by Parliament, and no longer could royal proclamations be enforced without the consent of Parliament. But the measure conferring independence upon the judges was delayed until 1701. It is true that William had consented to grant security to judges during good behaviour, but scarcely had the Bill of Rights been passed in 1689 when the King set up a "Committee on Instructions to the Judges about to go on Circuit". Four years after the revolution, he refused his assent to an Act of Parliament establishing security of tenure for judges during good behaviour and with fixed pay; and just two years before the Act of Settlement itself he called all the judges about to go on the Assizes to come before him for "instructions".

The judges' patents at the present day read—

"We of our special Grace have given and granted and by these presents do give and grant to our right trusty and well beloved Counsellor . . . the office of one of our Justices of Our High Court of Justice To hold the same so long as shall well behave himself therein with all wages profits and advantages due and of right belonging thereto . . ."

Nobody now seeks to challenge the complete independence of the judges, and it is gratifying to notice that it is fully recognized on every hand that the independence of the judges is of immense value to the whole ordered life of the nation. The experience of two and a half centuries has shown the independence of the judges to be as valuable to the English way of life as the independence of Parliament itself. The only questions now raised are raised by the lawyers themselves, and those questions are in a sense quite academic, though constitutionally important.

One such question that has been debated in recent years is based upon a passage in Anson's *Law and Custom of the Constitution*, which stated that "The Act of Settlement introduced this Parliamentary control (by an address from both Houses) in addition to the powers of removal which the Crown possesses if a judge should misconduct himself in the business of his office". It is a good illustration of the doubts which can arise upon the construction of quite simple words in an Act of Parliament. The language of the Supreme Court of Judicature (Consolidation) Act of 1925 differs from the language of section 3 of the Act of Settlement and from the language of section 6 of the Appellate Jurisdiction Act of 1876. But the Act of 1925 being a consolidation Act, it must be assumed that it did not amend the existing law. One of the most widely accepted views has been that a judge may be removed only by an address from both Houses of Parliament, and the ground must be misbehaviour. This view is based upon the fact that the condition upon which a judge holds his office is that of good behaviour, and it is only when that condition is broken that the procedure by way of an address from both Houses becomes operative. Another view is that a judge can be removed only for misbehaviour, but the method of his removal is not confined to the Parliamentary procedure of an address from both Houses, but he may be removed by other means. A third view is that a judge may be removed on the presentation of an address from both Houses for *any* reason, or by other means for misbehaviour.

The correct answer can scarcely be given by appealing to precedent, for it is a most remarkable thing that, during the two hundred and fifty years that have passed since the Act of Settlement, only one judge has ever been removed for misconduct. According to the facts as set out in the *Dictionary of National Biography*, Sir Jonah Barrington, a judge of the Court of Admiralty in Ireland, appropriated to himself divers sums of money that had been paid into his court, and did so on three separate occasions, in 1805, 1806 and 1810. The facts came to light when a commission of inquiry into the Irish courts of justice was set up in the year 1830, that is, twenty-five years after the commission of the first offence. As a result, Sir Jonah was deprived of his office after an address had been presented by both Houses of Parliament, whereupon he left England and never again returned, dying at Versailles in the year 1834. Before the Act of Settlement, the power of removal or dismissal possessed by the Crown was not a power to remove merely for misconduct or misbehaviour. It was an absolute power to remove at pleasure. Chief Justice Coke was not removed for any misbehaviour in the ordinary use of that term; he was deprived of his office for "his perpetual turbulent carriage" towards the Church, the prerogative and the courts of law. Dr. Tanner, in his book on the constitutional conflicts of the seventeeth century, says of Coke's dismissal that "the first dismissal of a judge for reasons that were in the main political, is a landmark in constitutional history". If a judge was removed from office by the King, there was no method open to the judge of challenging a finding of misbehaviour, for the reason that it was an unnecessary averment; the dismissal was at pleasure. If the Act of Settlement had said that a judge was to hold office during good behaviour and had said nothing more, giving no guidance as to the method of dismissal, it would have been presumed no doubt that the Crown would exercise the power of removal or dismissal. Then it would have been necessary to devise some new means whereby the action of the Crown could be effectively challenged, for no such method was known to the common law. But, of course, the Act did lay down the method of removal in section 3. There is some support to be found in the constitutional writers for the differing views above set out.

In Chitty's *Prerogatives of the Crown* (1820) it is said—

". . . by legislative provision, they (the common law judges) and the Vice-Chancellor hold their respective situations during their good behaviour, which gives them, in legal contemplation, an estate for life, as their good behaviour is presumed by law, and of such good behaviour, it seems Parliament only can judge."

In Anson's *Law and Custom of the Constitution* it is said—

"The judges, the Comptroller and Auditor-General, hold office during good behaviour, 'but upon the address of both Houses of Parliament it may be lawful to remove them'. This has been construed to mean that such officers can only be removed on an Address of the two Houses. But the words mean simply that if, in consequence of misbehaviour in respect of his office, or from any other cause, an officer of State holding on this tenure has forefeited the confidence of the two Houses, he may be removed, although the Crown would not otherwise have been disposed or entitled to remove him. Such officers, hold, as regards the Crown, during good behaviour, as regards Parliament, also during good behaviour, though the two Houses may extend the term so as to cover any form of misconduct which would destroy public confidence in the holder of the office."

In discussing the provisions of the Act of Settlement, Ridges' *Constitutional Law* says—

"The exact effect of the section has been widely misunderstood. It does not mean apparently that the judges can only be dismissed upon an address voted by both Houses. Offices held during good behaviour, as regards the Crown, may be determined by proceedings commenced by *scire facias* or criminal information; such methods have never been used against the judges, nor is it probable that they would be used now. As regards Parliament, though the judges hold office during good behaviour, they are nevertheless liable to be removed if the House vote an address in which an extended meaning is placed on the term 'good behaviour'."

And in Wade and Phillips' *Constitutional Law* it is said—

". . . Offices held during good behaviour may in the event of misconduct be determined without an address to the Crown by *scire facias*, criminal information, or impeachment. In practice it is unlikely today that any of these methods would be preferred to removal by an address."

It seems a little difficult to understand why the Houses of Parliament should be able to give an extended meaning to the term "good behaviour" as suggested in the quotations from Anson and Ridges. The more logical thing it to construe the words in the section and try to discover the true meaning. With all respect to those who hold contrary views, it would seem that the true view, as a matter of construction, is that a judge may be removed on an address from both Houses for *any* reason, or by other means for misbehaviour. The presence of the word "but" in the Act of Settlement—". . . *but* upon the address of both Houses of Parliament it may be lawful to remove them"—and the word "but" in the Appellate Jurisdiction Act—". . . *but* he may be removed from such office on the address of both Houses of Parliament"—lends strong support to this view.

It may very well be that the framers of both Acts had in mind that Parliament would only exercise the powers set out in the Acts in cases of misbehaviour; and it is quite inconceivable at the present day that Parliament would act otherwise; but on the construction of both Acts, and the actual words used, it would seem that judges hold their offices during good behaviour, but notwithstanding this, they may be removed on an address from both Houses of Parliament, and by other means for misbehaviour. It may perhaps be repeated that the question is now purely academic, because of the reasons given, but as a point of construction it is not without interest and importance.

The circumstances which made the passing of the Act of Settlement a necessity are well known and do not need to be repeated here. It will be enough to call attention once more to the great part played by the Chief Justice of the Common Pleas in the controversies of the seventeenth century which led up to the Revolution of 1688. The contests between the ecclesiastical courts and the courts of common law at the beginning of the century found Coke opposing with great vigour the ecclesiastical view that the King possessed in his own person all spiritual and temporal jurisdiction. Coke, it would appear, discerned the danger which attended the assertion of kingly authority in this form, and asserted in his turn that "the law of the realm cannot be changed but by Parliament". When in 1607, Archbishop Bancroft raised the question of prohibitions again by suggesting to the King that he could withdraw causes from the jurisdiction of both judges and bishops, and hear them himself, because in the King resided all jurisdiction, Coke described his memorable discussion with the King in language that has become famous:

"Then the King said that he thought the law was founded upon reason, and that he and others had reason as well as the judges. To which it was answered by me that true it was that God had endowed His Majesty with excellent science and great endowments of nature, but His Majesty was not learned in the laws of His realm of England; and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reason and judgement of law, which law is an act which requires long study and experience before that a man can attain to the cognizance of it; and that the law was the golden met-wand and measure to try the causes of the subjects, and which protected His Majesty in safety and peace: with which the King was greatly offended, and said that then he should be under the law, which was treason to affirm, as he said: to which I said that Bracton saith 'quod rex non debet esse sub homine, sed sub Deo—et lege'."

Professor Dicey, whilst condemning the quality of Coke's reasoning, yet considered that "no achievement of sound argument, no stroke of enlightened statesmanship, ever established a rule more essential to the very existence of the Constitution than the principle enforced by the obstinacy and the fallacies of the great Chief Justice".

The truth is that in this matter, as in many other constitutional questions, Coke and his fellow judges were seeking to establish the principle which the Act of Settlement confirmed nearly one hundred years later, the vital principle that the judges should be independent, and thus be able to stand between the Crown and the subject.

When Parliament objected to the issue of proclamations which defied the existing law and made new offences, or imposed illegal penalties, or exalted illegal tribunals, the King submitted the matter to the judges, and the judges, under the guidance of Coke, returned the courageous answer which denied the right of the Crown to do any of these things.

Two further instances of Coke's resolute defence of the independence of the judges must be mentioned. In 1615, one Edmund Peacham was accused of treason. He was a Somersetshire minister, and having written in rather an extravagant way about his bishop, he was tried, convicted of libel, and imprisoned.

During his imprisonment there was found in his study a written sermon which was never preached, and was not intended to be preached. It contained passages which censured the King and attacked the Government. The King was anxious to secure a conviction for treason, but as the overt act relied on was the written sermon, it was doubtful whether a conviction could be obtained. In accordance with the regular custom, the Council consulted the judges, but the King went one step farther. Knowing of the attitude of Coke, he gave instructions that the judges should be consulted separately, one by one. The threat to the independence of the judges was plain, and Coke told Bacon in language that will never be in danger of being forgotten that "such particular and auricular taking of opinions is not according to the custom of this realm".

A year later, in 1616, the question was raised in a similar form in the case of *Colt* v. *Bishop of Coventry*, the famous case of "Commendams". An action was brought against the Bishop of Coventry and Lichfield in respect of a living held by him "in commendam" and was being argued before twelve judges in the Exchequer Chamber. It was being submitted that the King had no right to make presentations "in commendam" at all, and the King intervened and instructed Bacon, his Attorney-General, to request the judges to postpone their decision until the King had spoken to them. The judges refused, and sent a letter to the King in which they said that what Bacon requested on behalf of the King was contrary to law and in violation of their oaths. They were

summoned before the Council, where the King tore up their letter and censured them most severely. He then asked them whether they would obey him in the future. Eleven of the judges said "yes", but Coke made the famous answer "that when that case should be, he would do that which should be fit for a judge to do". As a result of this piece of splendid defiance, the King used the power which the Act of Settlement finally took away, and issued a *supersedeas* under the Great Seal dismissing Coke from the office of Chief Justice of the King's Bench to which he had been appointed in 1613. But the fame of Coke lives on. In Fuller's *The Worthies of England* he says—

"His learned and laborious works on the laws will last to be admired by the judicious posterity whilst Fame has a trumpet left here and any breath to blow therein,"

but Coke will be best remembered for the unrelenting way that he pursued the idea which consumed him, that the Bench should be independent of the Crown, and should thus be in a position to decide all disputed questions without fear or favour, particularly in the constitutional sphere.

It ought also to be observed that as early as Magna Carta an attempt had been made to forbid the use of special servile tribunals as instruments of executive power. The Petition of Right in 1628 and the Bill of Rights in 1689 had made specific references to this matter. It is also clear from Gardiner's *Constitutional Documents of the Puritan Revolution* that the tenure of judges during good behaviour and without servility to executive power was in issue in the Puritan revolution. The twelfth of the nineteen propositions sent by the two Houses of Parliament to the King at York in 1642 read, "That all the judges . . . may hold their places *quam diu bene se gesserint*."

In the *Grand Remonstrance* of 1641, paragraph 38 reads—

"Judges have been put out of their places for refusing to do against their oaths and conscience; other have been so used that they durst not do their duties, and the better to hold a rod over them, the clause *quamdiu se bene gesserit* was left out of their patents, and a new clause *durante bene placito* inserted."

From the intensity of the prolonged struggle to achieve judicial independence it is possible to understand how vital was the issue. It cannot be better stated than in the words attributed to James I in the year 1620—

"While I have the power of making judges and bishops I will make that to be law and gospel which best pleases me."

And the contrary view is perhaps best expressed in the words of Montesquieu writing in 1748 in his *De l'esprit des lois*: "There is no liberty if the judiciary power be not separated from the legislative and the executive."

It was not until the Act of Settlement was safely on the Statute Book that the tremendous issue was finally resolved.

It is perhaps worth recalling, as indicating the zeal with which the judges guard their independence, that in the year 1928 the Government of the day introduced a bill dealing with rating and valuation. By clause 4 of the bill, relating to "decisions of doubtful points of law" it was sought to provide for questions relating to the valuation of hereditaments, about which a substantial point of law had arisen to be submitted to the High Court for its opinion. The merits or demerits of the clause are not now in question, but some observations of Lord Merivale in the House of Lords when the committee stage of the bill had been reached in that House serve to show that just as the independence of the judiciary had been zealously fought for, so the independence of the judiciary would be as zealously maintained. Lord Merivale said—

"I have the strong conviction that on the whole this clause, in the form in which it is presented, is a mischievous clause. What it would effect, whether it is designed or not, would be to make the judiciary act in an ancillary and advisory capacity to the executive, and confound the working of the judicial system with executive administration. Every student of politics who has considered the matter during the whole of our political history has seen that that is the road to mischief. It was the kind of proposal, the kind of intention, which led to the removal of Lord Coke from his high office . . . because, as he said, it established a species of auricular relation between His Majesty's administration and the judges, who had to be impartial in all questions affecting the subject. . . .

"I want to say two or three words more with regard to the position of His Majesty's judges in this matter. It is no part of the business of His Majesty's judges, and never has been part of their business, at any rate since the Act of Settlement, to have any advisory concern in the acts of the administration, or to take any part in the advising of the administration . . .

"The business of a judge is regulated by his oath of office. It is to determine according to law, without fear, favour, or affection, questions which arise between His Majesty's subjects or between His Majesty's subjects and either the Throne or the executive. . . ."

It may be that the fears of the judges were not well founded, but the Government, wisely recognizing that those fears existed, withdrew the clause in deference to the wishes of the judges that there should be no ground for any suspicion that their independence had been weakened in any way. In this connexion it is interesting to observe that section 4 of the Judicial Committee Act of 1833 provides—

"It shall be lawful for His Majesty to refer to the Judicial Committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit, and such Committee shall thereupon hear or consider the same, and advise His Majesty thereon in manner aforesaid."

It is no doubt under this section that the Secretary of State for the Colonies would refer to the Judicial Committee any proposal to dismiss a colonial judge.

It would scarcely be seemly for me to write at any length on the way the judges have fulfilled the trust in them which is implicit in their independence. In England, the respect for the judges is everywhere maintained and expressed. Every citizen is assured that the judges in their independent position will stand between him and injustice from whatever quarter that injustice may come. The traditional freedoms of the Englishman—freedom of speech and writing, freedom of thought, freedom from unlawful arrest—are zealously guarded, whilst the safety and the security of the State are maintained and preserved. The English judge, it should be remembered, comes to his high office after spending many years of his life in practice in the courts. He learns the law not only by reading, but by the actual conduct of cases of every kind in court. He appears before men who have undergone the same training before they ascended the Bench, and who have imbibed the same traditions of justice and freedom by which he is now surrounded. No man is appointed to the bench without this long and practical experience, and when he is so appointed, it is on the advice of a Lord Chancellor with the same background and experience, who appoints men solely on their character, reputation and skill, and without regard to their political views. A further point to be borne in mind is that once a man is appointed to the English bench he has accepted the position as his life work, and does not seek advancement or promotion, and is utterly uninfluenced by any other consideration than to fulfil faithfully the duties of his office.

The number of the judges has grown as the population of the country has increased, but compared with a great country like the United States of America the number of the judges in England is surprisingly small. But, vital as the independence of the judges has always been, there never was a time when it was more important than now. The power of the State continues to increase, and it is essential in a time of change that the true balance should be kept between the State and the individual. The independence of the judges, therefore, carries with it immense responsibilities. These responsibilities are not confined to deciding cases without fear or favour, affection or ill-will, but also the responsibility of being careful to see that they confine their duties to their own special sphere. It was recently said in the House of Commons by the Attorney-General that "it was a most important principle of our constitutional practice that judges do not comment on the policy of Parliament, but administer the law, good or bad, as they find it. It is a point of doctrine on which the independence of the judiciary rests".

The law which the judges administer is for the most part the law as made by Parliament, and judges are bound to act in accordance with it. They have no concern with the political complexion of any particular Parliament nor with the policy of any particular Government. They are the interpreters of the law and are concerned with the law only. But the makers of the law have from time to time been greatly helped by the wise and considered view of the judges when carrying out their work of interpretation. In the year 1946, for example, the present Lord Chancellor, Lord Simonds (then a Lord of Appeal in Ordinary), when deciding the case of *Adams* v. *Naylor* in the House of Lords, pointed out the desirability of legislation to deal with the situation which then existed with regard to proceedings against the Crown. In 1947, the Crown Proceedings Act was passed which made government departments liable to be sued for their breaches of contract, and for the wrongs committed by their servants, thus doing much to keep that balance between the individual and the State which is so necessary. Judges themselves are not immune from criticism. It was said in the Privy Council in *Ambard* v. *Attorney-General for Trinidad and Tobago*, 1936 A.C.322:

". . . no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith, in private or public, the public act done in the seat of justice . . . providing that members of the public abstain from imputing improper motives to those taking part in the administration of Justice . . .

"Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

Between the judges and Parliament there should be mutual respect and confidence, and this is to be achieved only by the judges's and Parliament's observing strictly the limits of their respective spheres of work.

This is perhaps the place to add a few words about the position of judges overseas who inherit the principles of judicial independence which safeguard the judges in England. I should have shrunk from dealing with this particular aspect of the subject, had it not been that Sir Kenneth Roberts-Wray, the Legal Adviser to the Commonwealth Relations Office and the Colonial Office, was kind enough to supply me with the authoritative information which he is so supremely qualified to give, and this part of the present article is virtually the work of Sir Kenneth, to whom I am so deeply indebted.

As regards judges overseas, the protection secured to English judges by the Act of Settlement did not

extend to them; and, indeed, as the Lord Chief Justice recently observed,[1] the provisions of the Act regarding removal by an address by both Houses of Parliament seems to be wholly inapplicable to colonial judges. Their liability to dismissal at pleasure therefore continued. It is of interest to note that in the Declaration of Independence it is complained against the King that "he has made judges dependent on his will alone for the tenure of their office and the amount and payment of their salaries".

The position today is that in all the independent Commonwealth countries the instrument creating the courts provides that the judges are removable for misbehaviour at the instance of the legislature only. In some instances incapacity also is a ground for removal.

In the majority of colonies and other territories with which the Colonial Office is concerned, the actual legal position has remained unchanged, and the constitutional instrument creating the office of governor contains a provision empowering the governor to appoint judges who, unless otherwise provided by law, are to hold their appointments during pleasure. In the pension laws of these territories will be found a provision enabling the governor to require persons in the service of the territory, including judges, to retire at a specified age. This age is usually fifty or fifty-five, but in actual practice (established 1929) the normal retiring age for judges has been extended to sixty-two.

The right of the Crown to terminate a colonial judge's appointment at pleasure was challenged in the case of *Terrell* v. *The Secretary of State for the Colonies and the Governments of the Federation of Malaya and Singapore*. Mr. Terrell, who at the time of the Japanese invasion of the Malayan Peninsula was a judge of appeal of the Colony of the Straits Settlements, was on leave outside Malaya, and the Secretary of State, finding it impossible to offer him further employment, called upon him to retire in July 1942, though he did not reach the age of sixty-two until December 1943. Mr. Terrell contended that, the Straits Settlements being a colony acquired by settlement, the settlers took English law with them, and that the Act of Settlement therefore applied. Lord Goddard, the Lord Chief Justice, rejected this submission, holding that the Act did not apply to colonies, and that the conditions upon which colonial judges hold office must depend upon the terms of the instrument creating the courts. There is no apparent reason to think this would not apply equally to judges of protectorates or trust territories.

It may be asked how the independence of judges in non-self-governing territories is secured against this absolute power in law of the Crown. The answer is that of long-established and undeviating practice. In 1929, a Colonial Office circular despatch stated that it had been the practice since 1870 to refer to the Judicial Committee of the Privy Council any proposal to dismiss a colonial judge. After reference to 22 Geo.3 c.75, under which the governor and council of a colony are empowered to "amove" the holder of any patent office for misbehaviour and the holder of the office has a right of appeal to the Sovereign in Council, the despatch laid down that any proposal to dismiss a judge, whether the holder of a patent office or not, will as a matter of course be specially referred to the Judicial Committee by the Secretary of State.

It seems more than probable that this practice was established in 1870 as the result of a memorandum drawn up in April of that year by order of the Lord President of the Council at the request of the then Secretary of State for the Colonies. The memorandum, which appears at p. 9 of the appendix to 6 Moo N.S. 16 E.R., p. 827, explains the views taken by the Lords of the Judicial Committee on the subject of the removal of colonial judges so far as they could be gathered from reported cases and from the experience of the preceding thirty years.

"It is obvious", stated the memorandum, "that some effectual means ought to exist for the removal of colonial judges charged with grave misconduct, and that these means ought to be less cumbrous than those existing for the removal of one of Her Majesty's judges in this country . . . All the forms of suspension or removal which are in use lead by different roads to the same result—viz. a hearing before the Privy Council."

This long-established practice shows a due solicitude for the security of tenure of colonial judges and provides as impregnable a safeguard for their independence of the Executive as that enjoyed by their English brethren. That this is so has been asseverated in Parliament on more than one occasion of recent date by a Government spokesman. Since it is hardly believable that a Secretary of State would even contemplate abandoning this hallowed practice in favour of anything which would threaten the independence of colonial judges, it is unnecessary to speculate as to the reaction of Parliament and the public if he were to do so.

In conclusion it may be said that the long struggle to achieve the independence of the English judges was in strictness a local matter. It was felt to be essential for the preservation of those human rights which had cost so much to attain. But the effect of the Act of Settlement has now extended far beyond the shores of England, and is now seen to be but one part of the larger battle for human rights that goes on without ceasing.

[1] Terrell *v.* The Secretary of State and others, *infra*.

DEFAMATION ACT, 1952[1]

AN ACT TO AMEND THE LAW RELATING TO LIBEL AND SLANDER AND OTHER MALICIOUS FALSEHOODS

30 October 1952

1. For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.

2. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

3. (1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage:

(*a*) If the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(*b*) If the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Section one of this Act shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

4. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section; and in any such case:

(*a*) If the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);

(*b*) If the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (*b*) of sub-section (1) of this section no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer:

(*a*) In any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;

(*b*) Where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved:

(*a*) Any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the High Court, whose decision thereon shall be final;

(*b*) The power of the court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (*a*) of this sub-section, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question;

and if no such proceedings as aforesaid are taken, the High Court may, upon application made by the

[1]English text in *The Public General Acts* of 1952, London, pp. 1392–1400.

party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section words shall be treated as published by one person (in this sub-section referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say:

(*a*) That the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or

(*b*) That the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this sub-section to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (*b*) of sub-section (1) of this section shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

5. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

6. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

7. (1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the schedule to this Act shall be privileged unless the publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in part II of the schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section four of the Law of Libel Amendment Act, 1888) immediately before the commencement of this Act.

(5) In this section the expression "newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in the United Kingdom either periodically or in parts or numbers at intervals not exceeding thirty-six days.

8. Section three of the Law of Libel Amendment Act, 1888 (which relates to contemporary reports of proceedings before courts exercising judicial authority) shall apply and apply only to courts exercising judicial authority within the United Kingdom.

9. (1) Section three of the Parliamentary Papers Act, 1840 (which confers protection in respect of proceedings for printing extracts from or abstracts of parliamentary papers) shall have effect as if the reference to printing included a reference to broadcasting by means of wireless telegraphy.

(2) Section seven of this Act and section three of the Law of Libel Amendment Act, 1888, as amended by this Act shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station within the United Kingdom, and in relation to any broadcasting by means of wireless telegraphy of any such report or matter, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper; and sub-section (2) of the said section seven shall have effect, in relation to any such broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which".

(3) In this section "broadcasting station" means any station in respect of which a licence granted by the Postmaster-General under the enactments relating to wireless telegraphy is in force, being a licence which (by whatever form of words) authorizes the use of the station for the purpose of providing broadcasting services for general reception.

10. A defamatory statement published by or on behalf of a candidate in any election to a local government authority or to Parliament shall not be deemed

to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

11. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it.

12. In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

13. Section five of the Law of Libel Amendment Act, 1888 (which provides for the consolidation, on the application of the defendants, of two or more actions for libel by the same plaintiff shall apply to actions for slander and to actions for slander of title, slander of goods or other malicious falsehood as it applies to actions for libel; and references in that section to the same, or substantially the same, libel shall be construed accordingly.

14. This Act shall apply to Scotland subject to the following modifications, that is to say:

(*a*) Sections one, two, eight and thirteen shall be omitted;

(*b*) For section three there shall be substituted the following section:

"3. In any action for verbal injury it shall not be necessary for the pursuer to aver or prove special damage if the words on which the action is founded are calculated to cause pecuniary damage to the pursuer.";

(*c*) Sub-section (2) of section four shall have effect as if at the end thereof there were added the words "Nothing in this sub-section shall be held to entitle a defender to lead evidence of any fact specified in the declaration unless notice of his intention so to do has been given in the defences"; and

(*d*) For any reference to libel, or to libel or slander, there shall be substituted a reference to defamation; the expression "plaintiff" means pursuer; the expression "defendant" means defender; for any reference to an affidavit made by any person there shall be substituted a reference to a written declaration signed by that person; for any reference to the High Court there shall be substituted a reference to the Court of Session or, if an action of defamation is depending in the sheriff court in respect of the publication in question, the sheriff; the expression "costs" means expenses; and for any reference to a defence of justification there shall be substituted a reference to a defence of *veritas*.

15. No limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act, 1920, shall preclude that Parliament from making laws for purposes similar to the purposes of this Act.

16. (1) Any reference in this Act to words shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning.

(2) The provisions of part III of the schedule to this Act shall have effect for the purposes of the interpretation of that schedule.

(3) In this Act "broadcasting by means of wireless telegraphy" means publication for general reception by means of wireless telegraphy within the meaning of the Wireless Telegraphy Act, 1949, and "broadcast by means of wireless telegraphy" shall be construed accordingly.

(4) Where words broadcast by means of wireless telegraphy are simultaneously transmitted by telegraph as defined by the Telegraph Act, 1863, in accordance with a licence granted by the Postmaster-General the provisions of this Act shall apply as if the transmission were broadcasting by means of wireless telegraphy.

17. (1) This Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose, but does not affect any proceedings begun before the commencement of this Act.

(2) Nothing in this Act affects the law relating to criminal libel.

18. (1) This Act may be cited as the Defamation Act, 1952, and shall come into operation one month after the passing of this Act.

(2) This Act (except section fifteen) shall not extend to Northern Ireland.

(3) Sections four and six of the Law of Libel Amendment Act, 1888, are hereby repealed.

SCHEDULE

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE

Part I

STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

1. A fair and accurate report of any proceedings in public of the legislature of any part of Her Majesty's dominions outside Great Britain.

2. A fair and accurate report of any proceedings in public of an international organization of which the United Kingdom or Her Majesty's Government in the United Kingdom is a member, or of any international conference to which that government sends a representative.

3. A fair and accurate report of any proceedings in public of an international court.

4. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside the United Kingdom, or of any proceedings before a court martial held outside the United Kingdom under the Naval Discipline Act, the Army Act or the Air Force Act.

5. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by the government or legislature of any part of Her Majesty's dominions outside the United Kingdom.

6. A fair and accurate copy of or extract from any register kept in pursuance of any Act of Parliament which is open to inspection by the public, or of any other document which is required by the law of any part of the United Kingdom to be open to inspection by the public.

7. A notice or advertisement published by or on the authority of any court within the United Kingdom or any judge or officer of such a court.

Part II

STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

8. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say:

(*a*) An association formed in the United Kingdom for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication:

(*b*) An association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

(*c*) An association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

9. A fair and accurate report of the proceedings at any public meeting held in the United Kingdom, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

10. A fair and accurate report of the proceedings at any meeting or sitting in any part of the United Kingdom of:

(*a*) Any local authority or committee of a local authority or local authorities;

(*b*) Any justice or justices of the peace acting otherwise than as a court exercising judicial authority;

(*c*) Any commission, tribunal, committee or person appointed for the purposes of any inquiry by Act of Parliament, by Her Majesty or by a Minister of the Crown;

(*d*) Any person appointed by a local authority to hold a local inquiry in pursuance of any Act of Parliament;

(*e*) Any other tribunal, board, committee or body constituted by or under, and exercising functions under, an Act of Parliament,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any Act of Parliament or incorporated by Royal Charter, not being a private company within the meaning of the Companies Act, 1948.

12. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any government department, officer of State, local authority or chief officer of police.

[Part III contains interpretations of expressions used in the Act and a Table of Statutes referred to in it.]

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1952[1]

A SUMMARY OF TREATIES, FEDERAL AND STATE LEGISLATION, ORDERS, JUDICIAL DECISIONS AND OTHER REGULATORY ACTS

CONTENTS

I. INTRODUCTION

In the political and legal tradition of the United States the rights of individuals have always comprised protection of individual liberty against government restrictions as well as the right of individuals to claim positive action by government to protect their liberties. This high value placed on individual freedom finds expression in constitutional provisions which define the powers of government and subject them to specific restrictions. Thus the liberties guaranteed to every one in the United States must be respected by governmental agencies, federal as well as local; and they find protection, when necessary, in the courts of the various states and of the Federal Government of the United States. The responsibility for affirmative action to protect and extend the recognized rights of Americans similarly rests on the governments of the United States, the states, territories and local communities, each according to the functions constitutionally assigned to them in the federal structure of the United States.

Constitutional and legislative provisions relating to human rights have a long history in the United States. Many of the statements on freedom of speech, press, and religion and the right to self-government date back to the charters and agreements made at the time when the first settlers came to America. These bills of rights, as they were called, were frequently retained and expanded in constitutions framed in the early colonies and later in the various states, and were the basis for the first ten amendments, known as the Bill of Rights, in the Federal Constitution. Additional rights protecting citizens are in the body of the Constitution, and some have been added in later amendments.

Under the judicial system of the United States, the interpretations of particular constitutional and legislative provisions in relation to cases brought before the courts become precedents which must be taken into account in later cases, thus constantly expanding the understanding and application of these provisions in the changing situations of modern life. Since the provisions in the early colonial and state constitutions related largely to civil and political rights, a great body of legislative and judicial interpretation exists in this field. The responsibility of state governments in the social, economic, and cultural field is extensive, as under the United States Constitution the Federal Government may exercise only limited powers in certain areas, and the promotion of education, for example, is largely a function of the states.

In addition to the support for human rights by governmental agencies, constitutional and legal provisions and court decisions, it is important to observe the support afforded in the exercise and enjoyment of these rights by the attitude of the American people and the whole climate of public opinion.

Progress of the United States in the field of human rights during 1952 must, therefore, be considered as

[1]This note was prepared by the United States Government.

reaffirming the basic human rights and liberties long enjoyed in this country.

This survey touches only on the major and most significant developments in this field—viz. on definitive actions and statements of the executive branches of the federal, state, and territorial governments, on the most important federal, state, and territorial laws, on international agreements which have actually come into force, and on legal principles established by decisions of the highest courts of the land. A complete picture would also include reference to the day-to-day federal, state, and territorial activities relating to human rights, to those continuing from past years, and to the vast financial provision for these activities made by states, territories, and local communities as well as by the Federal Government.

II. COMPREHENSIVE DEVELOPMENTS IN 1952

U.N. Human Rights Day. As in previous years, the President of the United States designated 10 December as Human Rights Day. In his proclamation he called upon the people of the United States to "join with the people of the other free nations of the world in recognition of our common purpose to defend and further the rights and freedoms of all people as proclaimed in the Universal Declaration of Human Rights, and in so doing renew our determination that here in our own land the great guarantees in our Bill of Rights shall not be lost or weakened or curtailed".

U.S. Bill of Rights Day. Similarly, 15 December was celebrated as Bill of Rights Day, commemorating the 161st anniversary of the Bill of Rights, which is the name popularly given to the first ten amendments to the Constitution of the United States. It is these amendments which contain the principal guarantees of human rights in the Constitution, including those of freedom of speech, press, and assembly, freedom from unreasonable search and seizure, the right to fair trial, the prohibition of excessive bail or fines and cruel and unusual punishments, and the right not to be deprived of life, liberty, or property without due process of law.

Puerto Rican Constitution. The new Constitution establishing the Commonwealth of Puerto Rico came into force 25 July 1952. This Constitution was framed by a Constitutional Convention elected by the people of Puerto Rico in 1951. The delegates to the Convention were elected pursuant to a law enacted by the United States Congress, which was in the nature of a compact which had to be submitted to the people of Puerto Rico for their approval or rejection. The Constitution was adopted by this convention on 4 February 1952, and was later ratified by the people of Puerto Rico in a referendum by a vote of 373,594 in favour to 82,877 opposed. It was subsequently approved by the Congress of the United States with revisions, and signed by the President of the United States on 3 July 1952. The revised Constitution was subsequently accepted by the Constitutional Convention of Puerto Rico. The Governor then proclaimed the Constitution to be in effect.

As the result of attainment of commonwealth status by the people of Puerto Rico, the United States Government notified the United Nations that it had decided to cease to transmit information on Puerto Rico under article 73 e of the Charter.

Puerto Rico has been administered by the United States since 1898. In 1900 the United States Congress enacted the first organic law providing for a civil form of government. The establishment of the Commonwealth in July 1952 marks the culmination of a steady progression in the exercise of self-government.

The first organic law provided for a governor appointed by the President of the United States, with the advice and consent of the Senate, a legislative assembly in which the lower house was elected but the upper house was composed of the heads of executive departments of the government and five other persons, all appointed by the President of the United States in the same way; and a supreme court, the members of which were also appointed by the President, justices of the lower courts being appointed by the governor with advice and consent of the upper house of the legislature. The Act provided for Puerto Rico's representation before all departments of the Federal Government by a popularly elected Resident Commissioner. The Resident Commissioner has a seat in the House of Representatives of the Congress of the United States.

In 1917, the scope of self-government was increased with enactment by the Congress of a second organic law. Under it, the people of Puerto Rico elected both houses of their legislature, and the popularly elected upper house advised and consented to the governor's appointment of justices of the lower courts. The President of the United States retained authority to appoint the governor, the justices of the supreme court, the heads of the departments of justice and education, and the auditor, but all other heads of executive departments were appointed by the governor. The people of Puerto Rico became citizens of the United States. The protection of a bill of rights patterned on the bill of rights of the United States Constitution was extended to Puerto Rico. Provision for representation before the various departments of the Federal Government remained. The legislature could repass a bill over the governor's veto, but if the governor did not then approve it, it did not become law unless it received the approval of the President.

In 1946, the President appointed as governor, with the advice and consent of the Senate, a Puerto Rican

who had formerly been Resident Commissioner from Puerto Rico. This was the first time that a Puerto Rican had been appointed governor.

In 1947, the Congress authorized the people of Puerto Rico to elect their governor. The elected governor was authorized to appoint all the members of his cabinet, the heads of the executive departments, including the attorney-general and commissioner of education. No change was made at that time in the provisions respecting appointment of the auditor and justices of the supreme court.

The new Constitution of the Commonwealth of Puerto Rico, as it became effective with the approval of the Congress in 1952, provides that "Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America". It establishes a tripartite form of government, with a popularly elected governor, a popularly elected bicameral legislature and a judicial branch. The heads of all executive departments are appointed by the Governor, with the advice and consent of the Puerto Rican Senate; appointment of the Secretary of State also requires the consent of the House of Representatives. It should be noted that with the establishment of the Commonwealth neither the President nor the United States Senate participates in any way in the appointment of any official of the government of the Commonwealth.

The Legislative Assembly, which is elected by free, universal and secret suffrage of the people of Puerto Rico, has full legislative authority in respect to local matters. The Commonwealth has the power to impose and collect taxes, and to contract debts. Acts of the Legislative Assembly become law upon approval of the Governor, or, in the event that an act is vetoed by the Governor, upon its re-enactment by two-thirds of the total number of members of which each house is composed. The President of the United States may no longer prevent a bill repassed over the Governor's veto from becoming law by disapproving it. Amendments to the Constitution may be proposed by the Legislative Assembly, and will be voted on at a referendum, becoming effective if ratified by a majority of the electors voting thereon. The Constitution does not restrict the substance of future amendments, except to provide that they shall be consistent with the act approving the Constitution, with the applicable provisions of the Federal Constitution, with the Puerto Rican Federal Relations Act, and with the Act of Congress authorizing the drafting and adoption of a constitution.

The judiciary of the Commonwealth is independent under the Constitution. The justices of the Supreme Court are no longer appointed by the President but are appointed by the Governor with the advice and consent of the Senate of Puerto Rico. Justices hold office during good behavior and may be removed, after impeachment, for causes specified in the Constitution. No judge may make a direct or indirect financial contribution to any political organization or party, or hold any elective office therein, or participate in any political campaign or be a candidate for elective office unless he has resigned his judicial office at least six months prior to his nomination.

To ensure full and effective participation of the population of Puerto Rico in Government, the Constitution provides that no discrimination shall be made on account of race, colour, sex, birth, social origin or condition, or political or religious ideas and requires that the laws shall guarantee the expression of the will of the people by means of equal, direct, and secret universal suffrage and shall protect the citizen against any coercion in the exercise of the electoral franchise. Article VI of the Constitution provides that every person over twenty-one years of age shall be entitled to vote if he fulfils the other conditions determined by law and prohibits depriving a person of the right to vote because he does not know how to read or write or does not own property. Minority parties are assured of representation which recognizes their island-wide voting strength. Elections will be held every four years.

The people of Puerto Rico continue to be citizens of the United States as well as of Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable. Puerto Rico will continue to be represented in Washington by a Resident Commissioner whose functions are not altered by the establishment of the Commonwealth. Matters of foreign relations and national defence will continue to be conducted by the United States, as is the case with the States of the Union. Under the Puerto Rican Federal Relations Act adopted in 1952 free trade with the United States will continue, only United States coins and currency will be legal tender, and the statutory laws of the United States not locally inapplicable will, with some exceptions, have the same force and effect in Puerto Rico as in the United States.

In its final declaration, the Constitutional Convention of Puerto Rico declared:

"When this Constitution takes effect, the people of Puerto Rico shall thereupon be organized into a commonwealth established within the terms of the compact entered into by mutual consent, which is the basis of our union with the United States of America.

. . .

"Thus we attain the goal of complete self-government, the last vestiges of colonialism having disappeared in the principle of Compact, and we enter into an era of new developments in democratic civilization."

Free Territory of Trieste: Administrative Assurance of Human Rights. On 9 May 1952, the Governments of the United States, United Kingdom and Italy in an understanding on the administration of Zone A of the Free Territory of Trieste, provided that administrative arrangements for the zone should be of such a nature as "to continue to ensure to all inhabitants of the zone the enjoyment of human rights and fundamental freedoms without distinction as to race, sex, language or religion".

Trust Territory of the Pacific Islands—Code of Laws. A code of laws for the Trust Territory of the Pacific Islands[1] was put into effect on 22 December 1952. Chapter I contains a bill of rights similar to that in the Federal Constitution of the United States, including specifically freedom of speech and expression, freedom of religion, freedom from unreasonable search and seizure, and the right to fair trial. The code provides in sections 41 to 44 for the development of self-governmental bodies on the local and regional levels. These envisage gradual transition from purely advisory bodies to legislative, executive and judicial instrumentalities. Where the will of the people is presently being voiced through the medium of local political institutions, systems or customs, the code requires no modification of these insofar as they are consistent with the Trusteeship Agreement and the laws of the Trust Territory.

III. CIVIL AND POLITICAL

Each of the state constitutions, as well as the Federal Constitution of the United States, recognizes individual rights and provides for their protection. These provisions frequently take the form of a bill of rights similar to the Bill of Rights in the Federal Constitution, mentioned above. Freedom of speech and press, freedom of conscience and religion, the right to a fair trial, security of person and similar rights are therefore guaranteed to the inhabitants of the United States by the governments of the states and territories, as well as by the Federal Government, and are protected in state legislation and by state and local courts as well as in federal legislation and by federal courts.[2]

Civil Rights Week in Massachusetts. The legislature of the State of Massachusetts approved, on 27 February 1952, an act for the observance each year of Civil Rights Week, from 8 to 15 December, with appropriate exercises in schools and otherwise "for the protection and implementation of these four basic rights: (1) the right to safety and security of person; (2) the right of citizenship and its privileges; (3) the right to freedom of conscience and expression; (4) the right to equality of opportunity; which have been the core of our democratic philosophy of government".

A. Life, Liberty, and Security of Person

The Declaration of Independence specified that life and liberty are among the "unalienable rights" with which all men are "endowed by their Creator". The Fifth and Fourteenth Amendments to the Federal Constitution provide that no person may be deprived by governmental authority of life or liberty without due process of law. The writ of *habeas corpus* is the traditional and historic device whereby persons can challenge the legality of restraint of liberty. Article I of the Constitution provides that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it". Positive measures, including means for the prevention and punishment for the crimes of murder and assault, and promoting the safety of life, are provided in local police regulations, the legislation of every state, and in certain federal laws and international agreements.

Protection v. Arbitrary Detention. Detention of an individual *incommunicado* was barred by a convention between the United States and the United Kingdom which entered into force on 7 September 1952, and which specified in article 16 that "when any national of the sending state is confined in prison awaiting trial or is otherwise detained in custody within the district of a consular officer of that state, the consular officer must be informed and permitted to visit his co-national without delay, to converse privately with him, and to arrange legal representation for him".

Deprivation of Liberty. The conviction in North Carolina of eleven persons who had violated a federal law forbidding kidnapping illustrates the constant activity of judicial authorities to protect the liberty and security of individuals. Two persons, a man and a woman, had been kidnapped by a group of people disguised in the regalia of the Ku Klux Klan. The defendants were charged with the crime and tried in the local courts. They were found guilty and the principle offenders were sentenced to prison terms ranging from one to five years.[3]

B. Freedom from Unreasonable Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable

[1] Extracts from this Code (including the Bill of Rights) are reproduced in this *Yearbook*, pp. 344-345.

[2] Similar provisions occur in the Constitution of the Commonwealth of Puerto Rico and in appropriate enactments for each of the territories. Unless otherwise noted, general references to State Constitutions in this report should be taken to include the Constitution of the Commonwealth of Puerto Rico and pertinent enactments for the territories of the United States.

[3] *US v. Brooks et al.* 199 F. 2d, 336 (C.A.4, 1952).

searches and seizures is guaranteed in the Fourth Amendment to the Federal Constitution of the United States. The amendment provides that search warrants may be issued only "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized". The constitution of each of the states contains similar provisions.

Confession by Coercion—Supreme Court Decision. In *Rochin* v. *California* the defendant, accused of selling narcotics, had been arrested and forcibly taken to a hospital, where his stomach had been pumped; he had vomited two capsules, which had been found to contain morphine. At his trial in a lower court these had been admitted in evidence over his objection, and he had been convicted of violating a state law forbidding the possession of narcotics. The Supreme Court reversed the conviction, holding that it had been obtained by methods "too close to the rack and the screw to permit of constitutional differentiation". The court ruled that the due process clause of the Fourteenth Amendment forbids states from basing convictions upon confession, however, much verified, obtained by coercion or other methods which offend the community's sense of fair play and decency.[1]

Violation of Privacy—Court Decision. The conviction in 1952 of two police officers in Nashville, Tennessee, for violating the constitutional rights of two citizens by invading the privacy of their home without a warrant and unlawfully restraining them, illustrates the respect for law which police officers are required to exercise in carrying out their functions. In this case the police officers forced their way into a private home to find a lodger who had failed to pay a debt. When the owners of the home resisted their entrance, the officers arrested them on the charge that they were "disturbing the peace". In a jury trial, the two police officers were found guilty. One officer was sentenced to a fine of $125 and a year in prison, and the other to a fine of $200 and 90 days in prison.[2]

C. Fair Trial

The Federal Constitution contains numerous safeguards with respect to a fair trial, including guarantees of the right of the accused to a speedy public trial by an impartial jury, with confrontation of opposing witnesses, compulsory process for obtaining witnesses in favour of the accused, and the assistance of counsel for his defence, as well as protection against double jeopardy for the same offence, compulsory self-incrimination, and excessive bail or fines, or cruel and unusual punishments. Similar provisions occur in the constitution of each of the states, and in appropriate enactments for the territories.

[1] 342 U.S. 165.

[2] *U.S. v. Bledsoe et al.* (W. D. Tenn. Convictions, Nov. 3, 1952. No opinion).

Trial Procedures in the Trust Territory of the Pacific Islands. On 14 February 1952 the High Commissioner of the Trust Territory of the Pacific Islands issued executive order No. 26, which provides that every defendant charged with a crime in the Trust Territory is entitled to have, in advance of the trial, a copy of the charge upon which he is to be tried; to consult counsel before the trial; to have an attorney-at-law or some other representative of his own choosing defend him at the trial; to apply to the court for further time to prepare his defence, and to have the application granted if the court is satisfied that the defendant will otherwise be substantially prejudiced in his defence; to bring with him to the trial such material witnesses as he may desire or to have them summoned by the court at his request; to give evidence on his own behalf at his own request at the trial (although he may not be compelled to do so); and to have the proceedings interpreted for his benefit when he is unable to understand them otherwise.

D. Grant of Asylum

All persons who have entered the United States legally as immigrants have the same rights as citizens, including freedom to work, public education and similar services, with the exception of the rights to vote and in general to Government employment, which are reserved to citizens.

The United States Displaced Persons Commission submitted its final report to the President and the Congress on 15 August 1952. This agency was established in 1948 to undertake the re-settlement of persons unable to return to their homes as the result of World War II. Barriers to immigration were temporarily set aside, and means provided for the integration into the American economy of a total of over 400,000 refugees, who were re-settled in all the forty-eight states and the territories. Private, public, and international agencies, as well as thousands of American citizens, took responsibility for individuals and families entering the United States under this programme.

Through the Intergovernmental Committee for European Migration, in which the United States took an active part, 38,102 additional refugees entered the United States between 1 February and 31 December 1952. Under the President's escapee programme, initiated on 22 March 1952, some 2,600 escapees were re-settled or were awaiting departure for the United States at the end of the year.

As in previous years, the Congress approved a number of private bills permitting particular persons to enter the United States. Through these bills exceptions were made, as desirable, for the benefit of political refugees and others.

E. Property

The Federal Constitution protects persons from being deprived of property without due process of law, and this right has been affirmed in numerous laws and court decisions. Similar provisions are included in the constitutions and laws of all the states.

In *Sei Fujii* v. *The State of California*, the Supreme Court of California invalidated the California Alien Land Law, adopted in 1920, which provided that aliens ineligible to become citizens could not acquire real property in the State. The court held that the law was inconsistent with the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution. The Fourteenth Amendment provides that no state may "deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws . . ."

An earlier opinion on the Fujii case, rendered by a lower California court in 1950, had invalidated the Alien Land Law, but had done so on the ground that the law was in conflict with the human rights provisions of the United Nations Charter. The Supreme Court of California unanimously agreed that this was not an appropriate basis for the decision of the court on the ground that the provisions of the Charter were not self-executing. The Supreme Court of California said on this point:

"A treaty does not automatically supersede local laws which are inconsistent with it unless the treaty provisions are self-executing . . . In order for a treaty provision to be operative without the aid of implementing legislation and to have the force and effect of a statute, it must appear that the framers of the treaty intended to prescribe a rule that, standing alone, would be enforceable in the courts. It is clear that the provisions of the preamble and of Article 1 of the Charter which are claimed to be in conflict with the alien land law are not self-executing. They state general purposes and objectives of the United Nations organization and do not purport to impose legal obligations on the individual member nations or to create rights in private persons."

In his opinion, Chief Justice Gibson of the California Supreme Court said:

"The humane and enlightened objectives of the United Nations Charter are, of course, entitled to respectful consideration by the courts and legislatures of every member nation since that document expresses the universal desire of thinking men for peace and equality of rights and opportunities. The Charter represents a moral commitment of foremost importance, and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs . . ." [1]

[1] 242 P (2d) 617.

F. Freedom of Religion

The Federal Constitution guarantees freedom of conscience and religious worship and embodies the principle of separation of church and State. It also provides that no religious test shall ever be required as a qualification to any office or public trust under the United States. Each of the state constitutions includes similar provisions.

Separation of Church and State—Supreme Court Decision. In *Zorach* v. *Clauson*, the Supreme Court upheld the constitutionality of New York City's "released time" programme for religious instruction of children attending public schools. Under this programme, public schools release students in school hours, on written request of their parents, so that they may leave school and go to religious centres for religious instruction. Students who choose not to obtain such religious instruction are required to stay in the classrooms, and the churches report to the schools the names of children released from the public schools who fail to report for religious instruction. The Supreme Court held that this programme does not violate the constitutional principle of separation of church and State, because the programme involves neither religious instruction in public schools nor the expenditure of public funds. The court found that there was no evidence in the record of the case to support a conclusion that the system involved the use of coercion to compel public school students to attend religious classes.

The relationship of Government to religion was defined in this case by Justice Douglas:

"Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for Government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The Government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction".[2]

Selective Service Regulations affecting Conscientious Objectors. Under the Universal Military Training and Service Act, registrants conscientiously opposed to both combatant and noncombatant training and service by reason of religious training and belief are liable "in lieu of induction" for "civilian work contributing to the maintenance of the national

[2] 343 U.S. 306.

health, safety, or interest". Executive order No. 10328, of 20 February 1952, amending the system's regulations, defined types of work to which conscientious objectors might be assigned in lieu of military service.

G. Freedom of Speech

The Federal Constitution, in the First Amendment, stipulated that Congress shall make no law abridging freedom of speech or of the press. In addition, each of the state constitutions provides expressly for freedom of speech and of the press. Laws, regulations, and court decisions implementing these provisions have included such matters as low postage rates on newspapers, books and periodicals, assurance of radio and television time for presentation of opposing arguments on controversial issues, rationing of newsprint in time of scarcity, protection of motion picture producers against unreasonable censorship, and protection of newspaper publishers against pressure by advertisers.

Telcommunications Convention between the United States and Canada. The United States entered into an agreement with Canada, effective from 15 May 1952, permitting the citizens of either country, upon certain conditions, to operate certain radio equipment or stations in the other country.

Movie Censorship—Supreme Court Decision. In *Burstyn Inc.* v. *Wilson*, the Supreme Court held that provisions of a state law forbidding the commercial showing of any motion picture film found by a censor to be "sacrilegious" are void as a prior restraint on freedom of speech and of the press. The court held that expression by means of motion pictures is included within the free speech and free press guarantees of the First and Fourteenth Amendments to the Constitution, and that a state cannot vest in a censor such unlimited control over motion pictures as that involved in the broad requirement that they be not "sacrilegious". In commenting on questions which might be raised in relation to this case, under the guarantee of separation of church and state, the court said: "It is not the business of Government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches or motion pictures".[1]

"Race Hatred" Literature—Supreme Court Decision. The case of *Beauharnais* v. *Illinois* concerned the conviction of an individual for distributing anti-Negro leaflets on the streets of Chicago, Illinois. A state statute had made it a crime to distribute in any public place any publication which "exposes the citizens of any race, colour, creed, or religion to contempt, derision, or obloquy". The Supreme Court, denying that the statute violated freedom of speech, upheld the constitutionality of the statute.[2]

Transit Radio—Supreme Court Decision. In the case of *Public Utilities Commission* v. *Pollak*, the Supreme Court, on 26 May 1952, upheld the constitutionality of so-called transit radio against the challenge that it violates the right of privacy of the "captive audience". It was concluded that there was neither (1) any violation of the First Amendment to the Constitution (on freedom of speech), because the testimony did not show any substantial interference with the passengers' freedom of conversation, nor (2) any violation of the Fifth Amendment (prohibiting deprivation of liberty without due process of law), inasmuch as a public vehicle cannot be expected to secure to each passenger a right of privacy equal to the privacy one is entitled to in his own home.[3]

State Legislation. On 20 March 1952, legislation was approved in Kentucky providing that no person should be compelled to disclose in any legal proceeding or trial before any court or grand or petit jury, or elsewhere, the source of any information procured by him and published in a newspaper or by radio or television broadcasting station by which he is engaged or employed or with which he is connected.

A law became effective in New York on 26 March 1952, which prohibited television, broadcasting, or motion pictures of proceedings in which the testimony of witnesses by subpoena or other compulsory process may be taken, conducted by a court, commission, committee, administrative agency or other tribunal of the State.

Acts were approved by the Legislatures of Maryland (28 March 1952) and South Carolina (29 February 1952), relieving radio broadcasting stations from liability for defamatory or libelous statements by candidates for political office.

H. Government by the Will of the People

The Declaration of Independence sets forth the self-evident truth that to secure "certain unalienable Rights" among which are life, liberty, and the pursuit of happiness—"governments are instituted among men, deriving their just powers from the consent of the governed". The Federal Constitution assures the citizens of the United States a republican form of government responsive to the will of the people through their elected representatives and expressly provides that the right to vote shall not be denied or abridged on account of race, colour, or sex.

Time out for Voting—Supreme Court Decision. In *Day-Brite, Lighting, Inc.* v. *Missouri*, the Supreme Court held that a state statute which provides that any employee entitled to vote may absent himself from his employment on election day for a limited time in

[1] 343 U.S. 495.
[2] 343 U.S. 250.
[3] 343 U.S. 451.

order to vote, and punishes any employer who deducts wages for such absence, does not violate an employer's constitutional rights.[1]

Equal Access to Public Service and Employment. In general, public service and employment in the federal and state governments and in other public bodies are open to all qualified citizens. Such limitations as remain are rapidly disappearing.

At the request of the Territorial Legislature of Hawaii, the Federal Congress amended the Hawaiian Organic Act to permit women to serve on juries in the courts of the territory. The Commonwealth of Puerto Rico also took legislative action in 1953 to permit women to serve on juries in accordance with its new Constitutional Bill of Rights prohibiting discrimination on account of sex. The General Assembly of Virginia on 18 February 1952 amended its code to allow women to serve on juries in Virginia. At the end of 1952 there were only six states where women were still barred from serving on juries.

On 24 June 1952 Congress authorized the appointment of qualified women as physicians and specialists in the medical services of the Army, Navy, and Air Force. This Act provides that all laws applicable to male commissioned officers and former male commissioned officers in such medical services shall be applicable in like cases to commissioned female officers.

An amendment to the Constitution of the State of California abolishing the last remaining restrictions on the employment of Chinese and Mongolians on public works in that state, came into force on 4 November 1952. An Act was passed by Congress on 15 July 1952 to provide benefits for certain federal employees of Japanese ancestry who lost certain rights with respect to grade, time in grade, and rate of compensation by reason of official policies toward persons of Japanese ancestry during World War II.

The report of the Federal Civil Service Commission reflected the increasing number of handicapped veterans who were finding employment opportunities. In 1951/52, more than three times as many disabled veterans were employed in the federal service as in January 1946; more than twice as many veterans with serious physical handicaps which could not be corrected by medical treatment or surgery were appointed in 1952 as in 1944.

The Fair Employment Board of the Federal Civil Service Commission, which is responsible for implementing the non-discrimination policy of the federal service, requested the fair-employment officers of all agencies to submit a special account on progress achieved, with particular reference to constructive steps taken in each agency. Contracts between the Federal Government and private employers include a non-discrimination clause requiring provision of equal employment opportunities without regard to colour, race, religion, or ancestry on work to be paid for in whole or in part from federal funds. The President's Committee on Government Contract Compliance reported that during the fiscal year ending June 1952, the United States Government expended in excess of $41,000,000,000 through private contracts and that every major prime contractor and sub-contractor who executed an agreement with the Government to furnish services, supplies, or construction agreed therein to provide equal job opportunities. The Committee made recommendations to encourage and assist employers in fair employment practices.

In the Trust Territory of the Pacific Islands, a comprehensive plan was adopted to provide a schedule of pay for Micronesians in government employ. An organized on-the-job training programme for native workers was also put into effect.

Programmes to bar persons of questionable loyalty from public office and employment were continued and expanded in 1952. The federal programme, based on an executive order issued by the President in 1948, as amended in 1951, required loyalty investigations of all applicants for positions in the federal service and defined the standard for refusal of employment or removal from office. California voters, at the 4 November 1952 election, approved two loyalty amendments to the state Constitution, one forbidding the holding of public office or employment by organizations or persons advocating the overthrow of the Government by force or unlawful means or advocating support of a foreign government against the United States in case of hostilities, and the other setting up a loyalty-oath programme. The Governor of Louisiana, on 10 July 1952, approved an act requiring Communists or members of Communist front organizations as listed by the United States Department of Justice to register with the Department of Public Safety; and providing that nominees of such organizations shall not appear on ballots for public office or hold non-elective public office. The General Assembly of Maryland approved an act providing that a subversive person, as defined by the Subversive Activities Act of 1949, shall not be admitted to the Bar, or may be disbarred. In Michigan the Legislature passed an act requiring Communists and knowing members of Communist front organizations to register with Michigan State Police and providing also that neither the names of nominees of the Communist Party nor the names of Communists should appear upon the ballots in primary or general elections. The Mississippi Legislature approved an act requiring candidates for election to state, district, or county office to file an affidavit that they are not subversive persons, as defined by the act.

[1] 342 U.S. 421.

IV. ECONOMIC, SOCIAL, AND CULTURAL

The achievement of equal opportunity is the keynote of American life. Individual initiative, community effort, and Government assistance combine to encourage the progressive realization of opportunities which will permit everyone to develop his abilities to the full. Official interest in improving economic, social, and cultural opportunities in the United States appears directly in the activities of agencies of federal, state, and local governments devoted to social welfare, health, education, labour, commerce, agriculture, housing, art, scientific research, and similar matters, and in legislation adopted by the States and the Federal Congress. The Federal Constitution opens with the words "We, the People of the United States, in Order to . . . promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution . . ." The Constitution specifically authorizes Congress to "lay and collect taxes to . . . provide for the . . . general Welfare of the United States". State Constitutions have similar provisions and include also particular articles regarding public education, the prohibition of child labour, safety of workers, institutional and other care for those who need it, and similar matters.

A survey of such official actions cannot, however, picture the full extent of services and opportunities enjoyed by the people of the United States in economic, social, and cultural fields nor their continuing expansion during 1952. The economy of the United States is based on free enterprise, with the production and distribution of goods, choices of employment and investment, and the general conduct of business and agriculture depending largely on individual initiative. Similarly, a large proportion of the hospitals and medical care, life insurance, pension plans, and other types of financial protection, welfare services, musical and dramatic performances, recreational facilities, scientific research, and other social and cultural activities are directed by commercial or private organizations and supported through payment of fees or by voluntary gifts and endowments. The protection and encouragement of free enterprise is a major objective of government. Co-operation between official and private agencies is characteristic of all levels of government, especially for the maintenance of standards of employment, health, and welfare and the effective use of scientific advance through official publications, training facilities, and other means. The following report should therefore be regarded as only a phase of the more extensive opportunities and facilities available to the residents of the various states and territories of the United States.

A. Working Conditions

Adequate working conditions are specifically provided for in some state Constitutions and in numerous federal and state laws. Contracts between labour unions and employers are also an important factor in improving and maintaining sound labour standards. The Department of Labour in the Federal Government co-operates closely with similar departments of state governments to enforce provisions of federal and state labour laws and regulations, compile statistics, encourage employment opportunities, industrial safety, and training for workers, and assist as desired in adjustment of disputes between workers and employers. Federal and state governments also encourage private action on the part of employers and employees in meeting social needs through research and publication of reports on pension, health and insurance plans now in operation.

Fair and Free Employment. Federal and state employment services co-operate in maintaining offices in all large centres throughout the country where employers register their needs and workers may choose freely among job openings for which they are qualified. Special employment services have been provided for war veterans. On 16 July 1952, the Federal Congress approved an act extending to eligible veterans of active service on or after 27 June 1950 (largely veterans returning from Korea), the job counselling and employment placement assistance provided throught the Department of Labour for veterans of World War II.

The Legislative Assembly of the Virgin Islands adopted an Act requiring any person or agency contracting for employees whose services are to be used outside the Virgin Islands, including domestic help, to secure a licence and obtain the approval of the Government Secretary of the Virgin Islands on all contract forms. The Government Secretary was forbidden to approve such contract forms unless they provide for return expenses to the Islands if the contract is not adhered to, and for conditions of employment and wages "not inferior in any respect to the minimum conditions of employment and wages offered for similar work in the locality in which the employee contracts to work, and in no case less favourable in any respect than similar conditions in the Virgin Islands".

Vocational rehabilitation in the United States is a partnership between the States and the Federal Government and provides services to restore the ability of the disabled to work for pay. In addition to rehabilitation counselling provided to every disabled person during the rehabilitation process, these services include provision of necessary medical and hospital care, occupational training, prosthesis, necessary tools and equipment to start work, and job placement. The federal–state programme of vocational rehabilitation operates in the forty-eight states, the district of Columbia, Puerto Rico, Hawaii, and Alaska. The report of the Office of Vocational Rehabilitation in the

Federal Security Agency[1] shows that 64,000 disabled men and women were restored to successful employment between 1 July 1951 and 30 June 1952.

A number of states and cities have laws, ordinances, or regulations regarding fair employment practices designed to assure freedom from discrimination based on colour, race, religion, or ancestry. New York and Connecticut are examples of States where these laws are administered by a special board which issues annual reports on complaints which have been handled and on progress during the year.

The Federal Railway Labour Act prohibits a union from using its position and power to destroy coloured workers' jobs in order to bestow them on white workers. The validity of this prohibition was applied by the Supreme Court in the case, *Brotherhood of Railroad Trainmen* v. *Howard*.[2]

Industrial Safety. A new Federal Coal Mine Safety Act was adopted by Congress and became law on 18 July 1952. This enlarged the authority of the Bureau of Mines, which is located in the United States Department of the Interior, by specifying new safety provisions, including the closing of mines in the event of imminent danger and creating penalties to aid in the enforcement of the provisions of the Act. Massachusetts and New York amended their industrial safety laws to provide further protection for certain workers. The Massachusetts amendment specified that safety rules shall apply to the self-employed and individual contractors when they themselves work at the trade. In addition, the Pennsylvania State Legislature approved a law setting up a Public Safety Commission to investigate safety problems in all fields, including industrial and mine safety.

Just and Favourable Remuneration. More than 21 million United States workers employed in the manufacture or preparation of goods which enter interstate commerce or activities relating thereto are protected by the Federal Fair Labour Standards Act, which sets a basic minimum wage of 75 cents an hours and a basic 40-hour week, with time and a half on the worker's regular rate for overtime. Over half of the states have minimum wage laws broadly applicable to all types of employment within the state except domestic service and agriculture. Most of these laws apply to women and minor workers; however, in seven states these apply also to men. Fourteen of the states and territories, including most of the large women-employing areas, have equal pay laws requiring equal pay for equal work for men and women.

In 1952, the Federal Congress amended the Walsh-Healey Public Contracts Act to make all proceedings under it subject to the Administrative Procedure Act and to make the Secretary of Labour's orders and determinations of prevailing minimum rates subject to judicial review. The Walsh-Healey Act requires that prevailing minimum wage rates, as determined by the Secretary of Labour, be paid in carrying out Government contracts for materials, supplies, and equipment exceeding $10,000 in value. During the year, the Secretary issued four minimum wage determinations under this Act to replace lower rates previously established.

The amendment to the Federal Fair Labour Standards Act adopted in 1950,[3] which sets a statutory minimum wage rate of 75 cents an hour, made temporary exceptions for Puerto Rico and the Virgin Islands, where wage standards have been substantially lower. For these areas, the amendment authorizes industry committee action for setting minimum wages industry by industry, with the objective of raising wages to the 75 cent statutory minimum as rapidly as conditions permit. In 1952 new wage orders were issued in the Commonwealth of Puerto Rico raising the minimum for particular industries. The statutory 75 cent minimum was established for sugar manufacturing, shipping, certain communications activities, and in the manufacture of some chemical products.

Of the states with minimum-wage laws on the statute books, Massachusetts, the first state to enact a minimum-wage law, adopted an amendment in 1952 which provides that no wage board may recommend a minimum below 65 cents an hour, except in specified cases, and establishes a minimum of 75 cents an hour for occupations not covered by a special minimum-wage order. Massachusetts thus became the second state to set a 75-cent minimum by statute, the minimum hourly rate set in the Federal Fair Labour Standards Act. Connecticut took similar action in 1951. Various states have established a minimum wage of 75 cents or higher in wage orders for specific industries.

During 1952, twenty-one wage orders improving wage rates and working conditions became effective in the following jurisdictions: California, Massachusetts, New Hampshire, New York, Oregon, Rhode Island, Utah, Wisconsin, the District of Columbia, and Puerto Rico.

Unemployment Insurance and Workmen's Compensation. A federal-state system of unemployment insurance is in effect in all states, the District of Columbia, Alaska, and Hawaii, and covers in general workers in private industry, commerce, and service occupations. The programme is financed by taxes on employers. Benefits are paid by State Employment Security agencies in accordance with laws adopted

[1] The Federal Security Agency became the Department of Health, Education, and Welfare, and the Federal Security Administrator became the Secretary of Health, Education and Welfare on 11 April 1953.

[2] 343 U.S. 768.

[3] See *Yearbook on Human Rights for 1950*, p. 333.

by the various states. Workers in agriculture, domestic service, public service, and non-profit organizations are generally not covered. A special federal system covers railway workers.

In 1952, the Federal Congress increased maximum weekly benefits under the railway unemployment system to $37.50. It also established a special system of unemployment compensation for veterans who have served in the armed forces since the outbreak of aggression in Korea. Benefits are paid through state agencies at the rate of $26 per week for 26 weeks. These benefits apply also in the Virgin Islands; these islands are not included in the regular federal-state system of unemployment insurance.

Changes in state and territorial laws in 1952 continued the trend of 1951 towards higher weekly benefit amounts. Two of these states adopted $30 maxima, making a total of eight states which provide benefits up to this amount. About one-third of the workers covered by unemployment insurance laws live in these states. Eleven states provide additional allowances for certain types of dependants.

Improvements were made also in a number of state workmen's compensation laws. Weekly rates for death and disability were increased in four of the states—Kentucky, Michigan, Pennsylvania, and Virginia. In three, maximum aggregate benefits were increased: in Kentucky from $10,000 to $11,500; in Pennsylvania from $12,500 to $20,000; and in Virginia from $7,800 to $10,000. Michigan, Rhode Island, and Virginia increased burial allowances. In Virginia, the period of medical care was extended, and in Louisiana the amount of medical benefits was raised.

Coverage was extended to additional workers in a number of states, and compensation for injury to civil-defence personnel was authorized in Kentucky, Massachusetts, Mississippi, New York, and Rhode Island.

Occupational disease coverage was adopted in Louisiana and extended in Virginia, the Virginia law providing for full coverage of all occupational diseases. Thirty-one state, federal, and territorial laws now cover all occupational diseases.

B. Social Security

One of the most important Government programmes to advance economic and social security in the United States is Old-age and Survivors Insurance. The Social Security Administration in the Federal Security Agency directs this and related programmes in accordance with legislation adopted in previous years. The federal programme of old-age and survivor's insurance is designed to be self-supporting, financed wholly by pay-roll taxes shared equally by employers and employees to cover benefit payments and administrative costs. Other social security programmes are operated by the states with the Federal Government sharing in the costs; they provide old age assistance; aid to the blind, the totally and permanently disabled, and dependent children; maternal and child health, and child welfare services. Private pension, health and insurance plans are also actively encouraged by Government agencies.

Old-age and Survivors' Insurance. The old-age and survivors' insurance programme, at the end of the 1952 fiscal year, covered four out of five of the nation's paid civilian jobs. In order to keep the programme in line with rising wages and prices, the Federal Congress amended the Social Security Act on 18 July 1952. The amendment increased benefit amounts, liberalized the retirement test, provided wage credits for military service after World War II, and made a number of technical changes.

As from 31 December 1952, thirty-eight states and two territories had completed arrangements with the Federal Security Administrator for coverage of eligible state and/or local employees under this insurance programme. In a separate law the Federal Congress provided increased annuities for retired members of the Federal Civil Service.

Public Assistance. The Social Security Act amendments of 1952 also authorized larger federal grants to the states for public assistance to needy aged, blind, and disabled persons and dependent children. The additional federal funds were made available for a two-year period, from October 1952 to September 1954. The annual report of the Federal Security Agency, 1952, reported significant declines in the number of persons receiving public assistance, reflecting increased employment opportunities and the expanded coverage of old-age and survivors' insurance and its higher benefits made possible by the 1950 amendments.

C. Housing

The Federal Government has declared as a goal the elimination of sub-standard and inadequate housing and the realization as soon as is feasible of a decent home and suitable living environment for every American family.

To contribute to this goal, the Federal Government carried on a number of programmes often in co-operation with State and city governments. Loans and grants are made to local communities to assist slum clearance and urban re-development. The Federal Government assists and stimulates the provision of credit from private sources for the construction, repair, and purchase of housing through the insurance and guarantee of payment of housing loans made by private institutions; by the provision of a secondary market for housing mortgages; and by the credit

resources and the encouragement of home savings provided by the Federal Home Loan Bank System, savings and loan associations, federal land banks, national farm loan associations, and production credit associations. Direct loans are made by the Federal Government for the construction and repair of housing in the case of major disasters and other types of case where loans on reasonable terms are not available from private lending sources. In order to provide housing for low-income families, the Federal Government also makes loans and annual contributions to local housing authorities to assist them in the construction and operation of low-rent public housing. Subsidies for farm housing are provided where the farmers are not able to obtain credit at reasonable terms. Temporary housing is provided for defence workers and servicemen and their families and for families whose homes have been destroyed or damaged by a major disaster. Loans and grants are made to local communities for the provision of community facilities and services in critical defence areas. The Federal Government also provides housing for veterans and servicemen and their families through the use of housing constructed by the Federal Government during World War II for war workers.

The Housing Act of 1952, approved on 14 July, provided for the insurance of an additional amount of housing mortgages; increased authorizations for appropriations for defence housing and community facilities and services, amended the appropriate laws to permit operation of housing programmes in the Territory of Guam; extended the farm housing programme for an additional year; increased the authorizations for loans and grants to assist farm housing, and provided for the purchase of mortgages financing defence and disaster housing, thereby assuring credit for such housing.

Advance payments on Federal capital grants to local communities for slum clearance and urban re-development were authorized.

Additional funds were made available for federal home loans to veterans, and the special home loan assistance made available for veterans of World War II was made available also to veterans of the Korean conflict.

State Legislation. The legislatures of fourteen states enacted legislation related to housing. Among these actions were provisions as to fire and safety regulations; safety devices on elevators; suitable receptacles for refuse, and adequacy of water supply, sewage and drainage; the financing of college dormitories; the establishment of housing authorities in states and cities; and preference for veterans in selection of tenants for housing built with public funds.

Michigan, New York, and Rhode Island revised earlier statutes to include non-discrimination clauses in regard to public housing. The revised Michigan statute reads in part:

"All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of inns, hotels, government housing, . . . subject only to the conditions and limitations established by law and applicable alike to all citizens and to all citizens alike, with uniform prices."

The first Guam Legislature enacted in 1952 a set of three integrated laws to guide housing development. These are known as the Sub-division Zoning and Building Laws of Guam, and were so drafted as to be especially applicable to the unique situation presented by the almost complete devastation of Guam in World War II.

D. HEALTH

Public health services in the United States are primarily the function of the state and local governments. The Federal Government functions largely in an advisory, resource, and research capacity. Medical services are provided primarily by private means. The United States Public Health Service, located in the Federal Security Agency, works closely with state, county, town, city, and rural agencies to prevent disease; promote adequate facilities for the care of the sick; develop effective methods of treatment for those who are ill, including research regarding cancer, tuberculosis, poliomyelitis, heart disease, and other diseases; and maintain sound standards of sanitation, water supply, and other services. Voluntary agencies, including large private endowments, are active along similar lines, and Government agencies co-operate with them through contracts for research and services, exchange of information, development of training programmes, distribution of information, and in the operation of hospitals, clinics, and other facilities to meet individual needs. The United States Public Health Service maintains inspection services at ports of entry to the United States to prevent the spread of communicable disease, and co-operates with other countries to reduce the danger and stamp out the source of such infections so far as possible. Legislation to protect the health of persons within the United States is primarily the responsibility of State Governments.

The WHO International Sanitary Regulations came into force for the United States on 1 October 1952; and by executive order the President designated the Surgeon-General of the Public Health Service as the agency for the United States to exercise functions and perform duties under the regulations. A number of states expanded their public health facilities and programmes. In Kentucky, a Department of Mental Health was established. The State Board of Health was also authorized to inspect and license hospitals and nursing homes, thus protecting persons using their facilities. Laws designed to prevent the unauthorized use of narcotic drugs were

adopted in Missouri and Viginia. New York amended its Public Health Law to require every physician to report promptly to the State Health Department the names of persons under treatment as habitual users of narcotics, so that compulsory care, treatment, guidance, and rehabilitation will be provided for adolescent drug users. The South Carolina Legislature established a Mental Health Commission, revised the state mental health laws, and authorized a $5,000,000 bond issue for the construction of state mental institutions.

E. Child Welfare

Prohibition of Child Labour. Child labour is prohibited throughout the United States through state legislation and the Federal Fair Labour Standards Act. Enforcement of this prohibition is assured through inspection and other services of State and Federal Departments of Labour, usually in connexion with the regulation of the employment of young people between the ages of fourteen and twenty-one. Most states restrict the work of young people by limiting the hours during which they may be employed, prohibiting their working at night and protecting them against dangerous occupations. A special programme to enforce the section of the Fair Labour Standards Act prohibiting the employment of young people under sixteen during school hours, with attention to the employment of migratory workers on the farms, was undertaken in 1952. New orders were also issued by the Federal Secretary of Labour and in Pennsylvania and Wisconsin prohibiting the employment of young people in occupations that might expose them to physical or moral hazards.

Child Welfare. Maternal and child welfare is promoted by activities at all levels of government, usually in co-operation with voluntary and private agencies. The Federal Government participates in child welfare programmes through provision of technical advice and recommendations, grants to state authorities for social services and other needs, special grants to aid dependent children living in their own or a relative's home, and in other ways.

The United States Children's Bureau, which functions as an advisory body, was created by Congress in 1912 and in 1946 became a unit in the Federal Security Agency. It studies many types of conditions affecting the lives of children, provides data and makes recommendations to improve practice in child-health and child-welfare programmes, and helps to establish standards for the care of children. The Social Security Act of 1935, as amended, charges the Bureau also with responsibility for making grants to states to extend and improve services for promoting the health and welfare of children, especially in rural areas and areas of special need.

As part of its responsibilities under the Act of 1912, the Children's Bureau publishes material on child welfare. Much of this is directed to parents and provides them with the best available information on child care. During 1952 the Bureau published twelve new pamphlets, including a pamphlet on personality development, one on the child who is hard of hearing, and a revision (the ninth edition) of its most popular publication, *Infant Care*; 1,866,797 copies of *Infant Care* were distributed that year, bringing the total number of copies distributed since the pamphlet was first published to 30 million.

The funds administered by the Children's Bureau under the Social Security Act represent a federal contribution to state welfare services and amount to only a small proportion of the money spent on these programmes throughout the nation. In 1952, $7,116,856.28 of Children's Bureau grants was expended by the States for social services to children. This money was used principally to provide casework services to children living in their own or foster family homes, or to train professional workers in the field of child welfare. In addition, $10,721,333.95 was expended by the states for services to crippled children, and $13,226,195.69 for maternal and infant health programmes. Although the pattern of these programmes has been established for approximately twenty years, each year finds the state and local programmes expanding and reaching more people. Reports from state agencies in 1952 indicated that a general upward trend in the number of people being reached has prevailed, especially in service for infants and schoolchildren. Sometimes the service was given through public agencies, sometimes arrangements were made with private physicians and hospitals.

Some states are developing special programmes for the hospitalization of maternity patients, especially those with complications of pregnancy, and for medical care and hospitalization of acutely ill children. 1952 showed a marked increase in the number of states developing demonstration programmes for the care of premature infants. Consequently, special attention was given to the development of earlier reporting of such infants and better provision for their care. The latter was accomplished in different ways. In some instances a centre was established for training personnel to care for the infants and for research on the causes of premature delivery. In other places, personnel in the public health field and in hospitals were given training in the care of premature infants, and incubators were provided for loan to homes or to small hospitals. This emphasis on the care of the premature infant resulted in an improvement in the general care of the newborn. Much progress was evident also in the development of training programmes not only for physicians, but also for nurses, medical social workers, and nutritionists.

More attention was also given in 1952 to planning services for children of migrant workers. Included in

this is the study of some way of providing continuity of service for pregnant women among the group of migrant agricultural workers as they move from one section of the country to another.

Aid to Dependent Children. Aid to dependent children is an essential part of a broad social plan of public services, including education, health, welfare, and the social insurances, that the United States is progressively developing to assure its children opportunity to grow up in a setting of their own family relationships, have the economic support and services they need for health and development, receive an education that will help them to realize their capacities, and share in the life of their neighbourhood and community. The assumption underlying the programme is that when a family circle is broken or incomplete or parents are handicapped by physical or mental disability the measure most conducive to the child's welfare is the strengthening of the home against the financial impact of these lacks or losses and to give his parent or other relative a chance to gain or re-establish control over his affairs. Because the fundamental need of the child is for security through receiving care, guidance, and affection from his own family, aid to dependent children is directed toward enabling the parent, or in his absence a close relative, to ensure continuity in family relationships and to maintain full responsibility for a way of living in which the child naturally belongs. The programme is administered by state welfare agencies with the Federal Government sharing in the cost. Federal participation is governed by a formula in the Social Security Act adopted by Congress in 1935 and since amended in various ways.

In 1952 the 82nd Congress revised the provisions for federal participation in payments for public assistance programmes, including aid to dependent children, by raising the maximum amounts of individual monthly payments subject to federal participation and increasing the federal share of expenditures. The largest increase in the federal share of assistance payments occurred in aid to dependent children. Approximately one and a half million children under eighteen were aided in 1952, with a total expenditure of over 550 million dollars. Of this sum, the Federal Government provided some 53 per cent, amounting to more than 290 million dollars.

School Lunch Programme. The National School Lunch Programme is another means of promoting the health and well-being of millions of children. During the past school year more than 9 million children, about 30 per cent of all children attending school, participated in school lunch programmes. The family of the child usually pays for lunches at school, but where this is not possible, the cost is provided from other sources. The Federal Government makes surplus food stocks available for school use at almost no cost, thus reducing the over-all expense. This programme, which began in the mid-1930s, was authorized on a permanent basis under the National School Lunch Act of 1946. The Federal Congress took action in 1952 to amend the apportionment of surplus foods to Hawaii, Alaska, Puerto Rico, and the Virgin Islands and to extend the Act authorizing the programme also to Guam.

F. Education

Provision of educational opportunities for the children of the United States is a responsibility of state governments. State constitutions usually include an article specifically requiring the establishment of a system of free public schools for all children. Each state has also passed laws making school attendance compulsory for children up to at least the age of fourteen years, and in most states to the age of sixteen or even eighteen years. Free public schools are provided in every state through the twelve grades of elementary and secondary school. Many students continue their education at state universities and city colleges, at which tuition is free or very low in cost. School buses are usually provided to bring children living in isolated areas, or at a distance, to school every day. Private schools and colleges are also numerous, and parents are free to send their children to the school of their choice. Tuition charges are usual in private institutions, but many schools, especially at the college level, have endowments or special funds from which scholarships can be granted to gifted or needy students.

While the Federal Government has no authority over the conduct of local education, it assists the states and local school boards in various ways, primarily through special grants and technical information. An Office of Education, in the Federal Security Agency, co-ordinates the interest of the Federal Government in education through annual reports, bi-annual surveys of the school population, publications of monthly journals and in other ways. One of the oldest of the federal programmes is support of education in "agriculture and the mechanic arts" in state colleges and universities. These were initiated in many cases by grants of public lands which could be sold or developed for the benefit of the college, and continued through aid to agricultural experiment stations conducted in co-operation with county or state authorities. A programme with a similar purpose provides for secondary school students through federal grants for vocational education. The Federal Government also makes surplus military or other government equipment available to educational institutions at low cost, assists school districts overburdened because of sudden increase of population due to federal activities, aids in vocational rehabilitation and education of the disabled, provides educational opportunities for discharged veterans, and aids similar projects. Free schooling is provided

also at the expense of the Federal Government in certain areas overseas for American children who are dependants of Government personnel.

Within this framework, the country's educational establishment continued to grow in 1952. Enrolment in public elementary schools rose from 21,318,000 in the 1951/2 school year to 22,039,000 in 1952/3, and in public secondary schools from 5,456,000 to 6,197,000 while the number of classroom teachers in these schools increased from 956,000 to 981,000, the expenditure for such schools from 7.4 thousand million dollars to 7.8 thousand million, and the average salary of classroom teachers from $3,167 to $3,405. In addition, 2,400,000 students were enrolled in the nation's 1,889 recognized institutions of higher learning, about evenly divided between public and private institutions.

School construction continued at a record pace. Contracts awarded for the construction of educational buildings during 1952 amounted to $1,400 million for public elementary/secondary schools; $152 million for non-public elementary/secondary schools; and $248 million for colleges and universities.

Under the Servicemen's Readjustment Act of 1944, more than 2 million young men and women returned to school or college. This law expired in 1952. Under a new law, the Veterans' Readjustment Assistance Act of 1952, 47,767 veterans were enrolled in colleges during December. The 1952 law provided a direct stipend to the veteran himself to defray tuition and living costs; and education or training period one and one-half times the length of the veteran's active service; federal funds for states to establish special agencies to approve educational institutions where student veterans may study and receive the federal stipend; and opportunity for the veteran to study in foreign institutions of higher learning.

Under programmes of vocational education for adults 3,165,900 adults were enrolled in 1952 in vocational education classes sponsored by public schools, many of these in rural areas. About 3 million more adults participated in some type of classes in community colleges, evening schools, adult education centres, and college extension courses. In classes on civic and public affairs, enrolment increased 428 per cent.

Legislation relating to education was adopted by the Federal Congress for the purpose of continuing or enlarging various rights and services authorized in earlier years. A law approved on 5 March 1952 protected the interests of the Territory of Alaska in the proceeds of land reserved for educational purposes by preventing private persons from locating mining claims thereon. That law also extended the federal system of endowments and support of colleges of agriculture and mechanic arts to certain colleges in Alaska. Two laws enlarged aid to the blind, by authorizing additional funds for books and apparatus for the American Printing House for the Blind and by extending provisions for adults also to blind children. Under a new order adopted by the Federal Communications Commission, a new class of television stations—non-commercial educational television—was established, and channel assignments for educational purposes were made in 242 communities, about 12 per cent of the total 2,000 channels made available. Many educational institutions were reported also as putting on programmes over nearby commercial stations. Ten institutions televised regular courses for degree credits, and more than sixty-five school systems reported use of television in the classroom.

Teacher's Oath Laws. The United States Supreme Court drew a distinction in the interpretation of Teacher's Oath laws of New York and Oklahoma as affecting the right of due process of law.

In *Adler* v. *Board of Education*, the Supreme Court upheld the validity of a state (New York) civil service law making ineligible for employment in any public school any member of an organization advocating the overthrow of the Government by force, violence, or other unlawful means. The statute required the state authorities to promulgate a list of organizations, membership in which would be *prima facie* evidence of disqualification for employment in the public schools. The Supreme Court held that these provisions do not constitute an abridgement of the freedom of speech and assembly of teachers and do not deny them due process of law.

The majority opinion states:

"It is clear that such persons have the right under our law to assemble, speak, think and believe as they will . . . It is equally clear that they have no right to work for the state in the school system on their own terms. . . . A teacher works in a sensitive area . . . There he shapes the attitudes of young minds toward the society in which they live. In this, the state has a vital interest . . . That the school authorities have the right and the duty to screen the officials, teachers and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted."

In Wieman v. *Updegraff*,[1] the United States Supreme Court held that an Oklahoma law violated the due process clause of the Fourteenth Amendment. The Oklahoma statute required each state officer and employee, as a condition of employment, to take an oath that he is not and has not been for the preceding five years a member of any organization listed by the Attorney-General of the United States as "Communist" or "subversive". The statute was construed to exclude persons from state employment solely on the basis of membership in such organizations,

[1] 342 U.S. 485.

regardless of their knowledge concerning the activities and purposes of the organization to which they belonged. The Supreme Court held that the statute equated innocent with knowing association. Justice Clark, differentiating between the Wieman and Adler cases, stated:

". . . under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly . . . Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process." [1]

Equal Opportunity. During 1952 a number of cases involving the constitutionality under the Federal Constitution of the practice of segregation of public school pupils on the basis of race were argued before the Supreme Court of the United States. The court propounded issues for additional briefing and argument and has retained jurisdiction of these cases. Other cases in state courts involved various phases of the general constitutional guarantee of equal opportunity. In Washington, D.C., an action was brought to compel the admission of Negro children to the Columbia Institution for the Deaf. The court held that "it is the duty of the District to provide equal educational facilities within the District for deaf children of both races, if it provides for any therein".[2] In Delaware an action was brought to enjoin the defendants from denying admission of Negro children to schools for white children. The Supreme Court of Delaware ruled that the state might operate separate schools if the facilities were equal, but, in this case, facilities provided were not equal, and it ordered Negro children admitted to white schools.[3]

G. Cultural Opportunities

Federal, state, and local governments in all parts of the United States are active in promoting opportunities for public enjoyment of the arts and other cultural and scientific resources. The guarantees of freedom of speech, press, assembly, and other rights operate to assure artists and writers freedom to express their convictions without limitation or compulsion. Public libraries are found in all large towns and cities and often in small communities, and rural areas are frequently served by bookmobiles or other travelling collections of books. Art galleries and scientific museums are likewise found in all larger communities maintained frequently by public funds. The National Gallery of Art and the Smithsonian Institution in Washington and the Metropolitan Museum of Art in New York are well-known examples of such institutions. The National Park Service of the Federal Government is the custodian of many historical buildings, including such fine examples of American architecture as Independence Hall and the Customs House in Philadelphia.

Exchange of Persons and Cultural Materials. The Federal Government is active in promoting cultural interchange. The Smith-Mundt Act of 1948 (U.S. Information and Educational Exchange Act) provides for co-operation with other nations in the interchange of persons, knowledge, and skills; rendering of technical and other services; and the interchange of developments in the field of education, the arts, and sciences. The Fulbright Act of 1946 provides for the financing of exchanges with certain foreign countries for study, teaching, lecturing, or advanced research out of the sale abroad of war-surplus equipment.

This Act was amended by the Mutual Security Act of 1952 to broaden the source of foreign currency funds which may be used for educational exchange purposes. Congress has authorized the use of credits accruing to the United States under the Finnish War Debt Indemnity Fund, Iranian Trust Fund, and the India Wheat Bill for educational exchanges with these countries. Other legislation authorized special exchange programmes with Germany and Austria, annual exchanges of graduate students between Latin American countries and the United States under the Buenos Aires Convention, and assistance to needy Chinese and Korean students and scholars stranded in the United States.

Private groups co-operated in providing cultural materials for shipment overseas, in stimulating exchanges of students and other groups, and arranging performances overseas by symphony orchestras, ballet, and other artistic groups. The Library of Congress exchanges publications with institutions in foreign countries, with the object of providing individuals abroad with materials presenting a cross-section of American life, the history and government of the United States, and its progress in science and technology, and supplying the people of the United States with information on the education, science, and technology of other countries throughout the world.

Typical of the numerous exchange agreements with other countries for financing an educational exchange programme under the Fulbright Act is the agreement with Germany signed on 18 July 1952. "Desiring to promote further mutual understanding between the peoples of the United States of America and the Federal Republic of Germany by a wider exchange of knowledge and professional talents through educational contracts", these Governments entered an agreement for the establishment of the United States Educational Commission in the Federal Republic of Germany "to facilitate the administration of an educational programme to be financed by funds made

[1] 344 U.S. 183.

[2] *Miller v. Board of Education of District of Columbia*, 106 F. Supp. 988 (1952).

[3] *Gebhart v. Belton*, 91A, 2d 137 (1952).

available to the Commission by the Government of the United States" and pledged the Governments of the United States and the Federal Republic to "make every effort to facilitate the exchange of persons programmes authorized in this agreement".

Under international exchange programmes, some 1,600 Americans were sent abroad during 1952, and more than 5,600 persons from other countries were brought to the United States. These exchanges included journalists, writers, labour leaders, government officials, artists, scientists, musicians, educators, and students.

Copyrights. The Registrar of Copyrights, who is located in the Library of Congress, reported that in the fiscal year ending 30 June 1952 separate issues of periodicals and newspapers comprised the largest number of copyright registrations, totalling 56,509. Registrations of musical compositions were in second place, numbering 51,538. Books, pamphlets, and similar publications, numbering 49,403, were also registered.

The Registrar of Copyrights estimated the number of articles deposited in the Copyright Office, not all of which were registered in 1952, as 325,024; this number included more than 86,000 books printed in the United States, 6,282 books printed abroad in a foreign language, and 2,027 books in English registered for *ad interim* copyright.

H. Benefits of Scientific Advance

Scientific research and experimentation has been actively promoted by federal and state governments since their inception, and responsibility for such work is defined in the federal and in many state constitutions. Experimental work in the field of agriculture was undertaken early in the history of the Republic, and has developed through extensive co-operation between the Federal Government and state colleges and state and county agricultural agencies. The Bureau of Standards, located in the Federal Department of Commerce in Washington, tests materials in use by the Government and on the request of official agencies. The United States Public Health Service, the Children's Bureau, and similar agencies of Government work constantly on projects to control and eradicate cancer, infantile paralysis, smallpox, tuberculosis, and other diseases. Extensive research is carried on also through the National Science Foundation, and by many other departments and agencies of the federal and state governments. Such research is facilitated through contracts with private business corporations and with colleges and universities.

An illustration of the latest aspects of scientific advance reported in 1952 was the shipment of radio isotopes to private institutions for use in medical research. These isotopes were prepared by the Federal Atomic Energy Commission at its plant in Oak Ridge, Tennessee. By the end of 1952, more than 1,100 institutions in the United States had been authorized to receive such isotopes, and more than 32,000 shipments had been made to them. A smaller number of institutions were working with stable isotopes produced by the Commission. The distribution programme was begun in 1948 to stimulate exploration of using such materials against cancer. Since 1948, isotopes have been used for experimentation also in many other fields.

Programmes of technical co-operation with other governments were authorized in the Act for International Development of 1950. This law provided for non-governmental as well as governmental activities and authorized bilateral agreements between the United States and other governments requesting aid under the technical co-operation programme. In 1952, in addition to basic programmes in the fields of health, sanitation, food supply, and education, activities included technical assistance in developing natural resources, housing, transportation and communications, industrial and managerial techniques, public administration, and other activities important to economic development. In response to requests from other governments, over 1,200 technicians from the United States have helped set up and operate projects until such time as nationals of the various countries were able to assume their direction. A number of United States experts were serving also in projects sponsored by the United Nations and the specialized agencies.

URUGUAY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. On 20 March 1952, the National Council of Government issued a decree providing for prompt measures of security to deal with the situation resulting from a strike of employees of the Ministry of Public Health. The decree, which received the approval of the General Assembly of Uruguay on 22 March 1952, was based on article 168, paragraph (17), of the Constitution of 26 October 1951[2] and provided for:

The taking over of all public health establishments and the use of the public forces to ensure the continuity of services and to enable employees not participating in the strike to continue their work unharmed and undisturbed, in accordance with the orders and instructions issued by the competent organs of the executive; the prohibition of public meetings of the employees who stopped work, and the closing of the places where they hold or attempt to hold meetings; the prohibition of any form of public propaganda, whether spoken or written, through any medium, including notices of meetings or announcements, designed to sustain or encourage the paralysis of the public services; and the suspension without pay of all public health employees who leave their posts and do not return to work within twenty-four hours in accordance with the relevant statutes and regulations.

The decree was repealed on 1 April 1952.

2. On 11 September 1952 the National Council of Government issued a decree providing for prompt measures of security to deal with the situation resulting from strikes or stoppages in public services. The decree, which like that of 20 March 1952 mentioned above, received the approval of the General Assembly and was based on article 168, paragraph (17), of the Constitution of 26 October 1951, provided for:

(1) The prohibition of any propaganda, whether spoken or written, relating to the paralysing of public services or to stoppages or strikes and apt, directly or indirectly, to continue or aggravate the situation dealt with by the decree; and the prohibition of all news and announcements and notices of meetings to the same effect. Infringements of this prohibition may result in the seizure or closing, as the case may be, of the publicity media or organs utilized.

(2) The prohibition of meetings which, in the opinion of the authorities, will presumably produce the results referred to in the preceding paragraph, and the closing of the places where such meetings are held or where an attempt is made to hold them.

(3) The application, as required, of article 168, paragraph (17), sub-paragraph 2, of the Constitution of the Republic and, where relevant, of article 5 of Act No. 9,604, of 13 October 1936.

(4) The empowering of the Ministers of the Interior and National Defence, subject to the consent of the National Council of Government, to carry out searches, enter into contracts and spend such sums from the general revenue account as may be required while the situation referred to in the decree subsists.

This decree was repealed by a decree issued by the National Council of Government on 30 September 1952.

3. A decree of 19 February 1952 facilitated the re-entry into the country of a certain category of aliens holding valid passports.

Under previous provisions, aliens resident in Uruguay who had left the country could, within three years after their departure, re-enter under a re-entry permit; for longer absences, the general provisions for permanent admission to the country were applied. The new Act makes an exception for aliens who are "legal citizens".[3] These may re-enter the country at any time, subject to no other formality than the possession of a valid passport.

4. By decree No. 20,796 of the Ministry of National Defence, dated 28 March 1952, licences were issued to a number of broadcasting stations. These licences may be revoked at any time without compensation to the licensees and are subject to the following conditions set forth in article 2 of the decree:

"*Art.* 2. The broadcasting stations shall, in addition to the provisions of the existing 'Regulations concerning the Installation and Operation of Radio Stations', comply with the following conditions: the service provided by broadcasting stations shall be regarded as a public service. Broadcasts

[1] This note is based on texts, summaries and information received through the courtesy of Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo.

[2] See *Yearbook on Human Rights for 1951*, p. 388.

[3] On "legal citizenship" as distinct from "natural citizenship", see articles 75 and 76 of the Constitution of 26 October 1951 in *Yearbook on Human Rights for 1951*, p. 386.

shall be essentially cultural, educational, scientific and artistic in character, and even in recreational broadcasts the cultural aspect shall not be disregarded. Private broadcasting stations whose operations are sustained by commercial advertising may not transmit more than 150 words between two items of a programme. The Broadcasting Service may, through the Radio Communications Services, use up to 15 minutes of the programme time of the broadcasting stations for broadcasts in the public interest.

5. A decree issued on 26 May 1952 granted tariff exemptions to certain enterprises engaged in the reception and transmission of news.

6. A decree was issued on 25 July 1952 to regulate the operation of mobile radio transmitters.

7. The following Acts and decrees relating to public health were issued:

(*a*) Decree of 7 January 1952 concerning protection against rabies;

(*b*) Ordinance of the Ministry of Public Health of 13 February 1952 establishing a co-ordinated plan for combating congenital syphilis in infants;

(*c*) Act No. 11,828, of 25 June 1952, granting broader powers to the Honorary Commission for the Administration of the Permanent National Fund [Comisión Honoraria Administradora del Fondo Nacional Permanente] in connexion with the anti-tuberculosis campaign. This commission is authorized:

(A) To reconstruct and repair dwellings to be used for the treatment of tuberculosis patients;

(B) To acquire and equip mobile dispensaries for use in carrying out more intensive measures throughout the country with regard to publicity, prophylaxis, vaccination and investigation for the purpose of preventing tuberculosis;

(C) To build and equip hospitals, sanatoria and other facilities for the prevention and treatment of tuberculosis in accordance with plans prepared in consultation with the Ministry of Public Health, which shall exercise technical and administrative supervision over such establishments upon their completion;

(D) To recruit the staff necessary for the purposes set forth in paragraphs (A) and (B).

(*d*) Decree of 30 July 1952 concerning measures to facilitate the prevention of smallpox;

(*e*) Decree of 13 August 1952 concerning the operation of the Department of Sex Hygiene and the prevention of venereal disease.

8. The following Acts and decrees relating to social security and social welfare were issued:

(*a*) Decree of 9 June 1952 raising the minimum amount of family allowances.

The minimum unit of family allowance was fixed at 8.50 pesos throughout the republic as a "means of equalizing the assistance furnished by the system of family allowances to all minors coming within the provisions of the law" and as an expression of "the primary duty of the State to foster the support of the family".

(*b*) Act No. 11,909 of 19 December 1952 authorizing changes in the computation of retirement pensions of civil servants wrongfully dismissed.

Any civil servant whose dismissal has been declared illegal under the provisions of Act No. 10,650, of 14 September 1945, may claim recognition for pension purposes of all or part of the period from the date of his dismissal to the date on which the said Act was promulgated or to the date, if earlier, on which he returns to a class of employment coming under the pension laws. In like manner a claim may be lodged by any civil servant referred to in article 15 of Act No. 10,650 (which provided means of recourse for persons wrongfully dismissed) for the period between his dismissal and the lawful expiry of the term of office to which he was elected or appointed.

The amount of pension contributions and allowances due shall be computed on the basis of the salary received by the civil servant at the time of his dismissal, plus such scheduled increments as have accrued to his post during the period for which recognition has been obtained.

Persons succeeding to the rights of a civil servant who would have been entitled to make a claim as aforesaid may also avail themselves of the provisions of the law.

(*c*) Decree providing for regulations under Act No. 11,781, of 20 November 1951, concerning the protection of persons suffering from heart disease.

Any person wishing to avail himself of the protection provided by this Act must file a written application and undergo a medical examination by a specialist. He shall not be required by his employer to do work differing in kind from or exceeding in duration that fixed by the specialist. An inspector designated in the employment contract shall ascertain whether or not this obligation is complied with.

NOTE ON THE PRINCIPAL CHANGES INTRODUCED BY THE URUGUAYAN CONSTITUTION OF 1952 WITH RESPECT TO HUMAN RIGHTS[1]

1. *Political Origin of the Constitutional Revision*

The revision of the 1942 Constitution originated in a political agreement between the *Partido Colorado "Batllismo"* and the *Partido Nacional* and was resolutely advocated by Mr. Andrés Martínez Trueba, who had been elected President of the Republic in the general election of 26 November 1950 and held that office from 1 March 1951.

The basic principles of the revision were laid down in agreements signed by representatives of the negotiating political groups on 31 July and 16 August 1951.

2. *Legal Procedure of the Revision*

The revision was carried out in accordance with the procedure in respect of "constitutional laws" laid down in section D of article 281 of the 1942 Constitution.

The original draft, drawn up by a committee composed of representatives appointed by the leaders of the Partido Colorado "Batllismo" and the Partido Nacional, was submitted to the Chamber of Representatives on 28 August 1951 with the signatures of the deputies affiliated with those two political parties.

The proposal was then submitted for study to a special committee of the Chamber, composed of twenty-five members. The committee made some amendments in the original text and, by a majority vote, recommended the adoption of the draft as thus amended.

Discussion of the proposal began in the Chamber of Representatives on 25 September 1951 and, after an exhaustive debate, ended on 10 October of the same year. There were eighty-five votes in favour of it and only fourteen against.

On submission to the Senate, the draft was considered by a Special Committee and after a brief plenary discussion was approved by the Senate on 26 October 1951 with slight amendments by a vote of twenty-six to four.

The Chamber of Representatives endorsed the amendments by seventy-four votes to six, and thus the constitutional law was finally adopted on the same day, 26 October 1951.

The text was officially published in the *Diario Oficial* No. 13,505, of 27 November 1951, and, to rectify several typographical errors, was reprinted in No. 13,511, of 5 December 1951. A plebiscite was held on 16 December 1951 in which 232,076 citizens voted in favour and 197,684 against.

Having thus received an absolute majority of the votes cast, as required by the Constitution for ratification, the law was promulgated by the President of the General Assembly of Uruguay on 25 January 1952.

In accordance with the provisions of the abovementioned section D of article 281 of the 1942 Constitution, the law entered into force on that same date.

3. *The Constitutional Revision and "Human Rights"*

The constitutional revision of 1952 was designed mainly to reorganize the structure of governmental powers and organs and to modify the relations between them. In addition, however, it affected certain aspects of the situation with regard to "human rights", as may be appreciated from the following brief summary of the principal changes in that respect.

4. *Modification of the Principle whereby State Agencies are held liable for Injury caused to Persons under their Jurisdiction*

Article 24 of the 1942 Constitution, which was the same as the corresponding article of the 1934 Constitution, established the direct civil liability of "all officials who, in the exercise of the public function which may have been entrusted to them, and with neglect of the duties that the office imposes on them, cause injury to a third party" and named as subsidiary respondents "the State, municipalities, autonomous bodies or decentralized services, or any public agency employing said official". The article added that "the said agencies shall constitute a necessary party in the suits instituted for this purpose, and shall have the right to take action against the official in the event of his being found guilty".

This arrangement gave rise in practice to serious difficulties which lessened the effectiveness of the full protection which had been sought for persons under the jurisdiction of public officials.

Thus, the contemplated revision of the Constitution provided an opportunity for making appropriate changes.

The new arrangement departs substantially from the former one. The civil liability of public agencies has now become direct in all cases. The revised

[1]Note prepared by Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo. The Constitution of Uruguay was adopted by the General Assembly (Senate and Chamber of Representatives assembled) of the Republic of Uruguay on 26 October 1951 and subsequently ratified by a plebiscite on 16 December 1951. It is published in the *Diario Oficial* of 7 March 1952. The articles on human rights of this Constitution are reproduced in *Yearbook on Human Rights for 1951*, pp. 382-388.

article 24 states: "The State, the departmental governments, the autonomous entities, the decentralized services, and in general any agency of the State, shall be civilly liable for injury caused to third parties, in the performance of public services, entrusted to their action or direction." The liability of civil servants is thus in no case direct but becomes purely contingent. Article 25, which supplements article 24, provides that "whenever the injury has been caused by their officials, in the performance of their duties or by reason of such performance, in the event they have been guilty of gross negligence or fraud, the corresponding public agency may reclaim from them whatever has been paid as compensation".

The changes made and the manner in which they were carried out are not, strictly speaking, free from faults, but the fact remains that the 1952 provisions have improved the position of persons under the jurisdiction of State agencies and have increased the effectiveness of the protection which they previously enjoyed.

5. *Extension of the "Civil-service Status"*

The term "civil-service status" refers, in public law, to the special legal position of the civil servant.

Every kind of status has both a positive and a negative side—i.e., it implies both rights and obligations for the person possessing it. Thus, while the establishment of a civil-service status achieves the fundamental purpose of satisfying the direct and immediate interests of the public services, it also generally benefits the civil servant by providing him with powers and guarantees which he would otherwise lack. Moreover, despite the fact that the protective value of civil-service status always depends in the final analysis on its specific formulation in each particular case, the mere extension of its scope of application may normally be regarded as the extension of a system of protection for civil servants.

The 1952 Constitution contains no clear and precise definition of the principles to be followed by those responsible for drawing up a civil-service status. Although some progress has been made, the appropriate provisions in this respect are few in number and inadequate. However, the latitude which the revised text allows for in the system entirely dispels the doubts on the subject raised by previous constitutions and thus establishes a favourable assertion of the civil servant's right to protection in the discharge of his office. Such a right is particularly important in a State such as Uruguay, which for various reasons has developed an extraordinarily large bureaucracy.

6. *Establishment of the Rights of Civil Servants to an "Administrative Career"*

Article 60 of the present Constitution has established a "career service" for officials covered by the budget of the central administration.

This arrangement which, in its essential elements, extends to civil servants employed by departmental governments (article 62), autonomous entities (articles 63 and 206), the legislative power (article 107) and the judicial power (article 239, paragraph 7), implies constitutional recognition of the right of civil servants to promotion throughout the various administrative levels.

Officials who are "political in character" or who have duties of "personal trust" are precluded from the career service. In order, however, to avoid the abuses which were frequent under the statutory provisions which formerly embodied a similar principle, article 60 has provided that no post may be placed in the above categories except "by an Act passed by an absolute majority of the full membership of each Chamber". This represents the institution of a strict method of classification which in itself will presumably prevent any disguised or indirect violation of the right which the Constitution has sought to guarantee.

In the case of civil servants employed by the departmental governments, the same purpose is served by the requirement that a quorum of three-fifths of the membership of the Departmental Board shall be necessary to establish positions within those departmental governments that are "political" or of "personal trust".

7. *The so-called "Right of Collaboration" of Civil Servants and the Possibility of Establishing Representative Personnel Committees within the Autonomous Entities*

Article 65 of the 1952 Constitution, which is based on experience gained in the light of regulations applied by various state agencies, provides that "the law may authorize the organization of representative personnel committees within the autonomous entities for purposes of collaboration with their directors in the enforcement of the regulations, study of budgetary requirements, organization of the services, labour regulations and the application of disciplinary measures".

Although apparently possessing consultative powers only, these committees, through the specifically prescribed representative character of their membership and the matters with which they are competent to deal, constitute an important guarantee for the personnel they serve.

Moreover, the participation of staff representatives in such committees implies constitutional recognition, limited to a particular class of civil servants (those employed by the autonomous entities) and subject to a particular set of requirements or, in other words, legal approval, of the so-called "right of collaboration" in the management of affairs, which for some time has been applied with varying degrees of success in the management of private undertakings and is now being tried in public organizations.

Representative committees of this type have been set up by two Acts—viz., No. 11,859, of 19 September 1952, establishing the Autonomous State Railways Administration, and No. 11,907, of 19 December 1952, establishing the State Administration for Sanitary Services.

The short period during which these provisions have been in force makes it impossible at this time to assess the practical results of the aforementioned constitutional innovation.

8. *Restrictions on the Right of Association of Civil Servants*

The 1934 and 1942 Constitutions proclaimed the right of association in very broad terms which implied recognition of the legality of associations of civil servants.

Article 38 of both those constitutions stated that "all persons have the right to associate, whatever may be the object that they pursue . . .".

The only restriction upon that right, and consequently the only limitation on the right of association of civil servants, was contained in the words "provided they do not form an association declared illegal by law".

By 1952, however, the situation had changed. The new Constitution has defined a particular type of unlawful association and has thus substantially affected the latitude allowed to civil servants in respect of the right of association.

Henceforth, as provided in article 58 of the revised Constitution, "they may not organize groups for propaganda purposes by using the names of public agencies or any connexion their position may bear to membership in such organizations".

The principal justification for this prohibition is the need to safeguard the moral and political independence of civil servants.

The report of the special committee of the Chamber of Representatives advocating such a solution stated that "the practice, which has now become general of designating political associations of civil servants by the name of the government department to which they belong must cease, because it is apt to constitute a form of pressure or coercion".

9. *The Right of Civil Servants to Strike*

As early as 1934 the Uruguayan Constitution formally recognized the right to strike, which even long before then had been regarded as implicitly recognized by the *lex suprema.*

The text of the provision containing this express constitutional recognition of the right to strike was an original creation without precedent in comparative law.

Originality, however, is not the same as achievement.

The formula adopted—viz., "the strike is declared to be a right of trade unions. Regulations shall be made governing its exercise and effect, on that basis"—proved to be politically expedient at the time of its adoption because of its very ambiguity which laid the groundwork for divergent and even conflicting interpretations and represented an apparent, although not real, reconciliation of most of the frequently contradictory trends that were manifested, first in the relevant sub-committee, later in the Constitutional Committee, and finally in the Third National Constituent Convention. However, what appeared originally to be expedient proved to be a serious disadvantage when the time came to apply these provisions and clarify their purport.

The obscurity of the text, which was aggravated by the lack of agreement among its sponsors regarding its real meaning, thus gave rise to the most divergent opinions concerning its true sense and scope.

The revision of 1942 did not change the form of article 53 of the 1934 Constitution. Consequently, during the time that the 1942 Constitution was in force, the arguments concerning interpretation continued as they had under the 1934 Constitution (Justino Jiménez de Aréchaga, "*La Constitución Nacional*" (The National Constitution), vol. II, p. 142; De Ferrari, "La huelga en el derecho uruguayo" (The strike in Uruguayan law), *Revista del Trabajo*, Buenos Aires, 1944; Couture y Pla Rodriguez, *La huelga en el derecho positivo uruguayo* (The strike in Uruguayan positive law); Salvagno Campos, "La huelga" (The strike), *Revista del Instituto de Jubitaciones*, fifth year, Montevideo, 1939; Méndez, Aparicio, "*Estudios de derecho Administrativo*" (Studies in administrative law).

Owing, however, to the great increase in strikes by civil servants and persons employed by the public services, the constitutionality of which was hotly debated, particularly after the adoption of the above-mentioned provision, the obscurities of the text became more important because they supplied both sides with apparently sound legal arguments and thus rendered difficult any solution which would restore normal conditions and allow the proper functioning of the public services which had been totally or partially interrupted.

The 1952 revision might have provided a favourable opportunity to amend the disputed article so as to dispel once and for all the doubts raised by that article with regard to how far recognition of the right to strike, particularly in the case of civil servants, extended.

That, however, did not happen. The constitutional bill submitted to Parliament merely repeated the exact terms of article 56 of the 1934 and 1942 Constitutions. For political reasons, the legislature deliber-

ately avoided taking a stand in the matter and chose instead to let the situation remain generally as it had been.

The survival of the original text of the article clearly reveals this purpose, but is by no means sufficient in itself to prove that such a purpose has in fact been achieved.

Like any provision that is part of a regulatory code, the above-mentioned article 56 cannot be interpreted independently, but must be examined with due reference to, and in harmony with, the context of the Constitution.

In the present case, the application of this principle of interpretation leads us from the law as established (*jus conditum*) to an interpretation which, while contrary to the announced intention of the constituent body, is unmistakable if article 56 is linked, as it should be, with the last paragraph of the recently created article 65. This paragraph provides that "in public services administered directly or by concession holders, the law may provide for the formation of competent organs to hear disputes between authorities of the services and their employees; and to consider methods and procedures to be used by the public authority to maintain continuity of service".

Actually, the specific reference to "disputes"—i.e., disagreements or discord between the "authorities of the services" that are "administered directly" or (and this is even more remarkable) furnished by "concession holders", on the one hand, and the generically defined "employees" on the other—when taken together with the envisaged possibility (implied in the allusion to "methods and procedures to be used by the public authority to maintain continuity of service") that such "disputes", which have all the markings of real "collective disputes", might endanger "continuity of service" is absolute evidence that in the last part of article 65 the present Constitution has contemplated the phenomenon of strikes by civil servants. In so doing, the Constitution has neither prohibited such strikes nor *in limine* declared them illegal, but has merely given the legislature the power to point out the "methods and procedures" the public authority might use for preventing the interruption of public services by such a strike or, to establish organs authorized to forestall and resolve the differences that might provoke the strike. This fact makes it equally indisputable that the 1952 Constitution presupposes the legality of strikes by civil servants or, in other words, that civil servants also have the right to strike as provided in article 56 of the Constitution. (For a more thorough treatment of the problem see the author's study "*Consideraciones sobre algunos aspectos del derecho de huelga en la nueva Constitución uruguaya*" (A consideration of various aspects of the right to strike as provided in the Uruguayan Constitution) published in the periodical *Derecho Laboral*, vol. VIII, No. 44, Montevideo, 1951).

This opinion, resting basically on the text of the Constitution and divorced, as it should be, from any considerations of merit or expediency, is shared by Professors Jiménez de Aréchaga and De Ferrari in learned articles on the subject (see, respectively: "La Constitución de 1952" (The 1952 Constitution), vol. II, pp. 54ff., Montevideo, 1952; and "La huelga de los trabajadores del Estado" (Strikes by State Employees), in the periodical *Derecho Laboral*, vol. IX, No. 51, Montevideo, January–March 1953).

On the other hand, the Uruguayan Penal Code continues to consider the "collective abandonment of public duties" in the nature of an offence and accordingly punishes by "three to eighteen months imprisonment . . . public officials who, to the number of not less than five, collectively abandon their duties to the detriment of the continuity or regularity thereof" (art. 165, Acts No. 9,155 and 9,435). That provision, which has formed the basis of many indictments, has not yet been declared unconstitutional by the Supreme Court of Justice in any judgement given in the exercise of its power to review the constitutionality of laws, although it must be observed that the situations which might in fact have given rise to a pronouncement on the matter by that body were in all cases dealt with by the device of immediately passing an amnesty law. An eloquent example of that policy may be seen in Act No. 11,792, of 16 February 1952, which was passed in connexion with a strike by public school teachers for higher salaries and provided in article 1 that "an amnesty is granted to those persons who have become guilty of the offence described in article 165 of the Penal Code by reason of having collectively abandoned duties assigned to them by the National Council of Primary Education and Teacher Training and the Children's Council".

10. *Change in the Requirements applicable to Foreigners for acquiring Legal Citizenship or being granted the Right to Suffrage without the Necessity of acquiring Citizenship*

Article 66 of the 1942 Constitution granted the right to legal citizenship to "foreign . . . men and women of good conduct who possess some capital or property in the country, or are engaged in some profession, craft or industry" and show evidence of having resided habitually in the Republic for a minimum period.

The said period was three or five years, depending respectively on whether the applicant was married to a person resident in the country or was either not married or married to a person resident outside the country.

The difference in the residence requirements was based upon the presumption that the strength of the bond to the Republic varied in the two cases. However, the ambiguity of the formula employed

to draw a distinction between them rendered rather difficult the exact classification of some situations encountered in practice. Being aware of this, the 1951 Constituent Convention sought to overcome the difficulties by substituting the expressions "having families in the republic" (article 75, paragraph (A)) and "without families in the republic" (article 75, paragraph (B)).

The revised text failed of its object and is far from being clear and unambiguous. The task of discovering its meaning has not been greatly facilitated even by a passage from the report of the special Committee on Constitutional Reform of the Chamber of Representatives—a passage which is necessarily subject to all the reservations inherent in the interpretation of a constitution which was submitted to a plebiscite only in so far as its literal meaning was concerned.

The passage in question reads: "Having a family in the country is considered a much greater reason for settling in the country than is the mere fact of being married. A person who has in the republic a spouse, child, parent, brother or sister dependent upon him feels a responsibility as head of a family and has sufficient reasons to be interested in all new problems and to be inclined to settle permanently in the country."

It is precisely in the light of the statements in that report that the Electoral Court, in making regulations concerning the evidence to be required of persons seeking to acquire legal citizenship under article 75, paragraph (A), laid down that the concept "having a family in the republic" implied that the applicant had "in the republic a spouse, child, parent, brother or sister dependent upon him".

In a decision dated 21 May 1952, the same body declared: "The words 'dependent upon him' refer only to the parent, brother or sister whom the person applying for legal citizenship seeks to represent as constituting a family in the republic; he must prove that he has in the country a spouse or child or a dependent parent, brother or sister. Proof consists of three factors: (*a*) relationship; (*b*) residence of the relative in the country; and (*c*) in the case of a parent, brother or sister, dependency upon the applicant."

The same considerations apply to the replacement of the term "married" by the term "having a family in the republic" in the list of conditions which, under article 78, entitle a foreigner to enjoy the unusual status of voting non-citizen.

11. *Right of Foreigners who are not Citizens to Certain Kinds of Public Employment*

Under the 1942 Constitution, citizenship or the exercise of the rights appertaining thereto was an indispensable condition for access to a public post. "Any citizen," said article 69 of that document, "may hold public employment. Legal citizens may not be appointed until three years after obtaining citizenship papers."

The 1952 Constitution has retained that provision. However, as was stated in the report accompanying the draft revision of the Constitution, an exception to this provision was made "for the convenience of the teaching profession as advocated by the University of the Republic". Thus, henceforth and as provided in the last paragraph of article 76, "citizenship shall not be required for a position as professor in institutions of higher learning".

This partial extinction of a privilege hitherto enjoyed only by citizens implies the recognition of a right which is bound to be particularly favourable to foreigners who are not citizens.

12. *Additional Methods of instituting Unconstitutionality Proceedings*

The Constitution of 1942, reproducing the relevant provisions of that of 1934, expressly conferred upon the Supreme Court of Justice the power of juridical review of the constitutionality of laws (articles 229 to 232).

However, that power, which could be exercised "for reasons of form or substance" and implied the possibility of cancelling the application of the unconstitutional provisions in the specific case with which the court's judgement was concerned, could be invoked only by an "interested party" in the form of a plea of exception in a contested suit, with the result that the power of review was unduly restricted in scope and effectiveness.

The sponsors of the 1952 revision took note of these defects and attempted to correct them by providing additional means for raising the question of unconstitutionality and specifically by permitting the bringing of an original action directly before the Supreme Court of Justice and by granting the right to raise the question as a plea of exception in "any judicial proceeding".

Article 258 now specifically provides that:

"Any person who considers that his direct, personal and legitimate interest has been prejudiced may apply:

(1) By way of an original action, which must be brought before the Supreme Court of Justice;

(2) By way of a plea of exception, which may be made in any judicial proceeding,

for a declaration of the unconstitutionality of a law and the inapplicability of the provisions affected thereby."

This reform, by helping to strengthen the principle of legality, has most certainly resulted in a considerable expansion of "human rights" guarantees.

Similar results can also be expected from the extension of this power of review to what is described in the Constitution, somewhat inaccurately, as "decrees of the Departmental Governments which have the force of law within their jurisdictions" (article 260) and from the provision enabling the Tribunal for Administrative Disputes [Tribunal de la Contenciose-Administrative], on an equal footing with judicial courts and judges, to apply of its own motion to the Supreme Court of Justice for a "declaration of the unconstitutionality of a law and its inapplicability, before rendering a decision" in a matter within its competence (article 258, *in fine*).

13. *Introduction of Constitutional Provisions concerning "Administrative Appeals"*

The possibility of appeal from the administrative acts of public authorities constitutes a guarantee of legality and justice both for the State and for the persons under its jurisdiction. That is perhaps the reason why the framers of the 1952 Constitution were not satisfied with providing in broad terms for such appeals and with laying down the rule that an action for nullity cannot be brought before the Tribunal for Administrative Disputes until all such administrative remedies have been exhausted, but preferred to chart a new course as regards both Uruguayan and comparative law and to provide in considerable detail in the text of the Constitution itself for the establishment and organization of a veritable system of "administrative appeals" applicable to the administrative acts of all organs of the State (articles 317 to 319).

The criterion adopted was prejudicial and functionally wrong. "Administrative appeals", owing to the complex and changing nature of the situations to which they apply do not lend themselves to constitutional regulation, especially the rigid and detailed regulation provided for in the present Constitution.

Thus, the announced intention of reducing these remedies to concrete constitutional terms has not, as was desired, facilitated the strengthening and development of the principles of legality and justice in administrative practice but has in fact tended to become a source of difficulty and confusion.

14. *Establishment by the Constitution of a Tribunal for Administrative Disputes*

A wholesome respect for "human rights" and an effective application of the principle of legality, both of which are part of the very substance of so-called "States based on law", require that administrative acts should conform strictly with the Constitution and with laws and regulations.

In order to meet that need, the framers of the 1934 Constitution assigned to the legislature the task of setting up a Tribunal for Administrative Disputes and enunciated basic principles for determining litigation arising from administrative actions (section XVII).

The rapporteur of the Constitutional Committee of the Third National Constituent Convention, referring to this Tribunal, said "by this draft we are establishing within the Administration a Tribunal specially entrusted with the supervision of legality with respect to acts not only of the central administration, but also of individual agencies, the decentralized services and even the municipalities".

The instructions of the Constituent Convention were not, however, carried out by the legislature, either then or in 1942 when they were repeated in the same terms, with the result that the practical realization of a reform which had given rise to so much hope and anticipation was considerably delayed.

For that reason, the sponsors of the 1952 revision, in their desire to correct the defective system then existing, chose to eliminate the intermediate stage of legislative action by establishing the Tribunal for Administrative Disputes directly by the Constitution.

Article 307 of the new Constitution specifically provides that "there shall be a Tribunal for Administrative Disputes, which shall consist of five members".

The establishment of that body directly by the Constitution prevented any possible delay in its inauguration and constitutes an improvement over the arrangements that existed heretofore.

This Tribunal, though limited in that aspect of its jurisdiction with which this note is concerned—viz. nullity proceedings (article 309 and 310) and redress proceedings (article 312)—has in fact ceased to be merely a potentiality and has become a living institution with all the benefits naturally inherent therein for safeguarding the rights of those under the jurisdiction of the State and for subjecting administrative acts to judicial review.

It is regrettable, however, that the obscurity and inadequacy of many of the provisions of section XVII of the Constitution, dealing with the institution and conduct of such contentious proceedings, will continue to prevent this significant reform from being completely successful.

16. *Conclusion*

The history of "human rights" in Uruguay has been a history of the growing firmness and strength of those rights.

The Constitutional revision of 1952, in spite of its technical shortcomings, does not go counter to that course of constant progress.

Although much has already been achieved in this regard by this small, young Republic, the firm democratic consciousness of its people still aspires to much higher goals.

VENEZUELA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS

Decree No. 376, of 14 March 1952, established the Technical Council on Social Security. Extracts from this decree are published in this *Yearbook*.

On 10 December 1952, the Minister of Labour approved the regulation adopted by the Technical Council on Social Security. The text of the regulation is published in *Gaceta Oficial* No. 23,951, of 10 October 1952.

On 3 March 1952, the Minister of Justice approved the regulation adopted by the Commission for the Prevention of Delinquency. The text of this regulation is published in *Gaceta Oficial* No. 23,801, of 3 April 1952.

Decree No. 377, of 14 March 1952, provides for the organization of the Commission for Indigenous Affairs. Extracts from this decree are published in this *Yearbook*.

On 16 May 1952, the Government Junta established, by decree No. 44, the Prisoners' and Discharged Prisoners' Assistance Board. This decree is published in *Gaceta Oficial* No. 23,838, of 22 May 1952. The Board shall combat the causes of delinquency; it shall secure aid, as necessary, from social welfare institutions for persons who have been directly or indirectly involved in a crime; it shall collaborate with the directors of penal institutions for the re-education and social rehabilitation of prisoners, and shall request the assistance of public institutions and private individuals in carrying out its work.

On 25 July 1950, the Government Junta issued decree No. 430, published in *Gaceta Oficial* No. 23,894, of 29 July 1952. This decree grants to members of social insurance institutions of any other American country, such medical aid as is provided by the Venezuelan Institute of Social Security in those sections of the national territory in which compulsory social security is operating, and on condition of reciprocity.

On 7 November 1952, the Government Junta issued decree No. 454, providing that the armed forces be permanently alerted to guarantee public order on election day, 30 November 1952. This decree is published in *Gaceta Oficial* No. 23,984, of 11 November 1952. On election day the armed forces shall maintain free access to the polling stations, and shall prevent any electoral campaigning, public entertainment and meetings, sale of alcoholic beverages, entry into the polling station by armed citizens, the forming of crowds, collective manifestations, violence, pressure on the voters and shall ensure that all persons eligible to vote may do so without hindrance.

DECREE No. 376 TO CONSTITUTE A TECHNICAL COUNCIL ON SOCIAL SECURITY[1]

of 14 March 1952

Art. 1. There shall be constituted a body, to be called the Technical Council on Social Security, subordinate to the Ministry of Labour and consisting of nine members.

Art. 2. It shall be the duty of the Technical Council on Social Security:

(*a*) To compile and study the country's various statistics relating to social security;

(*b*) To deal with technical inquiries submitted to it by the Federal Executive or by any official body through the Office of Labour, and to furnish such information concerning social security as may be requested of it;

(*c*) To carry out special studies concerning economic, social and health conditions in the country in relation to the progress of social security, and to study and recommend the rules relating to administrative procedure to be observed by bodies subordinate to the Ministry of Labour which are concerned with social security;

(*d*) To disseminate information through a special publication concerning any action taken by the Federal Executive, through its various agencies, in regard to social security;

[1] Spanish text in *Gaceta Oficial* No. 23,784, of 14 March 1952. English translation from the Spanish text by the United Nations Secretariat.

(*e*) To maintain close contact, through the competent agency, with all international institutions concerned with social security of which Venezuela is a member, and to report on its activities in this respect;

(*f*) To co-operate with and to prepare the necessary material for foreign social security experts whose services are engaged by Venezuela;

(*g*) To give guidance and information to and to prepare the necessary material for the official delegations which the National Government sends to international conferences dealing with social security;

(*h*) To prepare and review technical studies concerning the establishment, extension and scope of social insurance systems to be instituted in the country and to co-operate in working out the basic technical data for, or related to, the preparation of the preliminary drafts of social security statutes and regulations;

(*i*) To submit to the Office of Labour general plans concerning social security for land workers and for any other category of workers;

(*j*) To carry out such studies as may be necessary for the purpose of establishing a plan for organizing rehabilitation and retraining services for persons disabled or incapacitated in the course of their employment or through ordinary accidents;

(*k*) To study all matters related to psychotechnical services for vocational guidance and the setting up of vocational training schools for workers;

(*l*) To conduct periodic inquiries into the living conditions of persons employed by private undertakings and by the public service with a view to determining the people's habits in respect of housing, food, clothing and leisure-time activities;

(*m*) To prepare plans for the prevention of accidents and relating to industrial safety and hygiene;

(*n*) To promote improved statistics relating to wages, disputes, accidents, numbers of undertakings and workers, workers' occupations and activities, cost of living, internal migration of workers, employment, placement and unemployment;

(*o*) To submit to the Ministry of Labour quarterly reports on its own activities and on advances and developments achieved by social welfare institutions throughout the world;

(*p*) To carry out investigations and studies for the purpose of planning, co-ordinating, financing, building and allocating workers' housing; and

(*q*) To perform such further duties related to its specific functions as may be assigned to it by the Ministry of Labour.

. . .

DECREE No. 377 RELATING TO THE ORGANIZATION OF THE NATIONAL INDIAN COMMITTEE[1]

of 14 March 1952

Art. 1. The National Indian Committee, an official technical body subordinate to the Ministry of Justice, shall consist of ten members, one of whom shall act as Technical Adviser . . .

Art. 3. It shall be the duty of the National Indian Committee:

(*a*) To study the legal position of the Indians, their demography, social and economic conditions, cultural and educational development and general needs;

(*b*) To promote anthropological, ethnological, historical and bibliographical studies which may serve as a basis for a practical solution of the economic and social problems of the Indians;

(*c*) To report to the Minister of Justice every three months and whenever special circumstances require, on the progress of its work and on whatever action may be necessary and desirable for the purpose of protecting the Indians and their lands and raising their standard of living and, to that end, to co-operate with the religious missions whose services are enlisted by the State . . .

[1] Spanish text in *Gaceta Oficial* No. 23,784, of 14 March 1952. English translation from the Spanish text by the United Nations Secretariat.

YUGOSLAVIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

I

The Act of 29 December 1951 concerning the election of workers' councils in economic enterprises (*Sluzbeni List*—Official Gazette of the Federative People's Republic of Yugoslavia, No. 1 of 1952) contains provisions extending the democratic right of selfmanagement of manual and office workers in economic enterprises.

Under the previous provisions, the candidates obtaining the largest number of votes were elected members of the workers' councils of the enterprises provided that they appeared on the list which received a majority of manual and office workers' votes. The bodies responsible for the elections were nominated by the trade union organizations.

Under the new Act, the candidates obtaining the largest number of votes, irrespective of the list of candidates, are elected members of the workers' council. The bodies responsible for election are no longer nominated by the trade union organizations, but are elected by the outgoing workers' council from among the manual and office workers of the enterprise.[2]

II

The decree of 5 March 1952 concerning the distribution of the wages fund and the remuneration of manual and office workers in economic enterprises (*Official Gazette* of the FPRY, No. 11 of 1952) regulates the distribution of wages funds and the remuneration of manual and office workers in enterprises.

The workers' collectives in existing and newly established enterprises utilize the means of production placed at their disposal by the "social community". Permanent and temporary working capital funds are also allotted to them by the social community through the National Bank. The workers' collectives manage the enterprises directly or through organs elected by them—the workers' councils and executive committees—in conformity with their statutory rights and duties.

The enterprise draws up its own plan within the framework of the social plans established by the Federal Government, the governments of the people's republics or the district or municipal authorities. The profit earned by the enterprise is divided between the wages fund and accumulated earnings. The wages fund is fixed in conformity with the index laid down by the social plan or the enterprise's plan in relation to the profits of the enterprise.

The total amount of the wages fund depends on the result of the labour by the workers' collective. Any increase in the productivity of labour, reduction in production costs or other savings achieved in the work of the enterprise result in an increase in the wages fund. Hence the amount of the profit earned by each manual or office worker depends on the labour of each one of them, as well as on the fulfilment of the enterprise's plan.

The decree provides that the amount of the accumulated earnings shall be fixed in accordance with the rates set forth in the rates schedule established by the worker's council (elected by the workers' collective of the enterprise) in agreement with the trade union body (article 2). The scheduled rates may not be less than the minimum rates, which vary between 20 and 30 dinars an hour, depending on the

[1] This note was prepared by and received through the courtesy of Mr. Branko Jevremovic, former representative of the Federal People's Republic of Yugoslavia on the United Nations Commission on Human Rights.

[2] Under the Act of 1950 concerning the management of economic enterprises by the workers' collectives, enterprises are managed through a workers' council, an executive committee and a director. The workers' council is elected by all the manual and office workers of the enterprise, while the executive committee is elected by the workers' council. The members of the two bodies are elected for one year from among the manual and office workers of the enterprise. The functions of the executive committee are executive and administrative. It prepares drafts of the basic plans of the enterprise, supervises its proper working, adopts measures to increase production, establishes quotas of work in the enterprise and deals with matters relating to its management. The workers' council approves the basic plans and the balance sheet of the enterprise; takes decisions in connexion with the management of the enterprise and the fulfilment of the economic plan; elects and dissolves the executive committee of the enterprise; adopts the rules and rate schedule of the enterprise; discusses the executive committee's report and action taken by it; approves or rejects the report; and effects the allocation of the funds remaining at the disposal of the workers' collective. The functions of the director of the enterprise are managerial. He acts in accordance with the directives, and under the supervision, of the workers' council and the executive committee, in accordance with their resolutions. He is in charge of the management of the enterprise and has full powers with regard to organization and methods of work. He represents the enterprise in its relations with third parties and signs on behalf of the firm. He is appointed by competitive examination.

worker's skill (articles 4 and 15). The norms and methods of calculating the individual output of each worker or office worker are determined by the enterprise itself (article 5). Overtime and Sunday work is paid at time and a half, and night work not performed by regular shifts is paid at time and one-eighth (article 24).

Earnings depend on the total amount of the wages fund and may therefore be greater or less than the earnings specified in the rates schedule. The earnings of each manual or office worker depend on the efficiency of the workers' collective and of the individual manual and office workers. The wages fund is distributed among the manual and office workers in accordance with the rates laid down in the rates schedule and the worker's output (or the number of hours worked if output is not calculated in the enterprise concerned). If the wages fund built up is less than the aggregate minimum wages payable to the manual and office workers in the enterprise, the required amount is allocated by the State (article 21).

Earnings of manual and office workers are distributed at the time laid down in the rates schedule.

Any worker may appeal to the executive committee of the enterprise, elected by the workers' collective, a decision concerning his assignment to a particular job, the distribution of work, or the calculation of wages on time or piece rates (article 25).

Workers are also entitled to express their views to the executive committee with regard to the calculation of earnings, the payment of overtime or night work, and the regulations of the enterprise. They are also entitled to sue the enterprise in the ordinary courts (article 25).

III

The decree of 10 April 1952 concerning the procedure for termination of the contracts of employment of manual and office workers (*Official Gazette* of the FPRY, No. 20 of 1952) lays down the procedure by which economic organizations and similar undertakings may dismiss their manual and office workers.

The procedure for the dismissal of individual workers is different from that for the dismissal of groups of workers.

Any manual or office worker dismissed must be given notice in writing, the reasons for the dismissal being stated (article 2). The periods of notice required were laid down by legislation prior to this decree; they vary from one to four months depending on the qualifying period for the particular type of work.

A special arbitration board with powers relating to the termination of contracts of employment has been set up to deal with disputes arising out of dismissals, either on a complaint submitted by a manual or clerical worker or on the proposal of an economic organization. There is one arbitration board in each district (city) and in each people's republic. A city or district arbitration board consists of three members, one representing the local trade union council, one representing the enterprise dismissing the worker or workers and a third representing the people's committee of the city or district. The arbitration board of a people's republic consists of five members, two representing trade union organizations, two representing the economic associations of the people's republic and one representative who is a member of the economic council of the people's republic.

Except in the cases mentioned below, no authorization by an authority external to the enterprise is required in order to dismiss a manual or office worker. The worker is entitled to appeal to the city or district arbitration board within eight days from the notification of dismissal. The decision of the arbitration board is final (articles 2 and 10). When an economic organization wishes to dismiss a number of manual or office workers at the same time in order to reduce its wages bill or costs, it must obtain the agreement of the local or district trade union council. If consent is obtained, the economic organization may dismiss the manual and office workers whom it wishes to dismiss, taking into account the number of manual and office workers whom it is authorized to dismiss in accordance with this agreement. A manual or office worker may resign without such approval (article 3).

If a decision covering all the workers concerned is given and the trade union council and the economic organization are not in agreement, the latter may appeal to the arbitration board of the people's republic, whose decision is final (article 4). The arbitration board of the people's republic which decides this question and fixes the number of manual and office workers who may be dismissed is empowered to indicate the persons who may be dismissed only in special circumstances.

Women, disabled ex-servicemen, workers disabled by industrial accidents and workers who have been employed for over ten years are specially protected. If an economic organization wishes to dismiss an individual in one of these categories, it must obtain the consent of the trade union council. If consent is not obtained and the economic organization continues to wish to dismiss the worker, it must apply to the city or district arbitration board whose decision is final (article 8).

If an economic organization terminates a contract of employment without following the statutory procedure or in violation of the arbitration board's decision, the dismissal may be cancelled by the labour inspectorate on its own initiative or at the instance of the manual or office worker concerned (article 12).

IV

The decree of 29 March 1952 concerning the benefits and other rights of temporarily unemployed manual and office workers (*Official Gazette* of the FPRY, No. 16 of 1952) regulates the benefits and other rights of manual and office workers who are temporarily unemployed owing to reasons beyond their control and cannot for valid reasons be found other employment.

Workers are eligible for benefits if they have completed two years' continuous employment or five years' employment with stoppages, and attend regularly at the employment office. Benefits continue until fresh employment is found (article 4). When a person eligible for and in receipt of benefits finds fresh employment, he continues to be eligible for the benefits in the event of a further stoppage of work, without regard to the period of the fresh employment (article 5).

Benefits amount to 50 per cent of the rate laid down in the rate schedule—i.e., 50 per cent of the recipient's previous wage. Unemployed workers are eligible for family allowances under the same conditions as employed manual or office workers (article 6).

Recipients of benefits are entitled to health insurance benefits, including, in the case of women workers, pregnancy and childbirth benefits (article 10).

Persons dismissed for disciplinary reasons, leaving their employ of their own free will or refusing to accept employment, and persons in receipt of a pension or other income in excess of 2,000 dinars per family member per month are not eligible for benefit (article 9).

Manual and office workers whose contracts of employment have been terminated on the above-mentioned basis and who are not entitled to benefits are nevertheless eligible for health protection for themselves and members of their families on the same footing as other recipients of social insurance benefits (article 11).

In the case of manual and office workers whose contracts of employment have been terminated, the period without a contract of employment is regarded as a qualifying period, regardless of their entitlement to benefits for the purposes of qualifying for pension and other rights, provided that the workers attend regularly at the employment office (article 12).

If a person obtains employment in a district other than his place of residence, he and his family are entitled to a 75 per cent reduction in fares or free tickets on all state operated transport undertakings (article 13).

If benefits or reduced fares on transport facilities are withheld, the unemployed worker has the right to appeal to the competent authority and may institute proceedings in the administrative courts against that authority's decision (article 14).

V

The decree of 15 March 1952 specifying types of work in which women and young persons may not be employed (*Official Gazette* of the FPRY, No. 11 of 1952) contains provisions for the protection of women and young persons from the harmful effect of certain types of work.

Women, whatever their age, and young persons under eighteen years of age may not be employed in unhealthy, dangerous, or particularly arduous types of work (article 1).

The decree contains special provisions for pregnant women, who may not be employed in certain other arduous, unhealthy or dangerous types of work (article 3). During pregnancy, women must be employed in light work, without any reduction of wages (article 4). Pregnant women and nursing mothers may not be dismissed (article 5).

VI

The decree concerning apprentices of 22 July 1952 (*Official Gazette* of the FPRY, No. 39 of 1952) governs the status of apprentices.

The agency of the people's republic responsible for economic affairs determines the number of apprentices in an enterprise in relation to the number of qualified workers in each trade or occupation. Within the framework of these provisions, the city or district people's committee specifies the number of apprentices, male and female, for each enterprise (articles 26 and 27).

The enterprise or employer is free to choose apprentices provided that they are in possession of the required school certificate (articles 2 and 3).

Each enterprise or employer must enter into a contract with the parents or guardian of the apprentice. The terms of the contracts may not be less favourable than those established by law (article 3).

The enterprise is obliged to make available to the apprentice a course of apprenticeship in his trade; to ensure that he attends school regularly (i.e., an institution providing theoretical instruction related to his occupation or trade); to satisfy itself that he is working conscientiously in his vocational training and general education; and to pay him a monthly allowance, etc. (article 4).

Night work and overtime are prohibited. Similarly, an apprentice may not be employed in work having no relation with apprenticeship in his trade or occupation (article 11).

Corporal punishment is prohibited (article 22).

Apprentices are entitled to thirty days' paid annual holiday during the long school holidays and a seven-day holiday during the winter holidays.

If the contracting parties are not in agreement, the apprenticeship contract may be cancelled before the expiry of the term fixed in the contract by a decision of the city or district arbitration board competent to deal with the termination of contracts of employment (article 19).[1]

The enterprise or private employer must employ the apprentice as a qualified worker for at least six months after he has obtained his certificate of proficiency, if the apprentice so desires (article 24).

VII

The decree of 2 June 1952 concerning the establishment and provisional management of social insurance (*Official Gazette* of the FPRY, No. 30 of 1952) provides for the self-management of social insurance associations by insured persons and establishes rules governing the entitlement of insured persons to benefits. The institutions responsible for social insurance are called social insurance offices. These offices have been established in districts, cities, the capitals of autonomous provinces and the capitals of people's republics. The social insurance offices are self-governing institutions which manage their own affairs (article 2).

City or district social insurance offices deal with all matters relating to social insurance rights (article 10). The social insurance office of a people's republic or of a self-governing province supervises the work of the city and district social insurance offices in its area. It also manages the pensions disability insurance fund and the children's allowance fund (article 16).

The management boards of social insurance offices are elected by the insured persons (article 3). The board of each city or district social insurance office is elected directly by manual and office workers, recipients of pensions and disability insurance and other insured persons (article 6). The board so elected selects the executive committee and review board from among its members (articles 4 and 8).

The board of the social insurance office for the people's republic comprises representatives of all the city and district offices in the territory of the republic, the number of representatives being proportional to the number of insured persons (article 13). The board of the office for the people's republic elects its executive committee and review board (article 14).

The manager of the district or municipal social insurance office is nominated by the office management board and is responsible to it. The manager directs the affairs of the office (articles 9 and 15).

Insured persons have the right to appeal against decisions of district or city social insurance office. Appeals are considered by the social insurance office of the people's republic. Insured persons may institute administrative proceedings against decisions of the social insurance office of the people's republic (article 22).

VIII

The Fundamental Act of 1 April 1952, on people's committees (*Official Gazette* of the FPRY, No. 22 of 1952), makes provision for the reorganization of people's committees in their capacity as local organs of government and administrative bodies. It increases their autonomous powers, defines their relationships with the higher state organs and strengthens the direct participation of citizens in the people's committees as organs of popular self-government.

Under this Act, the territory of each people's republic is divided into social communities—districts and cities. The districts are divided into communes (rural and small towns) and urban communes. Cities may also be divided into communes, depending on the size of the population (article 8).

The people's committees are the local organs of social communities. There are therefore people's committees of communes (rural and small towns) people's committees of urban communes (invested with special powers and forming part of the district) people's committees of districts and people's committees of cities (which do not form part of the district). The people's committees of communes (rural and small towns) forming part of a district have wider powers than the people's committees of urban communes, since because of economic, transport, municipal and other considerations the city is a more homogeneous unit. The people's committee of a city, which is part of a district, has wider powers than the people's committee of a rural commune which is part of a district. In principle, the people's committee of a district and the people's committee of a city have the same powers and responsibilities.

The people's committee guides and insures the economic, social and cultural development of the commune, district or city, strengthens and develops social relationships in conformity with socialist principles[2] and the legal structure and discharges other tasks defined by law.

Within their respective jurisdictions, the people's committees are the supreme organs of government of the commune, district or city and the local administrative organs are subordinate to the committees. In their respective spheres, the people's committees administer matters within the competence of the Federal Government or of the governments of the people's republics, which as a general rule are not represented by special organs at the local government level. Special administrative organs for matters within the competence of the Federal Government and of the governments of the people's republics, which would be directly subordinate to federal organs

[1] See section III, above.

[2] Help given to the creation of co-operatives, etc.

or those of the people's republics, and outside the jurisdiction of the people's committees, may only be established by federal legislation or legislation of the people's republic concerned. Federal organs or organs of the people's republics may not, therefore, either set aside or restrict the autonomy of the people's committees (article 3).

The district and city people's committees elect and relieve judges and judge assessors of the district and departmental courts within their jurisdiction (article 3).

Relations between the district and commune people's committees and, between the people's committees and the higher state organs and between the organs of the people's republics and the federal organs are based on the rights and duties laid down by the Constitution and legislation. The higher organs of the state administration cannot undertake any action or issue any instructions which might conflict with the rights and duties of the people's committees (article 9).

The people's committees of districts, cities and urban communes with special powers prepare their own social development programme and their own budget. They have the right to introduce local taxes and receive a share of the taxes collected and of the profits made by economic enterprises. They also have the right to manage all buildings and lands in their jurisdiction which are property of the people. They may establish economic enterprises and communal, cultural, educational, health and social institutions (articles 13, 14, 15 and 16).

The district people's committees have the right to review the activities of the people's committees of the rural or urban commune and the state organs of the people's republic have the right to review the activities of the district and city people's committees in their territory from the point of view of constitutionality (article 20).

As the representative organs of the people, the people's committee of communes are composed of municipal councillors representing all the citizens of the commune. They are elected for three years (article 7).

The district and city people's committees comprise two chambers, the district or city council elected for four years and the producers' council, elected for two years (articles 4 and 7).

The district and city councils are general organs representative of all the citizens of the district or city concerned (article 4).

The producers' council is an organ representing producers—i.e., workers engaged in production, transport and trade—who are represented in proportion to their participation in the social production of the district or city (article 4).

The commune people's committees and the district or city councils are elected by the citizens of the commune or of the district or city by general, direct and secret ballot. The district or city producers' council is elected by all the workers engaged in production, transport and trade by general, direct and secret ballot (article 17).

In the district or city people's committees the district or city councils and the producers' councils decide separately certain matters within their respective terms of reference. They take part on an equal footing in the discussion of important questions and decisions are made only by agreement between the two councils although as a general rule the decisions are taken by the councils meeting separately. The councils have joint competence in regard to the adoption of the rules of the people's committee, decisions concerning the social plan, the budget, the general plan, the town planning programme, the organization of enterprises, economic and administrative measures, the awarding of public contracts, employment contracts, social security and other economic matters within the competence of the people's committee (article 45).

The two councils hold joint sessions to elect or dismiss officials or employees whose appointments are within the jurisdiction of the people's committee in accordance with the laws and regulations in force (article 48).

In addition to the right to vote for, and be elected as, municipal councillors, citizens have the right to recall municipal councillors before the expiry of their term of office if the councillors no longer enjoy their confidence. This is a logical development of the principle that councillors are responsible to the electors for their work.

The Act is intended to interest all citizens in public affairs and to facilitate their participation in the discussion and solution of social problems. To this end certain procedures have been devised and certain machinery established. Thus, the citizens participate in the work of the people's committee through the councils set up within the people's committee to deal with certain matters in particular fields within the jurisdiction of the people's committee.

The councils have both executive and administrative functions. They have a fixed number of members elected by the people's committee from among municipal councillors, the representatives of economic and social organizations and institutions elected with the consent of the organization or institution and citizens having the personal and technical qualifications necessary to assist councils in fulfilling their responsibilities (articles 60 and 63).

With a view to ensuring the broadest possible participation by citizens in local government, the people's committees establish other citizens' councils and committees to deal with specified administrative matters or activities (article 72).

The electors' conference is a special institution which allows citizens to share in the work of the people's committees and to discuss social affairs. It is composed of all the citizens of the area for which the municipal councillor is elected. As a rule, the conferences are held once every two months and are intended to permit the mass participation of all citizens in the work of the people's committees, to increase the responsibility of municipal councillors to their electors and to provide for the supervision of the work of the people's committees by the people (article 72).

In accordance with the legislation of the people's republics, electors' conferences discuss the actions and responsibilities of the people's committees, their organs and institutions, with particular reference to questions which directly concern the development of the commune, district or city. Electors' conferences may also deal with matters which come directly within the competence of higher state organs and may make recommendations and submit proposals concerning them. The people's committee is required to report to the electors' conference on its work and the municipal councillors must give an account of their activities whenever the electors' conference so decides.

The Act also makes provision for the organization of local referenda as a measure of direct democracy (article 73).

IX

The Act of 10 April 1952 on administrative litigation (*Official Gazette* of the FPRY, No. 23 of 1952) is intended to provide citizens with more comprehensive legal protection and to ensure the legality of decisions by state organs. It lays down the procedure for administrative litigation; the courts determine the legality of administrative orders concerning the rights and obligations of citizens (articles 1 and 5).

Any individual or body corporate considering that his or its rights or interests have been injured by an administrative order has the right to institute administrative proceedings (article 2).

Administrative disputes fall within the jurisdiction of the supreme courts of the people's republics and of the Federal Supreme Court. Their orders are binding upon state organs (articles 3, 4 and 63).

In principle, the court does not pass judgement upon the substance of the case, but sets aside the administrative order if it violates provisions of law or an essential rule of procedure; in other words, it gives a ruling upon the legality of the order itself. The administrative organ must make a further administrative order in accordance with the law and the observations of the court. Administrative proceedings may be instituted against the new order. In social insurance cases, the court may not only set aside the administrative order but, in exceptional cases, give a decision on the substance of the case; the courts' order then replaces the administrative order and constitutes a valid authority for action. This procedure has all the elements of normal and civil procedure. If the court sets aside an administrative order, it is empowered to deal with claims for restitution or for the payment of damages (article 40).

Citizens may also appeal to the court in order to protect their rights in cases of administrative default. If a lower administrative organ fails to take a decision within the statutory time limit, the person concerned is entitled to apply to the competent higher organ. An appeal may be lodged before the administrative court against any decision of the competent higher organ. An appeal may also be lodged if the competent higher organ fails to take a decision within the statutory time limit (article 23).

If a competent organ fails to issue an administrative order (administrative default) and is instructed to do so by the court, it is required to issue the administrative order within thirty days and any organ whose order has been set aside by order of the court is required to issue a new administrative order within seven days of notification of the person concerned. In case of default, the court, on the application of the interested party, makes an order which replaces the administrative order of the competent organ (article 65). The same procedure is followed if the competent organ whose administrative order has been set aside by the court, issues a new order which is not in conformity with the law and the court's observations (article 64).

Final judicial decisions are executed by the competent organs. Persons failing in their duties in this respect are liable to penal, disciplinary and civil sanctions in accordance with general provisions of the law.

X

The decree of 21 May 1952, concerning reductions in hotel charges during annual holidays (*Official Gazette* of the FPRY, No. 28 of 1952), gives all manual and office workers, whether employed by state organs or enterprises, co-operatives or private employers, the right to reduced boarding-house and hotel charges during their annual holiday of between fifteen and thirty days a year after a qualifying period of not less than eleven months' employment. Rates are reduced 40 per cent during the tourist season and 60 per cent at other times of the year.

Students in universities and higher educational establishments and old age pensioners enjoy the same privilege, which is also granted to all members of the families of the persons concerned.

In accordance with other provisions, all the above-mentioned persons are entitled to a 75 per cent reduction of fares on all means of transport managed by the state (50 per cent on airlines) when taking their annual holidays.

PART II

LAWS AND OTHER TEXTS ON HUMAN RIGHTS IN TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

TERRITORY OF PAPUA AND NEW GUINEA

TRUST TERRITORY OF NEW GUINEA

EDUCATION ORDINANCE, 1952[1]

Ordinance No. 121 of 1952

SUMMARY

This ordinance provides for the establishment of an Education Advisory Board for the territory, to consist of the Director of Education, four members appointed by the Administrator to represent the missions and voluntary education agencies of the territory, and such other members, not exceeding four in number, as the Administrator appoints (s. 7).

The Board's functions are to consider and tender advice to the Administrator concerning any matter relating to education in the territory or arising under the ordinance (s. 9).

The Administrator may establish district education committees, to tender advice on any matter relating to education in a district and with such other powers as are prescribed (ss. 11, 12).

The Administrator may, out of moneys appropriated by the Legislative Council for the purpose, establish and maintain such schools as he considers necessary or desirable (s. 13).

He may likewise establish pre-school, adult educational and vocational training institutions (s. 14).

He may authorize a native authority to conduct schools for native children (s. 15).

He may, by notice in the *Gazette*, direct the compulsory attendance of all children, or children of a specified age, sex or race, at schools in such places as are specified. Attendance of a child at a school where the religious precepts taught are unacceptable to the parents or guardian of the child is not to be compulsory (s. 17).

Existing and future mission and voluntary education agency schools must register with the Director of Education, who must be satisfied that the mission or agency is capable of conducting the school, and is providing education at a specified standard (ss. 19, 20).

The Administrator may authorize the payment of grants to missions or voluntary education agencies to assist them in carrying out education functions and, in particular, with respect to certain specified matters related thereto (s. 27).

Nothing in the ordinance restricts or authorizes the making of regulations restricting the teaching of religion in schools conducted by missions or voluntary agencies, and ministers of the various denominations may give religious instruction to children of their respective denominations in schools conducted by the Administration or a native authority (s. 29). The education tax on natives is abolished (s. 5).

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[1]English test in *Papua and New Guinea Gazette* No. 15 of 1953. Summary prepared by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra.

NATIVE ECONOMIC DEVELOPMENT ORDINANCE, 1951-1952

Ordinance No. 21 (assented to on 14 February 1952) as amended by ordinance No. 98 (assented to on 24 October 1952)[1]

SUMMARY

This ordinance provides for the establishment of native co-operatives. Any body of natives numbering seven or more may become registered under the ordinance if it has as its object the promotion of the economic interest of its members and if it engages in the buying and selling of any goods, or in common carrying, or in the production of any goods or produce intended for sale, or in the provision of services for its members.

[1]Text of the ordinance published by Government Printer, Port Moresby—4069/7.52 and 4404/11.52. Summary prepared by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra.

NATIVE APPRENTICESHIP ORDINANCE, 1951

Ordinance No. 77, assented to on 13 June 1952[1]

SUMMARY

This ordinance authorizes and provides a comprehensive code for regulating the entering into apprenticeship agreements by employers and native apprentices.

[1]Text of the ordinance published by Government Printer, Port Moresby.

TRUST TERRITORIES OF THE CAMEROONS AND OF TOGOLAND UNDER FRENCH ADMINISTRATION

NOTE

Act No. 52-130, of 6 February 1952, relating to the establishment of the group assemblies and local assemblies of French West Africa, Togoland, French Equatorial Africa, the Cameroons and Madagascar.[1]

Act No. 52-1322, of 15 December 1952, establishing a Labour Code in the Territories and Associated Territories coming under the supervision of the Ministry of France Overseas.[2]

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[1] See the text on p. 352 of this *Yearbook*.

[2] See pp. 72-73 and 352 *ibid.*

TRUST TERRITORY OF RUANDA-URUNDI

ENACTMENTS PROMULGATED IN THE BELGIAN CONGO AND DECLARED TO BE APPLICABLE IN RUANDA-URUNDI

The following enactments, promulgated in the Belgian Congo,[1] have been declared to be applicable in Ruandi-Urundi, subject to certain drafting changes:

1. Decrees of 17 May 1952, (1) to amend the provisions of the Civil Code concerning the registration of Congolese; (2) establishing equality of registered indigenous inhabitants and indigenous holders of the card of civic merit with non-indigenous inhabitants for purposes of the criminal law; and (3) establishing equality of registered indigenous inhabitants and indigenous holders of the card of civic merit with non-indigenous inhabitants for the purposes of criminal proceedings (legislative ordinances Nos. 11/122 and 11/123, of 10 September 1952, published in the *Bulletin officiel du Ruanda-Urundi* No. 9, of 30 September 1952).

2. Decree establishing equality of registered indigenous inhabitants and indigenous holders of the card of civic merit with non-indigenous inhabitants for the purposes of the consolidated decrees concerning the organization and jurisdiction of courts (legislative ordinance No. 11/124, of 30 September 1952, published in the *Bulletin officiel du Ruanda-Urundi* No. 9, of 30 September 1952).

[1] See pp. 350–351 of this *Yearbook*.

TRUST TERRITORY OF WESTERN SAMOA

ORDINANCES OF THE LEGISLATIVE ASSEMBLY OF WESTERN SAMOA AND THE COOK ISLANDS LEGISLATIVE COUNCIL[1]

Incorporated Societies Ordinance 1952, No. 6. Provides for the incorporation and registration of any society of not less than fifteen persons associated for any lawful purpose other than for pecuniary gain.

Co-operative Societies Ordinance 1952, No. 9. Makes legal provision for the establishment of co-operative societies in Western Samoa.

[1]Summaries of these ordinances received through the courtesy of the New Zealand Government.

TRUST TERRITORY OF THE PACIFIC ISLANDS

CODE OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS[1]

promulgated on 22 December 1952

CHAPTER I

BILL OF RIGHTS

Sect. 1. Freedom of religion, conscience, speech, press, rights of assembly and petition. No law shall be enacted in the Trust Territory respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of conscience, or of speech, or of the press, or the right of the people to form associations and peaceably to assemble and to petition the Government for a redress of grievances. No public money shall ever be appropriated, supplied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.

Sect. 2. Slavery and involuntary servitude. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the Trust Territory.

Sect. 3. Protection against unreasonable search and seizure. The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Sect. 4. No deprivation of life, liberty, or property without due process. No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall any person be compelled in any criminal case to be a witness against himself. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial; to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence. No crime under the laws of the Trust Territory shall be punishable by death.

Sect. 5. No ex post facto *law.* No bill of attainder, *ex post facto* law, or law impairing the obligations of contracts shall be enacted.

Sect. 6. Excessive bail, excessive fines, cruel and unusual punishments prohibited. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Sect. 7. No discrimination on account of race, sex, language or religion. No law shall be enacted in the Trust Territory which discriminates against any person on account of race, sex, language, or religion; nor shall the equal protection of the laws be denied.

Sect. 8. Freedom of migration and movement. Subject only to the requirements of public order and security, the inhabitants of the Trust Territory shall be accorded freedom of migration and movement within the Trust Territory.

Sect. 9. Education. Free elementary education shall be provided throughout the Trust Territory.

Sect. 10. No imprisonment for failure to discharge contractural obligation. No person shall be imprisoned solely for failure to discharge a contractural obligation.

Sect. 11. Writ of habeas corpus. The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion or imminent danger thereof, the public safety shall require it.

Sect. 12. Quartering of soldiers. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

[1]Text and information received through the courtesy of the United States Government. Chapter I is a revision of section 5 of the Interim Regulations for the Trust Territory of the Pacific Islands, issued by the Secretary of the Navy in April 1948, under authority of the President of the United States, reproduced in *Yearbook on Human Rights for 1949*, pp. 263–264. Chapter IV is a revision of executive order 26, of 14 February 1952 (see the *Report on the Administration of the Trust Territory of the Pacific Islands by the United States to the United Nations, 1952*), published by the United States Department of the Interior, Washington, 1953. See also p. 306 of this *Yearbook*.

Sect. 13. Trade and property rights protected. The High Commissioner may restrict or forbid the acquisition of interests in real property and in business enterprises by persons who are not citizens of the Trust Territory.

Sect. 14. Local customs recognized. Due recognition shall be given to local customs in providing a system of law, and nothing in this chapter shall be construed to limit or invalidate any part of the existing customary law, except as otherwise determined by the High Commissioner.

CHAPTER IV

Article I

JUDICIAL POWER

Sect. 115. Courts. The judicial power of the Trust Territory of the Pacific Islands shall be vested in a High Court for the Territory, a District Court for each administration district, and a Community Court for each municipality, or for individual communities therein if the District Administrator of the district in which the municipality is situated so determines.

. . .

Article II

HIGH COURT

. . .

Sect. 121. Divisions. The High Court shall consist of a Trial Division and an Appellate Division . . .

Sect. 124. Appellate jurisdiction and review. The Appellate Division of the High Court shall have jurisdiction to review on appeal the decisions of the Trial Division of the High Court:

(*a*) . . .

(*b*) In all cases decided by the High Court on appeal from a District Court involving the laws of the United States or the Bill of Rights of the Trust Territory.

(*c*) . . .

Article VII

ADMINISTRATION, RULES, AND PROCEDURE

. . .

Sect. 183. Utilization of native inhabitants. Native inhabitants of the Trust Territory shall be employed as judges, officers and employees of the courts to the maximum extent consistent with proper administration.

Sect. 186. Sessions to be public. The proceedings of every court shall be public, except when otherwise ordered by the court for good cause.

Sect. 187. Rights of defendants. Every defendant in a criminal case before a court of the Trust Territory shall be entitled:

(*a*) To have in advance of trial a copy of the charge upon which he is to be tried;

(*b*) To consult counsel before the trial and to have an attorney-at-law or other representative of his own choosing defend him at the trial;

(*c*) To apply to the court for further time to prepare his defence, which the court shall grant if it is satisfied that the defendant will otherwise be substantially prejudiced in his defence;

(*d*) To bring with him to the trial such material witnesses as he may desire or to have them summoned by the court at his request;

(*e*) To give evidence on his own behalf at his own request at the trial, although he may not be compelled to do so;

(*f*) To have proceedings interpreted for his benefit when he is unable to understand them otherwise; and

(*g*) To request the appointment of an assessor in trials before the Trial Division of the High Court in the event that one has not been appointed by the trial judge under the provisions of section 126.[1]

[1]Section 126 reads as follows: "A judge presiding in the Trial Division of the High Court may select one or more assessors to sit with him at the trial of any case to advise him in regard to the local law and custom which may be involved, but not to participate in the determination of the case."

TRUST TERRITORY OF NAURU

DANGEROUS DRUGS ORDINANCE 1952[1]

Ordinance No. 1 of 1952

This Ordinance appears in the *Government Gazette* (published by the Administration of Nauru) No. 8, of 9 February 1952. A summary is published in *Annual Summary of Laws and Regulations relating to the Control of Narcotic Drugs*, New York, 1952 (Economic and Social Council, Commission on Narcotic Drugs, United Nations publication 1953.XI.12.)

[1]Text of the ordinance received through the courtesy of Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra.

CRIMINAL CODE AMENDMENT ORDINANCE 1952[1]

Ordinance No. 5 of 1952

SUMMARY

By this ordinance, the Criminal Code of Queensland in its application to the Island of Nauru was amended inasmuch as the law of the territory relating to corporal punishment was reviewed and corporal punishment abolished for all offences other than sexual offences against females and garrotting. The extent and severity of punishment was also reduced, in general as well as for minors of sixteen years of age and under, and of fourteen years of age or under. In all cases where whipping is directed under this code, in the future the visiting medical officer of the prison where the offender is confined, or a Government Medical Officer, shall certify that the offender is physically able to undergo the punishment, be present when the whipping is inflicted and order that the whipping be not inflicted, or be postponed, if in his opinion it is likely to be attended with dangerous results to the offender.

[1]English text in *Government Gazette* (published by the Administration of Nauru), No. 42, of 27 September 1952. The ordinance was promulgated on 20 September of the same year. The Administration stated (see United Nations document T/L 472) that it supported the principle of abolition of corporal punishment and considered that the action already taken was a substantial step towards complete abolition.

TRUST TERRITORY OF SOMALILAND

NOTE

The Trusteeship Agreement for the Territory of Somaliland under Italian administration, which was approved by the General Assembly of the United Nations on 2 December 1950 and ratified by the Italian Parliament on 4 November 1951, came into force on 8 January 1952, the date on which the instrument of ratification by Italy was deposited with the Secretary-General of the United Nations, in accordance with article 23.

Article 9 of the Trusteeship Agreement and the Declaration of Constitutional Principles annexed to the Agreement are related to human rights. See *Yearbook on Human Rights for 1950*, pp. 366–370, and *idem for 1951*, p. 434.

DECREE No. 70 TO ABOLISH THE REDUCED SALARY SCALE ESTABLISHED FOR FEMALE PERSONNEL BY THE BRITISH ADMINISTRATION IN SOMALILAND[1]

of 8 May 1952

Whereas Act No. 1301,[2] of 4 November 1951, ratified and gave full force to the Trusteeship Agreement for the Territory of Somaliland under Italian Administration;

Whereas Art. 43-A (f) of the regulations relating to employees in receipt of monthly salaries, enacted on 15 January 1945, provides that female personnel shall receive four-fifths of the salaries payable to male personnel of the same class and grade;

Whereas it is desirable to repeal the aforesaid provision with a view to eliminating discrimination on the grounds of sex; . . .

Art. 1. With effect from 1 May 1952, art. 43-A (f) of the regulations relating to employees in receipt of monthly salaries, enacted on 15 January 1945, shall stand repealed.

Art. 2. With effect from the same date, female personnel shall receive the same remuneration as male personnel of the same class and grade.

[1] Italian text in *Bollettino Ufficiale* No. 5, Supplement No. 1, of 14 May 1952. English translation from the Italian text by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1951*, p. 434.

ORDINANCE No. 6 CONCERNING THE MAXIMUM PERIOD DURING WHICH DEFENDANTS IN CRIMINAL PROCEEDINGS MAY BE DETAINED AWAITING TRIAL[1]

of 3 April 1952

Art. 1. Without prejudice to the powers conferred by articles 277 *et seq.* of the Code of Criminal Procedure, a defendant shall be automatically released from prison if in the preliminary investigation of a criminal matter no summons to appear for trial has been issued and the period of pre-trial detention has exceeded:

Two months, if the offence is within the jurisdiction of the *Qadi*, the Resident and the regional commissioner;

Three months, if the offence is within the jurisdiction of the Chief Justice of Somaliland;

Five months, if the offence is within the jurisdiction of the regional court and the assize court.

Art. 2. A release order as provided in the foregoing article shall be issued by the person representing the Public Prosecutor before the Chief Justice of Somaliland.

Where the period of pre-trial detention has exceeded the limits prescribed by the foregoing article and no summons to appear for trial has been issued, the judge conducting the preliminary investigation of an offence within his jurisdiction shall forthwith

[1] Italian text in *Bollettino Ufficiale* No. 4, Supplement No. 1, of 16 April 1952. English translation from the Italian text by the United Nations Secretariat. The ordinance came into force on the day of its publication.

transmit all the papers in the case to the representative of the Public Prosecutor together with a report stating the reasons for the delay.

Art. 3. The Public Prosecutor may, in making a release order, require the accused to reside in a specific place or to provide bail or security.

Art. 4. The provisions of article 1 shall not apply to the following offences, unless they do not come within the jurisdiction of the regional court:

(*a*) Offences against the State;
(*b*) Massacre;
(*c*) Flood, landslide or avalanche;
(*d*) Shipwreck, sinking or air disaster;
(*e*) Disaster brought about by a criminal attempt against the safety of transport;
(*f*) Epidemic;
(*g*) Poisoning of water or food;
(*h*) Counterfeiting of currency or conspiring to pass counterfeit currency or to introduce such currency into the State;
(*i*) Wilful homicide;
(*l*) Aggravated robbery;
(*m*) Aggravated extortion;
(*n*) Abduction for the purpose of robbery or extortion.

A release order shall likewise not be issued in favour of a person who has been declared to be a habitual or professional offender or to have criminal tendencies, or to whom the conditions prescribed by article 102 of the Penal Code for a statement of habitual criminality apply, or who has been detained for reasons of personal safety or has been released on probation.

Art. 5. The release order shall be revoked if the accused does not comply with the requirements set forth in article 3 or has fled or is about to flee or commits another offence.

ORDINANCE No. 10 CONCERNING ABOLITION OF SENTENCE BY DECREE IN CRIMINAL PROCEEDINGS[1]

of 4 July 1952

Art. 1. The first part of article 99 of the royal decree of 20 June 1935, No. 1630 on the Judicial Regulations for Somaliland[2] is modified as follows:

The regional commissioner, who, after having studied the documentation and made such investigations as he considers necessary, decides to impose only a fine not exceeding 400 somalos in judicial proceedings that are prosecuted by the State, may pronounce the sentence by decree without trial.

The same powers are given to the Resident for the offences for which he is competent.

. . .

[1]Italian text in *Bollettino Ufficiale* No. 7, of 28 July 1952. English translation from the Italian text by the United Nations Secretariat. The ordinance came into force on 1 September 1952.

[2]The first part of this article read as follows: "If provincial commissioners in procedures for crimes which may be prosecuted *ex officio* are of opinion, after the examination of the case and the investigations deemed to be necessary, that they should pass sentence of imprisonment for not more than three months or of a fine not exceeding 5,000 lire, they may pass sentence by decree, without trial. The same power is granted to Residents for offences in which they are competent."

ORDINANCE No. 13 ABOLISHING THE REGULATION WHICH APPROVED FORCED OR COMPULSORY WORK IN THE TERRITORY OF SOMALILAND[1]

of 15 July 1952

Art. 1. Royal decree No. 917, of 18 April 1935, which approved the regulation for forced or compulsory work is not applicable in the Territory of Somaliland.

Art. 2. Any person demanding or ordering forced or compulsory work, in any form, is punishable by imprisonment of from one to five years and a fine up to 5,000 somalos unless the fact is considered to be a more serious offence under some other law.

[1]Italian text in *Bollettino Ufficiale* No. 8, of 10 August 1952. English translation from the Italian text by the United Nations Secretariat.

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA AND NEW GUINEA

Papua

NOTE

Summaries of the Education Ordinance, 1952, the Native Economic Development Ordinance, 1951–1952, and the Native Apprenticeship Ordinance, 1952, are to be found on pp. 339–340 of this *Yearbook*.

BELGIUM

BELGIAN CONGO

DECREE TO AMEND THE PROVISIONS OF THE CIVIL CODE RESPECTING THE REGISTRATION OF CONGOLESE[1]

of 17 May 1952

SUMMARY

The decree amends the provisions of the Civil Code with a view to placing certain Congolese on the same footing as non-indigenous inhabitants by making them subject, through registration, to civil legislation of European type. The most important changes are summarized below.

A register for the entry of civilized Congolese is kept at each civil registry office. In order to qualify for registration, a person must

(1) Have attained his majority as defined in the Civil Code;

(2) Prove by his education and his mode of life that he has attained a level of civilization fitting him to enjoy the rights and discharge the duties provided under statute law. A male Congolese who has entered into a legally recognized marriage may not be registered without his wife's consent. The wife assumes the status of her husband. Their marriage is governed by the Civil Code in respect of its effects on personal status and—except where their matrimonial system is governed by a special covenant modified, with a view to the registration, to comply with the formal and substantive requirements of the Civil Code—in respect of property. Marriage between a registered person and a non-registered person is governed, in respect of both form and substance, by the law applicable to the husband. Unmarried children under age who were born before the date of registration and whose filiation is legally established assume the status of their father if the latter has actually exercised parental authority and guardianship over them. A registered person's children born after the date of his registration assume the status of their father, except in the case of natural children acknowledged after attaining their majority. A registered person's name may be deleted from the register, under an established procedure, at his request on valid grounds. The name of a married male registered person may not be deleted from the register at his request without his wife's consent. The wife assumes the status of her husband. The deletion of a person's name from the register does not affect the status of his children if they have attained their majority or are married. From the date of the deletion of his name from the register, a person formerly registered reverts to the status of a non-registered Congolese, without prejudice to the rights of third parties.

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[1] French and Flemish texts in the *Bulletin officiel du Congo belge* No. 6, of 15 June 1953. The text is preceded by the report of the Colonial Council on the draft decree. Information received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des sciences administratives*, Brussels. Summary prepared by the United Nations Secretariat.

DECREE ESTABLISHING EQUALITY OF REGISTERED INDIGENOUS INHABITANTS AND INDIGENOUS HOLDERS OF THE CARD OF CIVIC MERIT WITH NON-INDIGENOUS INHABITANTS FOR THE PURPOSES OF THE CONSOLIDATED DECREES CONCERNING THE ORGANIZATION AND JURISDICTION OF COURTS

DECREE ESTABLISHING EQUALITY OF REGISTERED INDIGENOUS INHABITANTS AND INDIGENOUS HOLDERS OF THE CARD OF CIVIC MERIT WITH NON-INDIGENOUS INHABITANTS FOR THE PURPOSES OF THE CRIMINAL LAW

DECREE ESTABLISHING EQUALITY OF REGISTERED INDIGENOUS INHABITANTS AND INDIGENOUS HOLDERS OF THE CARD OF CIVIC MERIT WITH NON-INDIGENOUS INHABITANTS FOR THE PURPOSES OF CRIMINAL PROCEEDINGS

DECREE ESTABLISHING EQUALITY OF REGISTERED INDIGENOUS INHABITANTS AND INDIGENOUS HOLDERS OF THE CARD OF CIVIC MERIT WITH NON-INDIGENOUS INHABITANTS FOR THE PURPOSES OF THE DECREE CONCERNING THE RESTORATION OF CIVIC RIGHTS TO CONVICTED OFFENDERS[1]

of 17 May 1952

SUMMARY

These four decrees place registered indigenous inhabitants and indigenous holders of the card of civic merit on a footing of equality with non-indigenous inhabitants for the purpose of the enjoyment, in these particular respects, of certain rights hitherto reserved exclusively for the European population.

[1]French and Flemish texts of the decrees in the *Bulletin officiel du Congo belge* No. 6, of 15 June 1952. Information received through the courtesy of Mr. Edmond Lesoir, Secretary-General of the *Institut international des sciences administratives*, Brussels.

FRANCE

TERRITORIES UNDER THE SUPERVISION OF THE MINISTRY OF FRANCE OVERSEAS

ACT No. 52-1322 ESTABLISHING A LABOUR CODE IN THE TERRITORIES AND ASSOCIATED TERRITORIES COMING WITHIN THE COMPETENCE OF THE MINISTRY FOR OVERSEAS TERRITORIES

of 15 December 1952

NOTE

The Labour Code for the territories and associated territories coming within the competence of the Ministry for Overseas Territories was published in the *Journal officiel de la République française* No. 298, of 16 December 1952. It is subdivided into ten parts as follows: General (Part I), trade unions (II), labour contracts (III), wages (IV), conditions of work (V), hygiene and security—medical service (VI), organs and means of execution (VII), collective disputes (VIII), penalties (IX), temporary provisions (X).

The provisions which are particularly interesting from the point of view of human rights are analysed in the note on the development of human rights in France.[1] A general survey of the provisions of the Act may be found in *Industry and Labour* (published by the International Labour Office).[2]

[1] See pp. 72-73 of this *Yearbook*.
[2] Vol. IX, No. 3, 1 February 1953, pp. 74-84.

ACT No. 52-130 OF 6 FEBRUARY 1952 RELATING TO THE ESTABLISHMENT OF THE GROUP ASSEMBLIES AND LOCAL ASSEMBLIES OF FRENCH WEST AFRICA, TOGOLAND, FRENCH EQUATORIAL AFRICA, THE CAMEROONS AND MADAGASCAR[1]

Art. 1. Local assemblies shall be established in the African territories of Overseas France, with the exception of French Somaliland, to replace the assemblies established by the Decrees of 25 October 1946 and by the Act of 31 March 1948 instituting the General Council of the Upper Volta.

. . .

[Article 2 deals with the composition of the assemblies and fixes the number of members of each of the two sections which form them in the various Territories mentioned above, with the exception of the Senegal and Togoland assemblies, which will have a single chamber.]

Art. 3. . . . The number of councillors to be elected in each electoral district shall be proportional to the number of inhabitants, with a minimum of one councillor for each district.

For the election of the councillors in the first section, in territories in which there are two or more electoral districts, the seats shall be distributed proportionally to the number of voters registered on 15 January 1952.

The seats shall be distributed by decree, after consultation with the head of the territory.

ROLLS OF ELECTORS

Art. 4. With respect to the territories referred to in this Act, article 3 of Act No. 51-586, of 23 May 1951,[2] relating to the election of deputies to the National Assembly in the territories coming under the supervision of the Ministry of Overseas France shall be amended as follows:

"*Art. 3.* The following persons shall have the right to vote:

"(1) Any person whose name appears on the roll of electors on the date of the promulgation of this Act;

"(2) Any person whose name formerly appeared on

[1] French text in *Journal officiel de la République française* No. 34, of 7 February 1952. By Act No. 52-412 of 17 April 1952, published in *Journal officiel* No. 95, of 18 April 1952, the Comoro Islands were included in the territories in which Act No. 52-130 of 6 February 1952 applies.

[2] See *Yearbook on Human Rights for 1951*, p. 450.

the roll of electors and has been removed and who has not been disqualified from voting;

"(3) Any person, of either sex, possessing French citizenship, who has attained the age of twenty-one;

"(4) Any person, of either sex, possessing personal status, who has attained the age of twenty-one and belongs either to one of the categories specified in article 40 of Act No. 46-2151, of 5 October 1946,[1] as amended by Act No. 47-1606, of 27 August 1947,[2] or to one of the following categories; that is to say, if he or she:

"Is the head of a household;

"Is the mother of two children who are alive or who have died in the service of France;

"Is in receipt of a civil or military pension."

. . .

Art. 5. In the territories referred to in this Act, articles 4, 5 and 6 of Act No. 51-586, of 23 May 1951,[3] relating to the election of deputies to the National Assembly in overseas territories, shall apply to the elections of councillors to local assemblies.

ELIGIBILITY

Art. 7. The following shall be eligible for election to both sections of the local assemblies:

Any citizen, of either sex, whatever his status, who has attained the age of twenty-three and has not been committed to a trustee, who has been placed on a roll of electors in the territory or shows proof that he should be placed thereon before the date of the election, who has been resident for not less than two years in the group of territories or the territory, and who is able to speak French;

Any citizen who has not been committed to a trustee or disqualified from voting who, though not resident in the territory, is registered therein on one of the direct taxation rolls on 1 January of the year in which the election is held or shows proof that he should be registered thereon on that date.

[Articles 8, 9 and 10 deal with posts which cannot be held simultaneously with the office of councillor, among them the posts of administrators of overseas territories, members of the offices of the President of the French Union or of Ministers or Secretaries of State, regular members of the armed forces, and prefects.]

ELECTORAL SYSTEM

Art. 11. Members of local assemblies shall be elected for five years and shall be eligible for re-election. The entire membership of local assemblies shall be renewed.

Art. 12. The elections shall be held as follows in each college and in each electoral district:

When one seat is to be filled, by uninominal list with one ballot;

When two or more seats are to be filled, by majority vote on one ballot without preferential votes or split votes and without incomplete lists.

[The remaining articles deal with election procedure.]

[1] See *Yearbook on Human Rights for 1948*, pp. 317 and 318.
[2] *Ibid.*, p. 317.
[3] See *Yearbook on Human Rights for 1951*, p. 450.

NEW CALEDONIA

ACT No. 52-1310 OF 10 DECEMBER 1952 CONCERNING THE COMPOSITION AND FORMATION OF THE GENERAL COUNCIL OF NEW CALEDONIA AND DEPENDENCIES[1]

COMPOSITION OF THE GENERAL COUNCIL

Art. 1. The General Council of New Caledonia and dependencies shall consist of twenty-five members elected for a term of five years and eligible for re-election.

The terms of office of all the members of the General Council shall expire at the same time.

ROLLS OF ELECTORS

Art. 3. The electoral college in each electoral district shall include persons of either sex entitled to exercise political rights, not disqualified from voting and entered in the rolls of electors.

Without prejudice to the provisions of Act No. 46-1889, of 28 August 1946, concerning the verification of entries in the rolls of electors and the procedure for emergency entries, any elector who ceases to be domiciled within his original electoral district shall continue to be registered in the roll of electors of that district and may be entered in the roll of

[1] French text in *Journal officiel de la République française* No. 294, of 11 December 1952. English translation by the United Nations Secretariat. Article 14 of the Act repeals all provisions contrary to the present Act.

electors of the electoral district of his new domicile only on the production of proof that he has resided in that district for one year.

Art. 5. The rolls of electors shall be compiled and revised each year in the manner and subject to the time-limits and conditions provided by the laws and regulations in force.

Art. 6. The provisions of articles 8, 9 and 10 of Act No. 52-130, of 6 February 1952,[1] shall apply to the election of members of the General Council of New Caledonia.

ELECTORAL PROCEDURE

Art. 7. The elections shall be by majority vote on one ballot, with split votes and preferential votes.

Incomplete lists shall be permitted.

Art. 8. A declaration bearing the legalized signatures of all the candidates shall be prepared for each electoral list and shall be lodged with and registered by the government of the Territory not later than the twenty-first day before the polling day.

Art. 11. The provisions of articles 15, 18, 19, 20 and 21 of Act No. 52-130, of 6 February 1952, shall apply to the election of members of the General Council of New Caledonia.

Art. 12. Electoral cards shall be distributed not later than eight days before the polling day in each election, as provided by article 7 of the Act of 20 March 1924, having regard to the following provisions:

Commissions for the distribution of electoral cards shall be set up in each commune or municipal area or district as soon as the electoral campaign is opened.

[1] See p. 352 above.

OCEANIA

ACT No. 52-1175 OF 21 OCTOBER 1952 CONCERNING THE COMPOSITION AND STRUCTURE OF THE TERRITORIAL ASSEMBLY OF THE FRENCH ESTABLISHMENTS IN OCEANIA[1]

COMPOSITION OF THE ASSEMBLY

Art. 1. The Territorial Assembly of the French Establishments in Oceania shall be composed of twenty-five members, who shall be elected for five years and shall be eligible for re-election. The entire membership of the Assembly shall be renewed.

. . .

ELECTORAL SYSTEM

Art. 2. The elections shall be held as follows in each electoral district:

If one seat is to be filled, by uninominal list with one ballot;

If two or more seats are to be filled, by majority vote on one ballot, with splitting of votes and without incomplete lists.

Art. 4. Any person, of either sex, who is entitled to exercise political rights, who has not been disqualified from voting under the laws and regulations and whose name appears on the roll of electors, shall be entitled to vote.

ELIGIBILITY

Art. 5. Any person, of either sex, shall be eligible for election to the Territorial Assembly, provided that he has attained the age of twenty-three years, is not committed to a trustee, is entered on a roll of electors in the territory or produces sufficient evidence to show that he should be so entered before the date of the election, has been resident in the territory for not less than two years and is able to speak French.

Art. 6. The provisions of articles 8, 9 and 10 of Act No. 52-130,[2] of 6 February 1952, shall be applicable to the election of councillors to the Territorial Assembly.

Art. 7. Each nomination for a single seat or any list shall be made not later than thirty days before the date of the election by a declaration which shall bear the notarized signatures of all the candidates and which shall be deposited and registered with the Government of the territory.

[1] French text in the *Journal officiel de la République française* No. 253, of 22 October 1952. English translation by the United Nations Secretariat. Article 13 of the Act repeals all provisions relating to the structure of the Territorial Assembly which are inconsistent with this Act, including those of article 6 of decree No. 46-2379, of 25 October 1946. Another text of French Oceania, decree No. 52-1198, of 24 October 1952, relative to the establishment in French Oceania of family holdings immune from seizure (*Journal officiel* No. 259, of 29 October 1952) is reproduced in *Food and Agricultural Legislation*, 1953, vol. II, No. 1, published by the Food and Agriculture Organization of the United Nations.

[2] See p. 352 above.

In the absence of the candidate's signature, his power of attorney in due form must be produced. A provisional receipt for the declaration shall be given to the person depositing the same; the final receipt shall be issued within three days.

A nomination may not be withdrawn after the list has been deposited. In the event of the death of one of the candidates during that period, the candidates who submitted the list shall be entitled to replace him by a new candidate.

. . .

ORGANIZATION OF ELECTIONS

Art. 9. The electoral colleges shall be convened by an order of the Chief Territorial Officer; the date of the election shall be fixed by decree.

An interval of sixty clear days shall be allowed to lapse between the date on which the colleges are convened and the date of the election, which shall always be held on a Sunday. The polling shall not continue for longer than one day. The polling shall begin and end at the times fixed in the order convening the electors. The ballots shall be counted immediately.

Art. 10. Articles 14 and 16 of Act No. 51-586, of 23 May 1951,[1] and article 17 of that Act, as supplemented by article 18 of Act No. 52-130, of 6 February 1952, shall be applicable to the election of councillors to the Territorial Assembly.

Art. 11. In each commune and administrative district, commissions shall be set up to be responsible for distributing the voting cards not later than eight days before the date of the election.

. . .

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[1] See *Yearbook on Human Rights for 1951*, p. 450.

NETHERLANDS

NEW GUINEA

ORDINANCE OF THE GOVERNOR OF NEW GUINEA CONCERNING LABOUR REGISTRATION[1]

of 15 February 1952

SUMMARY

In view of the relatively small indigenous population, the drift of this population to the towns and the severe labour shortage in areas where headway is being made in developing the territory, there is a serious danger that the available labour force might be subjected to excessive demands by employers for work elsewhere than in the natural surroundings of the workers, so that the indigenous social structure might be disturbed.

If the natural balance appears likely to become disturbed, the administrative authorities will take appropriate measures forthwith. The above-mentioned ordinance requires each employer to submit a half-yearly statement of the indigenous workers in his employment. To supplement this legal provision, all administrative departments concerned are also required to submit similar periodical statements through normal administrative channels.

[1] Dutch text of the Ordinance in *Official Gazette* No. 6, of 1952. Text of the executive decision in *Official Gazette* No. 7, of 1952. Summary received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs. English translation by the United Nations Secretariat.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

GAMBIA

THE DEPORTATION (IMMIGRANT BRITISH SUBJECTS) ORDINANCE, 1952[1]

AN ORDINANCE TO REGULATE THE DEPORTATION OF UNDESIRABLE IMMIGRANT BRITISH SUBJECTS AND FOR SIMILAR PURPOSES

(assented to 29 May 1952)

Sect. 6. Except where a court has, in accordance with the provisions of this ordinance, given a certificated recommendation that an order should be made, no deportation order, restriction order or security order shall be made under this ordinance except where a judge or magistrate has, in accordance with the provisions of the next following two sections, made a report on the case and the Governor in Council is satisfied, having regard to the findings of fact and any conclusions of law as stated in the report, that such order may lawfully be made.

Sect. 7. (1) A notice in the prescribed form shall be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him, the grounds upon which it is proposed that an order may be made against him under this ordinance, and requiring him to show cause, before a judge or magistrate, at a place and time to be stated in the notice, why such order should not be made in respect of him.

(3) In any case where it is intended to take proceedings against any person under this ordinance on the ground that he is an undesirable person, and it is represented on oath or affidavit to a judge or magistrate that that person is an undesirable person, the judge or magistrate may issue a warrant for his arrest, and, if the notice mentioned in sub-section (1) of this section shall not have already been served upon him, it shall be so served not later than twenty-four hours after his apprehension.

. . .

Sect. 8. (1) At the time appointed in the notice served under the foregoing section or at any adjournment of the hearing, the judge or magistrate shall take or consider such evidence upon oath or . . . affidavit as is tendered in support of the charges, and where the evidence is an affidavit, the accused shall be informed of the general nature of such evidence, and where the evidence of witnesses is taken orally at the hearing, the witness may be cross-examined by the accused or his councel, and the accused may on his own behalf call such witnesses and tender such other evidence as may be relevant upon the question of issue.

. . .

Sect. 11. (1) As soon as practicable after a deportation order or restriction order or security order is made, a copy thereof shall be served upon the person charged.

(2) A person with respect to whom a security order has been made may be detained in such manner as may be directed by the governor until such order shall have been complied with;

Provided that, without prejudice to the provisions of sub-sections (3) and (4) of this section, where the security order is not complied with, no person shall be detained under this sub-section for a period exceeding twenty-eight days.

(3) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a deportation order is in force may be detained in such manner as may be directed by the Governor, and may be placed on a ship, aircraft, or vehicle about to leave the Gambia and shall be deemed to be in legal custody while so detained and until the ship, aircraft, or vehicle finally leaves the Gambia.

(4) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a restriction order is in force may be detained in such manner as may be directed by the Governor so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place

[1] English text in *Gambia Colony*, No. 4 of 1952; Supplement "C" to the *Gambia Gazette* No. 15, of 31 May 1952. This ordinance was passed in the Legislative Council on 6 May 1952; the date of commencement of the ordinance was 31 May 1952.

which he is prohibited from leaving, and shall be deemed to be in legal custody while so detained.

(5) No person shall be detained under sub-section (3) or sub-section (4) of this section for a period exceeding ninety days and, if at the expiration of such period he has not been removed or deported as aforesaid, the restriction order or deportation order as the case may be shall cease to have effect.

. . .

THE DEPORTATION (ALIENS) ORDINANCE, 1952[1]

AN ORDINANCE TO REGULATE THE DEPORTATION OF ALIENS

(assented to 29 May 1952)

. . .

3. (1) The Governor may, if he thinks fit, in any of the cases mentioned in this ordinance, make a deportation order in respect of any alien.

(2) A deportation order shall be in the prescribed form and may be made subject to any condition which the Governor may think fit to impose.

(3) A deportation order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof, shall prescribe a time within which the person charged may of his own volition comply therewith.

5. A deportation order may be made in any of the following cases:

(*a*) If any court certifies to the Governor that the alien has been convicted either by that court, or by any inferior court from which the case of the alien has been referred for sentence or brought by way of appeal, of any of the offences specified in the schedule to this ordinance[2] and that the court recommends that a deportation order should be made in his case either in addition to or in lieu of sentence; or

(*b*) If any court certifies to the Governor that the alien is an undesirable person and recommends that a deportation order should be made in his case; or

(*c*) If any court certifies to the Governor after proceedings taken for the purpose within four years after the alien has last entered the Gambia that the alien has been sentenced in a foreign country for an extradition crime within the meaning of the Extradition Act, 1870; or

(*d*) If the Governor deems it to be conducive to the public good to make a deportation order against the alien.

6. Where any case in which a court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before any higher court, and that court certifies to the Governor that it does not concur in the recommendation, such recommendation shall be of no effect, but without prejudice to the power of the Governor to make an order of deportation under the last foregoing provision.

RESTRICTION ORDERS: SECURITY ORDERS

7. The Governor may, if he thinks fit, in lieu of making a deportation order, make a restriction order, or a security order, or both, in relation to any alien in respect of whom he could make a deportation order under this ordinance.

DETENTION PENDING DECISION: CONTENTS AND EXECUTION OF ORDERS

8. Where a court recommends the making of a deportation order or restriction or security order on the grounds that the person charged is an undesirable person or a person convicted of any of the offences specified in the schedule to this ordinance, the person charged may, if the court shall so order, be detained in such manner as the court may direct pending the decision of the Governor, for a period not exceeding twenty-eight days, and shall be deemed to be in legal custody whilst so detained.

10. (1) A soon as practicable after a deportation order or restriction order or security order is made, a copy thereof shall be served upon the person charged.

(2) A person with respect to whom a security order has been made may be detained in such manner

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[1] English text in *Gambia Colony* No. 5, of 1952; Supplement "C" to the *Gambia Gazette* No. 15, of 31 May 1952. This ordinance was passed in the Legislative Council on 6 May 1952; the date of commencement of the ordinance was 31 May 1952. Section 19 of the ordinance repeals the Repatriation of Convicted Aliens Ordinance, 1949.

[2] According to the schedule, a deportation order may be recommended by a court in respect of any offence for which the court has power to impose imprisonment without the option of a fine.

as may be directed by the Governor until such order shall have been complied with:

Provided that, without prejudice to the provisions of sub-sections (3) and (4) of this section, where the security order is not complied with, no person shall be detained under this sub-section for a period exceeding twenty-eight days.

(3) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a deportation order is in force may be detained in such manner as may be directed by the Governor, and may be placed on a ship, aircraft, or other vehicle about to leave the Gambia and shall be deemed to be in legal custody while so detained and until the ship, aircraft, or other vehicle finally leaves the Gambia.

(4) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a restriction order is in force may be detained in such manner as may be directed by the Governor so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place which he is prohibited from leaving, and shall be deemed to be in legal custody while so detained.

(5) No person shall be detained under sub-section (3) or (4) of this section for a period exceeding ninety days, and, if at the expiration of such period he has not been removed or deported as aforesaid, the restriction order or deportation order as the case may be shall cease to have effect.

13. (1) The Governor by order may:

(*a*) At any time revoke any deportation order or restriction order or security order;

(*b*) Vary any restriction order so as to permit the person therein mentioned to enter or leave any area which he is prohibited from entering or leaving, or to permit him to leave the Gambia, and may attach to the permission a condition suspending the operation of the order during the absence of such person from any such area or from the Gambia, or conditions as to security for good behaviour or otherwise, and may also vary, cancel or add a condition requiring such person to report himself;

(*c*) Vary any deportation order so as to permit the person mentioned therein to enter the Gambia and may attach to such permission conditions as to security or otherwise.

(2) Subject to the provisions of sub-section (1) of this section any deportation order, restriction order or security order made by the Governor under this ordinance shall be final and shall not be called in question, reviewed, quashed or varied by any court in the Gambia.

. . .

16. In any proceedings under this ordinance:

(i) A document purporting to be an order made under this ordinance shall, until the contrary is proved, be presumed to be such an order; and

(ii) Any order made under this ordinance shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made.

17. (1) The Governor may by order impose, in relation to persons in respect of whom restriction orders are in force, and either generally or in any specific case, such restrictions as to residence within the area specified in the order, reporting to the police, registration, occupation, employment, visitors, censorship and receipt or despatch of communications, use or possession of any vehicle, boat, aircraft, machine, radio, or other apparatus, camera, arms and explosives, or other article, or such other like restrictions, as he may deem necessary in the public interest, and any person in relation to whom any such order is made shall comply with the terms of the order.

. . .

THE CHILDREN AND YOUNG PERSONS (AMENDMENT) ORDINANCE, 1952[1]

. . .

2. Section 12 of the Children and Young Persons Ordinance, 1949, is hereby repealed and in place thereof the following section shall have effect:

"12. Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years; but in lieu thereof the court shall sentence such person to be detained during Her Majesty's pleasure; and, if so sentenced, he shall notwithstanding anything in the other provisions of this Ordinance, be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody."

[1]English text: *Gambia Colony*, No. 15 of 1952. This ordinance was passed in the Legislative Council on 23 December 1952; the date of the commencement of the Ordinance was 31 December 1952. An analogous amendment of sub-section 2 of section 28 of the Criminal Code was made by the Criminal Code (Amendment) Ordinance, 1952 (published in *Gambia Colony*, No. 17 of 1952). The dates of adoption and commencement are the same.

SARAWAK

THE EMERGENCY REGULATIONS, 1952[1]

Regulation of 9 August 1952 as amended on 20 September 1952

6. (1) The Governor may, if he considers it in the public interest so to do, by order prohibit the manufacture, sale, use, display or possession of any flag, banner, badge, emblem, device, picture, photograph, uniform or distinctive dress.

(2) Any person contravening any provision of an order made under this regulation shall be guilty of an offence against these regulations.

(3) Any article in respect of which an offence has been committed under this regulation may be seized and destroyed or otherwise dealt with as the Governor may direct, whether or not the identity of the offender is known and whether or not any prosecution has been commenced in respect of the offence.

7. (1) Every person within any district or part thereof which may be designated by order by the district officer in charge of the district shall remain within doors between such hours as may be specified in the order unless in possession of a written permit in that behalf issued by the district officer or a police officer of or above the rank of sub-inspector.

. . .

8. (1) Any meeting or assembly of five or more persons in any place whatsoever may be ordered to disperse by any resident, district officer, native officer or any police officer of or above the rank of sergeant.

(2) The persons dispersing any such assembly may use such force as may be necessary.

9. (1) Any Resident or district officer may by order, or by giving directions, or in any other manner, regulate, restrict, control or prohibit the use of any road or waterway by any person, or close any road or waterway.

(2) Any Resident, district officer or native officer may, by the issue of permits to which conditions may be attached or in any other manner, regulate, restrict, control or prohibit the travelling by any person in any motor-car, motor-bus or vehicle of any description, and may similarly regulate, restrict, control or prohibit the travelling by any person in any vessel.

. . .

10. A Resident or district officer may by order exclude any person or persons from the division or district under his charge or from any part thereof.

11. (1) A Resident may by order under his hand direct that any person shall not move outside the limits of any area specified in the order, and such order shall also apply to such persons normally residing with the person in respect of whom the order is made as are specified therein.

(2) Any order made under this regulation shall be effective for such period as may be specified in the order and may contain such conditions, regarding reporting to the Police or otherwise, as the Resident may deem expedient.

(3) So long as any order made under this regulation is effective no person affected thereby shall leave the area which he has been ordered to remain in without the written permission of the district officer in charge of the district or the officer in charge of the police district, and any such written permission may contain such conditions as the officer giving the same may deem expedient.

(4) Any person who fails to comply with an order made under this regulation or who contravenes any condition contained in such order or any condition contained in a written permission granted under paragraph (3) of this regulation, shall be guilty of an offence against these regulations.

12. (1) If, as respects any place or premises, it appears to a Resident to be necessary or expedient in the interests of public safety or order, or for the maintenance of supplies or services essential to the life of the community, that special precautions should be taken to prevent the entry of unauthorized persons, he may by order declare such place or premises to be a protected place for the purposes of these regulations; and so long as the order is in force, no person shall, subject to any exemptions for which provision may be made in the order, be in those premises without the permission of such authority or person as may be specified in the order.

(2) Any place or premises in relation to which an order made under this regulation is in force is hereinafter referred to as a "protected place".

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[1]English text of the Principal Regulations in *Colony of Sarawak, Government Gazette*, Second Supplement, No. 21 of 11 August 1952, and of the Amendment Emergency Regulation, 1952, *ibid.* No. 28, of 1 October 1952. These regulations were made in exercise of the powers conferred on the Governor in Council by the Emergency Regulations Ordinance 1948, the operations of which were extended for a further period of two years as from 16 June 1952.

(3) Where in pursuance of this regulation, any person is granted permission to be in a protected place, that person shall, while acting under such permission, comply with such directions for regulating his conduct as may be given by the Resident or by the authority or person granting the permission.

(4) Any police officer or any person authorized in that behalf by the occupier of the premises may search any person entering or seeking to enter, or being in, a protected place, and may detain any such person for the purpose of searching him.

(5) If any person is in a protected place in contravention of this regulation, or, while in such a place, fails to comply with any directions given under this regulation, then, without prejudice to any proceedings which may be taken against him, he may be removed from the place by any police officer or any person authorized in that behalf by the occupier of the premises.

(6) Any person who is in a protected place between the hours of 6.30 p.m. and 6.30 a.m., or such other hours as the Chief Secretary may, by order, specify in relation to any particular protected place, and who fails to stop after being challenged by a police officer so to do, may be arrested by force which force may, if necessary to effect the arrest, extend to the voluntary causing of death.

. . .

13. (1) If, as respects any area, it appears to a Resident or a district officer to be necessary or expedient that special precautions should be taken to prevent malicious injury to persons or property, he may, by order, declare such area to be a special area for the purposes of these regulations. Any area in relation to which an order made under this regulation is in force is hereinafter referred to as a "special area".

(2) Every person in a special area shall stop and submit to search by an officer when called upon so to do, and if any such person fails to stop when challenged or called upon to stop by an officer, he may be detained for the purpose of being searched.

(3) A district officer may, in respect of any special area in his district, by order prescribe the roads, paths or routes to be used by persons in or passing through such special area.

(4) Whenever roads, paths or routes are prescribed under the provisions of the preceding paragraph, any person who while in the special area leaves the prescribed roads, paths or routes may be arrested without warrant by an officer, and shall, in the absence of reasonable excuse the burden of proving which shall be upon him, be guilty of an offence against these regulations.

. . .

14. Any person who posts or distributes any placard, circular or other document containing any incitement to violence or counselling disobedience to the law, or to any lawful order, or likely to lead to any breach of the peace, shall be guilty of an offence against these regulations.

15. (1) Any Resident or district officer may by order prohibit the printing, sale, issue, circulation or possession of any document which, in his opinion, contains any incitement to violence or counsels disobedience to the law or to any lawful order or is calculated or likely to lead to a breach of the peace or to promote feelings of ill-will or hostility between different races or classes of the population, or is of a seditious tendency.

(2) Any order made under this regulation in respect of a publication issued periodically or in parts or numbers at intervals whether regular or irregular, may extend to any past or future issue of such publication.

(3) If a Resident is satisfied that any person has printed, sold, issued or circulated any document which, in his opinion contains any incitement to violence or counsels disobedience to the law or to any lawful order or is calculated or likely to lead to a breach of the peace or to promote feelings of ill-will or hostility between different races or classes of the population, or is of a seditious tendency, he may by order prohibit such person from printing, selling, issuing or circulating any document or such documents as may be specified in the order.

16. Any person aggrieved by an order made under regulation 15 of these regulations may appeal to the Governor against such order.

17. (1) Any Resident, or any officer authorized by him in that behalf, may, if it appears to him to be necessary or expedient so to do in the interests of public safety, take possession of any land or of any building or part of a building, and may give such directions as appear to him necessary or expedient in connexion with the taking of possession of that land or building.

(2) While any land or building is in the possession of a Resident or such officer by virtue of this regulation, the land or building may, notwithstanding any restriction imposed on the use thereof (whether by any written law or other instrument or otherwise), be used by, or under the authority of, the Resident or such officer for such purpose, and in such manner, as the Resident or such officer thinks expedient in the interests of public safety; and the Resident or such officer so far as appears to him to be necessary or expedient in connexion with the taking of possession or use of the land or building in pursuance of this paragraph:

(*a*) May do, or authorize persons using the land or building as aforesaid to do, in relation to the land or building, anything any person having an interest in the land or building would be entitled to do by virtue of that interest; and

(*b*) May by order provide for prohibiting or restricting the exercise of rights of way over the land or building, and of other rights relating thereto which are enjoyed by any person, whether by virtue of an interest in the land or otherwise.

. . .

18. (1) Any Resident or district officer, if it appears to him to be necessary or expedient so to do in the interests of public safety, may take possession of any moveable property in the division or district under his charge, including any vessel and anything on board a vessel, and may give such direction as appears to him to be necessary or expedient in connexion with the taking possession of the moveable property.

(2) Without prejudice to the generality of the power aforesaid a Resident or district officer may:

(*a*) Authorize any persons by name or office (which persons are hereinafter in this regulation referred to as the authority) to take possession, in their discretion, of any moveable property;

(*b*) Authorize any person or class of persons to perform such functions in connexion with the taking possession of any moveable property as appears necessary and expedient;

(*c*) Require and empower persons or classes of persons to do or abstain from doing any such things as appear necessary or expedient in connexion with the taking possession of any moveable property.

(3) Where a Resident or district officer or the authority takes possession of any moveable property, the Resident or district officer or the authority, as the case may be, may use or deal with, or authorize the use of or dealing with, the moveable property for such purpose or in such manner as he thinks expedient in the interests of public safety, as if he were the owner thereof.

19. A Resident or district officer, if he considers it necessary or expedient in the public interest so to do, may direct any person having possession of or control over any moveable property, to store such property in such place as may be specified in the direction, or to dispose of such property in such manner or to take or abstain from taking such action in relation to such property as may be specified in the direction.

20. (1) A Resident or district officer, if he considers it necessary or expedient in the public interest so to do, may direct any able-bodied male person to perform any specified service or work.

(2) Any person performing any service or work under a direction given under this regulation shall be paid such compensation as may be prescribed by rules made under regulation 38 of these regulations.

. . .

20A. A Resident may by order make provision for securing that enough workers are available in undertakings engaged in essential work and may in particular provide by any such order:

(*a*) For securing that, except in circumstances and to the extent provided by the order, persons employed in any such undertaking shall continue to be employed in that undertaking, and shall not be caused or allowed to give their services in any other undertaking;

(*b*) For prohibiting persons so employed from absenting themselves from work without reasonable excuse or being persistently late in presenting themselves for work or refusing to work reasonable overtime or to work at the times when they are required to work or to obey lawful orders in relation to their work, or impeding the work of the undertaking;

(*c*) For requiring payment to persons so employed of wages for periods during which, though work is not available for them in their usual occupation, they are capable of and available for work, and willing to perform services which they can reasonably be asked to perform;

(*d*) For any incidental and supplementary matters for which the Resident thinks it expedient to provide, including in particular, the matters referred to in sub-paragraphs (*b*) and (*c*) of the last foregoing paragraph and the entry and inspection of premises with a view to securing compliance with the order:

and any such provision may be made so as to relate either generally to undertakings engaged as aforesaid or to any particular undertaking or class or description of undertakings so engaged, and either generally to persons employed in undertakings to which the order relates or to any particular person or class or description of persons so employed.

. . .

21. (1) The Chief Secretary or any Resident authorized by him in writing in that behalf, in any case where it appears to him to be necessary or expedient for securing the public safety or for the maintenance of public order, may by order under his hand direct that any person named in such order shall be detained for any period not exceeding one year in such place of detention as may be specified in the order.

(2) For the purposes of this regulation, there shall be one or more advisory committees consisting of persons appointed by the Governor.

(3) The functions of any such committee shall be to consider, and make recommendations to the Governor

with respect to, any objections against an order under this regulation which are duly made to the committee by the person to whom the order relates.

(4) The Governor may make rules as to the manner in which objections against such an order as aforesaid may be made to such an advisory committee, and such rules shall contain provisions for enabling any person in respect of whom an order is made under this regulation to make objections against the order; and every such person shall be informed of his right to make objections under this regulation.[1]

21A. (*as added on 20 September 1952*). (1) The Governor in Council may order any person detained under paragraph (1) of regulation 21 of these regulations to leave and remain out of the colony:

Provided that no such order shall be made against:

(*a*) Any British subject born or naturalized in the colony; or

(*b*) Any person until he has had sufficient opportunity of making an objection against the order of detention to an Advisory Committee under the provisions of paragraph (4) of regulation 21 of these regulations, and such objection, if made, has been duly heard and reported on by the Advisory Committee.

For the purposes of this paragraph a person detained under paragraph (1) of regulation 21 of these regulations shall be deemed to have had sufficient opportunity of making an objection against the order of detention if a period of seven clear days has elapsed after he has been informed of his right to lodge such objection . . .

(2) Where any person has been ordered to leave and remain out of the Colony under paragraph (1) of this regulation, such order shall be deemed to include all the dependants of such person . . .

(3) Any person who has been ordered to leave and remain out of the colony under paragraph (1) of this regulation may:

(*a*) Be detained in custody in such place or places as the Chief Secretary, or any person authorized by him in that behalf, may direct, for such period as may be necessary for the purpose of making arrangements for such person to leave the colony;

(*b*) Be conducted across the frontier or placed on board a ship by any police officer or immigration officer, and may be lawfully detained on board so long as such ship is within the territorial waters of the colony.

(4) An order of detention made under paragraph (1) of regulation 21 of these regulations in respect of a person who has been ordered to leave and remain out of the colony under this regulation shall be suspended for the purpose of carrying out such order.

(5) Any person who has left the colony in pursuance of an order made under this regulation who returns to or enters the colony shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years, and, whether or not a prosecution under this paragraph has been instituted against him, may be detained in custody and conducted across the frontier or placed on board a ship under the original order made, or deemed to have been made, against him under this regulation.

(6) Any person ordered, or deemed to have been ordered, to leave and remain out of the colony shall, while detained or in the custody of a police officer or immigration officer, be deemed to be in lawful custody.

. . .

22. Any district officer or police officer of or above the rank of sub-inspector may seize and take possession of any premises at which he has reasonable cause to believe that any document has been printed or published in contravention of an order made under regulation 15 of these regulations or for the purpose of contravening the provisions of regulation 14 of these regulations or in respect of which any person has been convicted of an offence under any written law relating to sedition or seditious publications. Any premises so seized and any printing press or other equipment found therein shall be disposed of as the Governor may order.

24. (1) Any police officer of or above the rank of sub-inspector may without warrant and with or without assistance:

(*a*) Enter and search any premises;

(*b*) Stop and search any vessel, aircraft, vehicle or individual, whether in a public place or not;

if he suspects that any evidence of the commission of an offence is likely to be found on such premises or individual or in such vessel or vehicle, and may seize any evidence so found.

(2) No woman shall be searched under this regulation except by a woman.

27. Any police officer may without warrant arrest any person suspected of the commission of an offence against these regulations, or of being a person ordered to be detained under regulation 21 of these regulations.

28. (1) Any police officer may without warrant arrest any person in respect of whom he has reason to believe that there are grounds which would justify his detention under regulation 21 of these regulations. Any such person may be detained for a period not exceeding twenty-eight days pending a decision as to whether an order for his detention under regulation 21 of these regulations should be made.

[1] See the Maintenance of Public Order (Special Powers of Detention) Ordinance, 1952, p. 365 of this *Yearbook*.

(2) Any person detained under the powers conferred by this regulation shall be deemed to be in lawful custody and may be detained in any prison, or in any police station, or in any other similar place authorized generally or specially by a Resident.

29. (1) If any person, upon being questioned by a police officer, fails to satisfy the police officer as to his identity or as to the purposes for which he is in the place where he is found, the police officer may, if he suspects that person has acted or is about to act in any manner prejudicial to the public safety or the maintenance of public order, arrest him and detain him pending inquiries.

(2) No person shall be detained under the powers conferred by this regulation for a period exceeding forty-eight hours exclusive of the time necessary for the journey from the place of arrest to the nearest magistrate except with the authority of such magistrate, who if satisfied that the necessary inquiries cannot be completed within the period of forty-eight hours, may authorize the further detention of the person detained for an additional period not exceeding seven days.

(3) Any person detained under the powers conferred by this regulation shall be deemed to be in lawful custody and may be detained in any prison, or police station, or in any other place authorized generally or specially by the Chief Secretary.

30. Any police officer may arrest without warrant any person who fails on demand to produce his identity card and to satisfy the police officer that he is a person exempted under the provisions of paragraph (*d*), (*e*) or (*f*) of sub-section (1) of section 21 of the National Registration Ordinance, 1949.

38. The Governor may make rules to provide for the payment of compensation in respect of property possession of which has been taken, or which has been surrendered, under orders made under these regulations, or in respect of any services or work performed under directions given under these regulations.

42. (1) Where any person is charged with any offence under or against these regulations any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by such person to or in the hearing of any police officer, whether or not interpreted to him by any other police officer or any other person concerned, or not, in the arrest, shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that no such statement shall be admissible or used as aforesaid:

(*a*) If the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or

(*b*) In the case of a statement made by such person after his arrest, unless the court is satisfied that, before making such statement, a caution was administered to him in the following words or words to like effect: "It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence."

(2) Notwithstanding anything to the contrary contained in any written law, a person accused of an offence to which paragraph (1) of this regulation applies shall not be bound to answer any questions relating to such case after any such caution as aforesaid has been administered to him.

44 (*as added on 20 September 1952*). (1) Notwithstanding anything to the contrary contained in any written law, a court may order that the whole or any part of any trial before it for any offence against these regulations or for any offence specified in the schedule[1] to these regulations shall take place in a closed court if it is satisfied that it is expedient in the interests of justice or of public safety or security so to do.

(2) A court may at any time order that no person shall publish the name, address or photograph of any witness in any case tried or about to be tried before it, or any evidence or any other thing likely to lead to the identification of any such witness. Any person who acts in contravention of any such order shall be guilty of an offence against these regulations.

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[1]The schedule includes *inter alia* offences under the Sedition Ordinance (cap. 64) the Emergency Regulations Ordinance, 1948, and the Undesirable Persons Ordinance (cap. 58).

THE MAINTENANCE OF PUBLIC ORDER (SPECIAL POWERS OF DETENTION) ORDINANCE, 1952[1]

No. 16 of 1952 (assented to 30 August 1952)

. . .

3. The Governor in Council may, whenever it appears to him necessary for the maintenance of public order, by proclamation (hereinafter referred to as a proclamation of special powers of detention) declare that the provisions of this ordinance shall apply either to the whole of the colony or to such part of the colony as may be specified in the proclamation.

4. (1) Where a proclamation of special powers of detention has been made, and so long as such proclamation is in force, the Chief Secretary may, on being satisfied that there are reasonable grounds for believing that any person within any area which is the subject of such proclamation is conspiring or designing or abetting another to commit a crime of violence with intent to further any political party or object, by order under his hand direct that such person be detained for any period, not exceeding the period of duration of this ordinance any extension thereof, in such place as may be specified in the order, whether such place is a prison constituted under the Prisons Ordinance or not or is within or without such area.

(2) The Chief Secretary may at any time cancel a detention order.

5. (1) On the coming into force of this ordinance there shall be established one or more advisory committees consisting of five persons, appointed by the Governor, of whom at least two persons shall not be officers of the Government.

(2) The functions of an advisory committee shall be to consider, and make recommendations to the Governor in Council in respect of every detention order in and respect of any objection against a detention order made to the advisory committee by the person to whom the order relates.

6. Whenever the Chief Secretary makes a detention order, he shall forward to the Supreme Council and to the advisory committee established in the area in which the person specified in the order is detained a copy of the order and all such information as will enable full and proper consideration to be given to the order made or to any objections made against such order:

Provided that the Chief Secretary shall not be required to disclose the name of any informer or the source of any information.

7. (1) Every person detained under a detention order shall have the right to object, within one month from the date on which he was first detained, against the detention order and to be heard thereon in person by an advisory committee.

(2) The officer in charge of the place of detention to which a person is committed under a detention order shall, as soon as practicable after such person's arrival thereat, inform such person of his right under sub-section (1) of this section. If such person desires to exercise such right, such officer shall forthwith so inform the advisory committee established in the area in which the person is detained and shall forthwith forward to such committee any written objection made by such person.

8. (1) An advisory committee shall, on being informed of an objection against a detention order made by the person to whom the order relates or, if no such objection is made, on the expiration of one month from the date on which the person was first detained proceed to consider the detention order and make recommendations thereon to the Governor in Council. In the event of disagreement amongst the members of an advisory committee, the recommendation of each member shall be separately recorded.

(2) Where the person to whom the detention order relates has objected against such order and has asked to be heard in person by an advisory committee, the officer in charge of the place of detention in which such person is detained shall produce such person at such place and time as the chairman of the advisory committee by order under his hand directs.

(3) When any such person appears before an advisory committee, the chairman of the advisory committee shall inform him of the grounds on which the detention order has been made against him and furnish him with such particulars as are in the opinion of the chairman sufficient to enable him to present his case.

(4) All proceedings before an advisory committee shall be *in camera.*

9. (1) The Governor in Council may at any time:

(*a*) Cancel a detention order;

(*b*) Reduce the period of detention specified in a detention order;

(*c*) Extend the period of detention specified in a detention order;

(*d*) Suspend the operation of a detention order upon such conditions as to the Governor in Council seem desirable including the condition that the

[1]English text in *Colony of Sarawak, Government Gazette,* First Supplement, No. 1 of 24 September 1952.

person to whom the order relates shall enter into a bond, for such amount and with or without sureties as the Governor in Council may direct, for the due compliance of any condition.

(2) The Governor in Council may revoke the suspension of the operation of a detention order if satisfied that the person to whom the order relates has failed to observe any condition or that it is not expedient that the operation of the order should continue to remain suspended.

11. Any person detained under a detention order whilst in a place of detention or in custody outside a place of detention shall be deemed to be in lawful custody.

12. (1) Any police officer may arrest without warrant any person who he has reason to believe is a person against whom a detention order has been made.

(2) Any person arrested under the powers conferred by this section or by section 13 of this ordinance shall be deemed to be in lawful custody and may be detained in any prison, police station or any place authorized generally or specially by the Chief Secretary, for a period not exceeding fourteen days pending verification whether such person is a person against whom a detention order has been made or pending a decision as to whether a detention order shall be made for his detention, as the case may be.

(3) Whenever a police officer arrests a person under the powers conferred by sub-section (1) of this section, he shall forthwith report to the Resident of the division in which the arrest was made the name and particulars of the person arrested, the date and place of arrest and the facts or information on which he acted.

13. (1) A Resident may, in respect of any person in his division of whom he has reason to believe that there are grounds which would justify his detention under a detention order, by writing under his hand authorize any police officer to arrest such person and thereupon such police officer may arrest without warrant such person.

(2) Whenever a Resident authorizes an arrest under the powers conferred by sub-section (1) of this section, he shall forthwith report to the Chief Secretary the name and particulars of the person to be arrested and the facts or information on which he acted.

(3) The Resident on receiving a report under sub-section (3) of section 12 of this ordinance from any police officer may order the person arrested by such officer to be released either unconditionally or on the condition that such person enters in a bound, for such amount and with or without sureties as the Resident may direct, to appear at such time or place as the Resident may specify. Whether the Resident orders the person to be released or not, he shall forthwith forward to the Chief Secretary the information reported to him by the police officer who made the arrest.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ORDINANCE, 1952[1]

An ordinance to amend the Criminal Procedure Code

(assented to on 9 December 1952)

NOTE

Under this ordinance, the age at which the death sentence can be passed is raised from sixteen to eighteen years. The critical age is determined by the date on which the offence was committed and not by the date on which the sentence is passed, as was provided by the principal Act.

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[1]English text of the ordinance in *Colony of Sarawak, Government Gazette*, First Supplement, No. 2, of 31 December 1952. The ordinance was passed at a meeting of the Council Negri held on 3 December 1952. Summary by the United Nations Secretariat.

UNITED STATES OF AMERICA

NOTE ON ENACTMENTS IN NON-SELF-GOVERNING TERRITORIES[1]

A new Constitution was adopted in Puerto Rico. The provisions on human rights of this Constitution are reproduced below.

An Act was adopted in the Virgin Islands requiring any person or agency contracting for employees whose services are to be used outside the Virgin Islands, including domestic help, to secure a licence and obtain the approval of the Government Secretary of the Virgin Islands on all contract forms.[2]

Orders raising the minimum wage for particular industries and improving wage rates and working conditions were issued in Puerto Rico.

The National School Lunch Act of 1946 was modified in 1952 to amend the apportionment of surplus foods to Hawaii, Alaska, Puerto Rico and the Virgin Islands and to extend the Act authorizing the programme also to Guam.[3]

Sub-division Zoning and Building Acts were adopted in Guam.[4]

An Act preventing private persons from locating mining claims on land reserved for educational purposes was adopted in Alaska.

[1] See also pp. 303–319 of this *Yearbook, passim.*

[2] For more details see p. 311 of this *Yearbook.*

[3] For more details see p. 316 of this *Yearbook.*

[4] See p. 314 of this *Yearbook.*

CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO[1]

adopted by the People of Puerto Rico in a Referendum on 3 March 1952 and approved by the 82nd Congress of the United States on 3 July 1952

Article II

BILL OF RIGHTS

Sect. 1. The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, colour, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality.

Sect. 2. The laws shall guarantee the expression of the will of the people by means of equal, direct and secret universal suffrage and shall protect the citizen against any coercion in the exercise of the electoral franchise.

Sect. 3. No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. There shall be complete separation of church and State.

Sect. 4. No law shall be made abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Sect. 5. Every person has the right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free and shall be compulsory in the elementary schools to the extent permitted by the facilities of the state. Nothing contained in this provision shall prevent the State from furnishing to any child non-educational services

[1] For the joint resolution of the United States Congress approving the Constitution of the Commonwealth of Puerto Rico, see *United States Code, Congressional and Administrative News, 82nd Congress—Second Session 1952*—Laws, Messages, Executive Orders, etc., p. 321. The Constitution became effective by a proclamation of the Governor of Puerto Rico dated 25 July 1952. Amendments to the Constitution were adopted by the people of Puerto Rico in November 1952 and came into force on 25 January 1953; they are embodied in this text.

By resolution 748 (VIII) of 27 November 1953, the General Assembly of the United Nations recognized, *inter alia*, that in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.

established by law for the protection or welfare of children.

Compulsory attendance at elementary public schools to the extent permitted by the facilities of the State as herein provided shall not be construed as applicable to those who receive elementary education in schools established under non-governmental auspices.

Sect. 6. Persons may join with each other and organize freely for any lawful purpose, except in military or quasi-military organizations.

Sect. 7. The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law.

Sect. 8. Every person has the right to the protection of law against abusive attacks on his honour, reputation and private or family life.

Sect. 9. Private property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law. No law shall be enacted authorizing condemnation of printing presses, machinery or material devoted to publications of any kind. The buildings in which these objects are located may be condemned only after a judicial finding of public convenience and necessity pursuant to procedure that shall be provided by law, and may be taken before such a judicial finding only when there is placed at the disposition of the publication an adequate site in which it can be installed and continue to operate for a reasonable time.

Sect. 10. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Wire-tapping is prohibited.

No warrant for arrest or search and seizure shall issue except by judicial authority and only upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons to be arrested or the things to be seized.

Evidence obtained in violation of this section shall be inadmissible in the courts.

Sect. 11. In all criminal prosecutions, the accused shall enjoy the right to have a speedy and public trial, to be informed of the nature and cause of the accusation and to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have assistance of counsel, and to be presumed innocent.

In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine.

No person shall be compelled in any criminal case to be a witness against himself and the failure of the accused to testify may be neither taken into consideration nor commented upon against him.

No person shall be twice put in jeopardy of punishment for the same offence.

Before conviction every accused shall be entitled to be admitted to bail.

Incarceration prior to trial shall not exceed six months nor shall bail or fines be excessive. No person shall be imprisoned for debt.

Sect. 12. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted. Cruel and unusual punishments shall not be inflicted. Suspension of civil rights including the right to vote shall cease upon service of the term of imprisonment imposed.

No *ex post facto* law or bill of attainder shall be passed.

Sect. 13. The writ of *habeas corpus* shall be granted without delay and free of costs. The privilege of the writ of *habeas corpus* shall not be suspended, unless the public safety requires it in case of rebellion, insurrection or invasion. Only the Legislative Assembly shall have the power to suspend the privilege of the writ of *habeas corpus* and the laws regulating its issuance.

The military authority shall always be subordinate to civil authority.

Sect. 14. No titles of nobility or other hereditary honors shall be granted. No officer or employee of the Commonwealth shall accept gifts, donations, decorations or offices from any foreign country or officer without prior authorization by the Legislative Assembly.

Sect. 15. The employment of children less than fourteen years of age in any occupation which is prejudicial to their health or morals or which places them in jeopardy of life or limb is prohibited.

No child less than sixteen years of age shall be kept in custody in a jail or penitentiary.

Sect. 16. The right of every employee to choose his occupation freely and to resign therefrom is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary workday which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed.

Sect. 17. Persons employed by private businesses, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, shall have the right to organize and to bargain collectively with their employers through representatives of their own free choosing in order to promote their welfare.

Sect. 18. In order to assure their right to organize and to bargain collectively, persons employed by private businesses, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, in their direct relations with their own employers shall have the right to strike, to picket and to engage in other legal concerted activities.

Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services.

Sect. 19. The foregoing enumeration of rights shall not be construed restrictively, nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in a democracy. The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively.

PART III

INTERNATIONAL TREATIES AND AGREEMENTS AND OTHER TEXTS ADOPTED BY SPECIALIZED AGENCIES AND OTHER INTER-GOVERNMENTAL ORGANIZATIONS

AGREEMENTS CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS, SPECIALIZED AGENCIES OR OTHER INTER-GOVERNMENTAL ORGANIZATIONS

UNITED NATIONS

CONVENTION ON THE INTERNATIONAL RIGHT OF CORRECTION[1]

Adopted by the General Assembly of the United Nations on 16 December 1952

(Resolution 630 (VII))

PREAMBLE

The Contracting States,

Desiring to implement the right of their peoples to be fully and reliably informed,

Desiring to improve understanding between their peoples through the free flow of information and opinion,

Desiring thereby to protect mankind from the scourge of war, to prevent the recurrence of aggression from any source, and to combat all propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,

Considering the danger to the maintenance of friendly relations between peoples and to the preservation of peace, arising from the publication of inaccurate reports,

Considering that at its second regular session the General Assembly of the United Nations recommended the adoption of measures designed to combat the dissemination of false or distorted reports likely to injure friendly relations between States,

Considering, however, that it is not at present practicable to institute, on the international level, a procedure for verifying the accuracy of a report which might lead to the imposition of penalties for the publication of false or distorted reports,

Considering, moreover, that to prevent the publication of reports of this nature or to reduce their pernicious effects, it is above all necessary to promote a wide circulation of news and to heighten the sense of responsibility of those regularly engaged in the dissemination of news,

Considering that an effective means to these ends is to give States directly affected by a report, which they consider false or distorted and which is disseminated by an information agency, the possibility of securing commensurate publicity for their corrections,

Considering that the legislation of certain States does not provide for a right of correction of which foreign governments may avail themselves, and that it is therefore desirable to institute such a right on the international level, and

Having resolved to conclude a convention for these purposes,

Have agreed as follows:

Article I

For the purposes of the present Convention:

1. "News dispatch" means news material transmitted in writing or by means of telecommunications, in the form customarily employed by information agencies in transmitting such news material, before publication, to newspapers, news periodicals and broadcasting organizations.

2. "Information agency" means a press, broadcasting, film, television or facsimile organization, public or private, regularly engaged in the collection and dissemination of news material, created and organized under the laws and regulations of the Contracting State in which the central organization is domiciled and which, in each Contracting State where it operates, functions under the laws and regulation of that State.

3. "Correspondent" means a national of a Contracting State or an individual employed by an information agency of a Contracting State, who in

[1] *Resolutions* adopted by the General Assembly at its Seventh Session during the period from 14 October to 21 December 1952. *Official Records of the General Assembly, Seventh Session*, Supplement No. 20 (A/2361), p. 22. See also Part IV of this *Yearbook*, p. 432.

either case is regularly engaged in the collection and the reporting of news material, and who when outside his State is identified as a correspondent by a valid passport or by a similar document internationally acceptable.

Article II

1. Recognizing that the professional responsibility of correspondents and information agencies requires them to report facts without discrimination and in their proper context and thereby to promote respect for human rights and fundamental freedoms, to further international understanding and co-operation and to contribute to the maintenance of international peace and security,

Considering also that, as a matter of professional ethics, all correspondents and information agencies should, in the case of news dispatches transmitted or published by them and which have been demonstrated to be false or distorted, follow the customary practice of transmitting through the same channels, or of publishing, corrections of such dispatches,

The Contracting States agree that in cases where a Contracting State contends that a news dispatch capable of injuring its relations with other States or its national prestige or dignity transmitted from one country to another by correspondents or information agencies of a Contracting or non-Contracting State and published or disseminated abroad is false or distorted, it may submit its version of the facts (hereinafter called "communiqué") to the Contracting States within whose territories such dispatch has been published or disseminated. A copy of the communiqué shall be forwarded at the same time to the correspondent or information agency concerned to enable that correspondent or information agency to correct the news dispatch in question.

2. A communiqué may be issued only with respect to news dispatches and must be without comment or expression of opinion. It should not be longer than is necessary to correct the alleged inaccuracy or distortion and must be accompanied by a verbatim text of the dispatch as published or disseminated, and by evidence that the dispatch has been transmitted from abroad by a correspondent or an information agency.

Article III

1. With the least possible delay and in any case not later than five clear days from the date of receiving a *communiqué* transmitted in accordance with provisions of article II, a Contracting State, whatever be its opinion concerning the facts in question shall:

(*a*) Release the *communiqué* to the correspondent and information agencies operating in its territory through the channels customarily used for the release of news concerning international affairs for publication; and

(*b*) Transmit the *communiqué* to the headquarters of the information agency whose correspondent was responsible for originating the dispatch in question, if such headquarters are within its territory.

2. In the event that a Contracting State does not discharge its obligation under this article with respect to the *communiqué* of another Contracting State, the latter may accord, on the basis of reciprocity, similar treatment to a *communiqué* thereafter submitted to it by the defaulting State.

Article IV

1. If any of the Contracting States to which a *communiqué* has been transmitted in accordance with article II fails to fulfil, within the prescribed time-limit, the obligations laid down in article III, the Contracting State exercising the right of correction may submit the said *communiqué*, together with a verbatim text of the dispatch as published or disseminated, to the Secretary-General of the United Nations and shall at the same time notify the State complained against that it is doing so. The latter State may, within five clear days after receiving such notice, submit its comments to the Secretary-General, which shall relate only to the allegation that it has not discharged its obligations under article III.

2. The Secretary-General shall in any event, within ten clear days after receiving the *communiqué*, give appropriate publicity through the information channels at his disposal to the *communiqué*, together with the dispatch and the comments, if any, submitted to him by the State complained against.

Article V

Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement.

Article VI

1. The present Convention shall be open for signature to all States Members of the United Nations, to every State invited to the United Nations Conference on Freedom of Information held at Geneva in 1948, and to every other State which the General Assembly may, by resolution, declare to be eligible.

2. The present Convention shall be ratified by the States signatory hereto in conformity with their respective constitutional processes. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

1. The present Convention shall be open for accession to the States referred to in article VI (1).

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VIII

When any six of the States referred to in article VI (1) have deposited their instruments of ratification or accession, the present Convention shall come into force among them on the thirtieth day after the date of the deposit of the sixth instrument of ratification or accession. It shall come into force for each State which ratifies or accedes after that date on the thirtieth day after the deposit of its instrument of ratification or accession.

Article IX

The provisions of the present Convention shall extend to or be applicable equally to a contracting metropolitan State and to all the territories, be they Non-Self-Governing, Trust or Colonial Territories, which are being administered or governed by such metropolitan State.

Article X

Any Contracting State may denounce the present Convention by notification to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

Article XI

The present Convention shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than six becomes effective.

Article XII

1. A request for the revision of the present Convention may be made at any time by any Contracting State by means of a notification to the Secretary-General of the United Nations.

2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XIII

The Secretary-General of the United Nations shall notify the States referred to in article VI (1) of the following:

(*a*) Signatures, ratifications and accessions received in accordance with articles VI and VII;

(*b*) The date upon which the present Convention comes into force in accordance with article XIII;

(*c*) Denunciations received in accordance with article X (1);

(*d*) Abrogation in accordance with article XI;

(*e*) Notifications received in accordance with article XII.

Article XIV

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy to each State referred to in article VI (1).

3. The present Convention shall be registered with the Secretariat of the United Nations on the date of its coming into force.

CONVENTION ON THE POLITICAL RIGHTS OF WOMEN[1]

Adopted by the General Assembly of the United Nations on 20 December 1952

(Resolution 640 (VII))

The Contracting Parties,

Desiring to implement the principle of equality of rights for men and women contained in the Charter of the United Nations,

Recognizing that everyone has the right to take part in the government of his country directly or through freely chosen representatives, and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights,

Having resolved to conclude a convention for this purpose,

Hereby agree as hereinafter provided:

[1] *Resolutions* adopted by the General Assembly at its seventh session, during the period from 14 October to 21 December 1952. *Official Records of the General Assembly, Seventh Session*, Supplement No. 20 (A/2361), p. 28. See also Part IV of this *Yearbook*, p. 435.

Art. 1. Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Art. 2. Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Art. 3. Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

Art. 4. 1. This convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the General Assembly.

2. This convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Art. 5. 1. This convention shall be open for accession to all States referred to in paragraph 1 of article 4.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Art. 6. 1. This convention shall come into force on the ninetieth day following the date of deposit of the sixth instrument of ratification of accession.

2. For each State ratifying or acceding to the convention after the deposit of the sixth instrument of ratification or accession the convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Art. 7. In the event that any State submits a reservation to any of the articles of this convention at the time of signature, ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are or may become parties to this convention. Any State which objects to the reservation may, within a period of ninety days from the date of the said communication (or upon the date of its becoming a party to the convention), notify the Secretary-General that it does not accept it. In such case, the convention shall not enter into force as between such State and the State making the reservation.

Art. 8. 1. Any State may denounce this convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. This convention shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than six becomes effective.

Art. 9. Any dispute which may arise between any two or more contracting States concerning the interpretation or application of this convention, which is not settled by negotiation, shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

Art. 10. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in paragraph 1 of article 4 of this convention of the following:

(*a*) Signatures and instruments of ratifications received in accordance with article 4;

(*b*) Instruments of accession received in accordance with article 5;

(*c*) The date upon which this convention enters into force in accordance with article 6;

(*d*) Communications and notifications received in accordance with article 7;

(*e*) Notifications of denunciation received in accordance with paragraph 1 of article 8;

(*f*) Abrogation in accordance with paragraph 2 of article 8.

Art. 11. 1. This convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy to all Members of the United Nations and to the non-member States contemplated in paragraph 1 of article 4.

Specialized Agencies

INTERNATIONAL LABOUR ORGANISATION

CONVENTION (No. 102) CONCERNING MINIMUM STANDARDS OF SOCIAL SECURITY [1]

(Social Security (Minimum Standards) Convention 1952)

Adopted by the General Conference of the International Labour Organisation, Geneva, on 28 June 1952

PART I

GENERAL PROVISIONS

Art. 1. 1. In this convention

(*a*) The term "prescribed" means determined by or in virtue of national laws or regulations;

(*b*) The term "residence" means ordinary residence in the territory of the Member and the term "resident" means a person ordinarily resident in the territory of the Member;

(*c*) The term "wife" means a wife who is maintained by her husband;

(*d*) The term "widow" means a woman who was maintained by her husband;

(*e*) The term "child" means a child under school-leaving age or under fifteen years of age, as may be prescribed;

(*f*) The term "qualifying period" means a period of contribution, or a period of employment or a period of residence, or any combination thereof, as may be prescribed.

2. In articles 10, 34 and 49, the term "benefit" means either direct benefit in the form of care or indirect benefit consisting of a reimbursement of the expenses borne by the person concerned.

Art. 2. Each Member for which this convention is in force

(*a*) Shall comply with

(i) Part I;

(ii) At least three of parts II, III, IV, V, VI, VII, VIII, IX and X, including at least one of parts IV, V, VI, IX and X;

(iii) The relevant provisions of parts XI, XII and XIII; and

(iv) Part XIV; and

(*b*) Shall specify in its ratification in respect of which of parts II to X it accepts the obligations of the Convention.

Art. 3. 1. A member whose economy and medical facilities are insufficiently developed may, if and for so long as the competent authority considers necessary, avail itself, by a declaration appended to its ratification, of the temporary exceptions provided for in the following articles: 9 (*d*); 12 (2); 15 (*d*); 18 (2); 21 (*c*); 27 (*d*); 33 (*b*); 34 (3); 41 (*d*); 48 (*c*); 55 (*d*); and 61 (*d*).

2. Each Member which has made a declaration under paragraph 1 of this article shall include in the annual report upon the application of this convention submitted under article 22 of the Constitution of the International Labour Organisation a statement, in respect of each exception of which it avails itself

(*a*) That its reason for doing so subsists; or

(*b*) That it renounces its right to avail itself of the exception in question as from a stated date.

Art. 4. 1. Each Member which has ratified this convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the convention in respect of one or more of parts II to X not already specified in its ratification.

2. The undertakings referred to in paragraph 1 of this article shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

Art. 5. Where, for the purpose of compliance with any of the parts II to X of this convention which are to be covered by its ratification, a Member is required to protect prescribed classes of persons constituting not less than a specified percentage of employees or residents, the Member shall satisfy itself, before undertaking to comply with any such part, that the relevant percentage is attained.

Art. 6. For the purpose of compliance with parts II, III, IV, V, VIII (in so far as it relates to medical care), IX or X of this convention, a Member may

[1] Text of this convention and of the following convention and recommendation in *Seventh Report of the International Labour Organisation to the United Nations*, Geneva, 1953, pp. 138–162 and 164–172.

take account of protection effected by means of insurance which, although not made compulsory by national laws or regulations for the persons to be protected

(*a*) Is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers;

(*b*) Covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee; and

(*c*) Complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention.

PART II

MEDICAL CARE

Art. 7. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of benefit in respect of a condition requiring medical care of a preventive or curative nature in accordance with the following articles of this part.

Art. 8. The contingencies covered shall include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences.

Art. 9. The persons protected shall comprise

(*a*) Prescribed classes of employees, constituting not less than 50 per cent of all employees, and also their wives and children; or

(*b*) Prescribed classes of the economically active population, constituting not less than 20 per cent of all residents, and also their wives and children; or

(*c*) Prescribed classes of residents, constituting not less than 50 per cent of all residents; or

(*d*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more, and also their wives and children.

Art. 10. 1. The benefit shall include at least

(*a*) In case of a morbid condition

(i) General practitioner care, including domiciliary visiting;

(ii) Specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals;

(iii) The essential pharmaceutical supplies as prescribed by medical or other qualified practitioners; and

(iv) Hospitalisation where necessary; and

(*b*) In case of pregnancy and confinement and their consequences

(i) Pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives; and

(ii) Hospitalization where necessary.

2. The beneficiary or his breadwinner may be required to share in the cost of the medical care the beneficiary receives in respect of a morbid condition; the rules concerning such cost-sharing shall be so designed as to avoid hardship.

3. The benefit provided in accordance with this article shall be afforded with a view to maintaining, restoring or improving the health of the person protected and his ability to work and to attend to his personal needs.

4. The institutions or government departments administering the benefit shall, by such means as may be deemed appropriate, encourage the persons protected to avail themselves of the general health services placed at their disposal by the public authorities or by other bodies recognized by the public authorities.

Art. 11. The benefit specified in article 10 shall, in a contingency covered, be secured at least to a person protected who has completed, or whose breadwinner has completed, such qualifyng period as may be considered necessary to preclude abuse.

Art. 12. 1. The benefit specified in article 10 shall be granted throughout the contingency covered, except that, in case of a morbid condition, its duration may be limited to twenty-six weeks in each case, but benefit shall not be suspended while a sickness benefit continues to be paid, and provision shall be made to enable the limit to be extended for prescribed diseases recognized as entailing prolonged care.

2. Where a declaration made in virtue of article 3 is in force, the duration of the benefit may be limited to thirteen weeks in each case.

PART III

SICKNESS BENEFIT

Art. 13. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of sickness benefit in accordance with the following articles of this part.

Art. 14. The contingency covered shall include incapacity for work resulting from a morbid condition and involving suspension of earnings, as defined by national laws or regulations.

Art. 15. The persons protected shall comprise

(*a*) Prescribed classes of employers, constituting not less than 50 per cent of all employees; or

(*b*) Prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

(*c*) All residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of article 67; or

(*d*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more.

Art. 16. 1. Where classes of employees or classes of the economically active population are protected, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66.

2. Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of article 67.

Art. 17. The benefit specified in article 16 shall, in a contingency covered, be secured at least to a person protected who has completed such qualifying period as may be considered necessary to preclude abuse.

Art. 18. 1. The benefit specified in article 16 shall be granted throughout the contingency, except that the benefit may be limited to twenty-six weeks in each case of sickness, in which event it need not be paid for the first three days of suspension of earnings.

2. Where a declaration made in virtue of article 3 is in force, the duration of the benefit may be limited

(*a*) To such period that the total number of days for which the sickness benefit is granted in any year is not less than ten times the average number of persons protected in that year; or

(*b*) To thirteen weeks in each case of sickness, in which event it need not be paid for the first three days of suspension of earnings.

PART IV

UNEMPLOYMENT BENEFIT

Art. 19. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of unemployment benefit in accordance with the following articles of this part.

Art. 20. The contingency covered shall include suspension of earnings, as defined by national laws or regulations, due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work.

Art. 21. The persons protected shall comprise

(*a*) Prescribed classes of employees, constituting not less than 50 per cent of all employees; or

(*b*) All residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of article 67; or

(*c*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more.

Art. 22. 1. Where classes of employees are protected, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66.

2. Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of article 67.

Art. 23. The benefit specified in article 22 shall, in a contingency covered, be secured at least to a person protected who has completed such qualifying period as may be considered necessary to preclude abuse.

Art. 24. 1. The benefit specified in article 22 shall be granted throughout the contingency, except that its duration may be limited

(*a*) Where classes of employees are protected, to thirteen weeks within a period of twelve months, or

(*b*) Where all residents whose means during the contingency do not exceed prescribed limits are protected, to twenty-six weeks within a period of twelve months.

2. Where national laws or regulations provide that the duration of the benefit shall vary with the length of the contribution period and/or the benefit previously received within a prescribed period, the provisions of sub-paragraph (*a*) of paragraph 1 shall be deemed to be fulfilled if the average duration of benefit is at least thirteen weeks within a period of twelve months.

3. The benefit need not be paid for a waiting period of the first seven days in each case of suspension of earnings, counting days of unemployment before and after temporary employment lasting not more than a prescribed period as part of the same case of suspension of earnings.

4. In the case of seasonal workers the duration of the benefit and the waiting period may be adapted to their conditions of employment.

PART V

OLD-AGE BENEFIT

Art. 25. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following articles of this part.

Art. 26. 1. The contingency covered shall be survival beyond a prescribed age.

2. The prescribed age shall be not more than sixty-five years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned.

3. National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

Art. 27. The persons protected shall comprise

(*a*) Prescribed classes of employees, constituting not less than 50 per cent of all employees; or

(*b*) Prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

(*c*) All residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of article 67; or

(*d*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more.

Art. 28. The benefit shall be a periodical payment calculated as follows:

(*a*) Where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66;

(*b*) Where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of article 67.

Art. 29. 1. The benefit specified in article 28 shall, in a contingency covered, be secured at least

(*a*) To a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be thirty years of contribution or employment, or twenty years of residence; or

(*b*) Where in principle, all economically active persons are protected, to a person protected who has completed a prescribed qualifying period of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least

(*a*) To a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of 15 years of contribution or employment; or

(*b*) Where, in principle, all economically active persons are protected, to a person protected who has completed a prescribed qualifying period of contribution and in respect of whom, while he was of working age, half the yearly average number of contributions prescribed in accordance with subparagraph (*b*) of paragraph 1 of this article has been paid.

3. The requirements of paragraph 1 of this article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of part XI but at a percentage of ten points lower than shown in the schedule appended to that part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, ten years of contribution or employment, or five years of residence.

4. A proportional reduction of the percentage indicated in the schedule appended to part XI may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds ten years of contribution or employment but is less than thirty years of contribution or employment; if such qualifying period exceeds fifteen years, a reduced benefit shall be payable in conformity with paragraph 2 of this article.

5. Where the benefit referred to in paragraph 1, 3 or 4 of this article is conditional upon a minimum period of contribution or employment, a reduced benefit shall be payable under prescribed conditions to a person protected who, by reason only of his advanced age when the provisions concerned in the application of this part come into force, has not satisfied the conditions prescribed in accordance with paragraph 2 of this article, unless a benefit in conformity with the provisions of paragraph 1, 3 or 4 of this article is secured to such person at an age higher than the normal age.

Art. 30. The benefits specified in articles 28 and 29 shall be granted throughout the contingency.

PART VI

EMPLOYMENT INJURY BENEFIT

Art. 31. Each Member for which this part of the convention is in force shall secure to the persons protected the provisions of employment injury benefit in accordance with the following articles of this part.

Art. 32. The contingencies covered shall include the following where due to accident or a prescribed disease resulting from employment:

(*a*) A morbid condition;

(*b*) Incapacity for work resulting from such a condition and involving suspension of earnings, as defined by national laws or regulations;

(*c*) Total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and

(*d*) The loss of support suffered by the widow or child as the result of the death of the breadwinner; in the case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support.

Art. 33. The persons protected shall comprise:

(*a*) Prescribed classes of employees, constituting not less than 50 per cent of all employees, and, for benefit in respect of death of the breadwinner, also their wives and children; or

(*b*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more, and, for benefit in respect of death of the breadwinner, also their wives and children.

Art. 34. 1. In respect of a morbid condition, the benefit shall be medical care as specified in paragraphs 2 and 3 of this article.

2. The medical care shall comprise:

(*a*) General practitioner and specialist in-patient care and out-patient care, including domiciliary visiting;

(*b*) Dental care;

(*c*) Nursing care at home or in hospital or other medical institutions;

(*d*) Maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;

(*e*) Dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances, kept in repair, and eyeglasses; and

(*f*) The care furnished by members of such other professions as may at any time be legally recognized as allied to the medical profession, under the supervision of a medical or dental practitioner.

3. Where a declaration made in virtue of article 3 is in force, the medical care shall include at least:

(*a*) General practitioner care, including domiciliary visiting;

(*b*) Specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals;

(*c*) The essential pharmaceutical supplies as prescribed by a medical or other qualified practitioner; and

(*d*) Hospitalization where necessary.

4. The medical care provided in accordance with the preceding paragraphs shall be afforded with a view to maintaining, restoring or improving the health of the person protected and his ability to work and to attend to his personal needs.

Art. 35. 1. The institutions or government departments administering the medical care shall co-operate, wherever appropriate, with the general vocational rehabilitation services, with a view to the re-establishment of handicapped persons in suitable work.

2. National laws or regulations may authorize such institutions or departments to ensure provision for the vocational rehabilitation of handicapped persons.

Art. 36. 1. In respect of incapacity for work, total loss of earning capacity likely to be permanent or corresponding loss of faculty, or the death of the breadwinner, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66.

2. In case of partial loss of earning capacity likely to be permanent, or corresponding loss of faculty, the benefit, where payable, shall be a periodical payment representing a suitable proportion of that specified for total loss of earning capacity or corresponding loss of faculty.

3. The periodical payment may be commuted for a lump sum:

(*a*) Where the degree of incapacity is slight; or

(*b*) Where the competent authority is satisfied that the lump sum will be properly utilized.

Art. 37. The benefit specified in articles 34 and 36 shall, in a contingency covered, be secured at least to a person protected who was employed in the territory of the Member at the time of the accident if the injury is due to accident or at the time of contracting the disease if the injury is due to a disease and, for periodical payments in respect of death of

the breadwinner, to the widow and children of such person.

Art. 38. The benefit specified in articles 34 and 36 shall be granted throughout the contingency, except that, in respect of incapacity for work, the benefit need not be paid for the first three days in each case of suspension of earnings.

PART VII

FAMILY BENEFIT

Art. 39. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of family benefit in accordance with the following articles of this part.

Art. 40. The contingency covered shall be responsibility for the maintenance of children as prescribed.

Art. 41. The persons protected shall comprise:

(*a*) Prescribed classes of employees, constituting not less than 50 per cent of all employees; or

(*b*) Prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

(*c*) All residents whose means during the contingency do not exceed prescribed limits; or

(*d*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more.

Art. 42. The benefit shall be:

(*a*) A periodical payment granted to any person protected having completed the prescribed qualifying period; or

(*b*) The provision to or in respect of children, of food, clothing, housing, holidays or domestic help; or

(*c*) A combination of (*a*) and (*b*).

Art. 43. The benefit specified in article 42 shall be secured at least to a person protected who, within a prescribed period, has completed a qualifying period which may be three months of contribution or employment, or one year of residence, as may be prescribed.

Art. 44. The total value of the benefits granted in accordance with article 42 to the persons protected shall be such as to represent:

(*a*) 3 per cent of the wage of an ordinary adult male labourer, as determined in accordance with the rules laid down in article 66, multiplied by the total number of children of persons protected; or

(*b*) 1.5 per cent of the said wage, multiplied by the total number of children of all residents.

Art. 45. Where the benefit consists of a periodical payment, it shall be granted throughout the contingency.

PART VIII

MATERNITY BENEFIT

Art. 46. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of maternity benefit in accordance with the following articles of this part.

Art. 47. The contingencies covered shall include pregnancy and confinement and their consequences, and suspension of earnings, as defined by national laws or regulations, resulting therefrom.

Art. 48. The persons protected shall comprise:

(*a*) All women in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees, and for maternity medical benefit, also the wives of men in these classes; or

(*b*) All women in prescribed classes of the economically active population, which classes constitute not less than 20 per cent of all residents, and, for maternity medical benefit, also the wives of men in these classes; or

(*c*) Where a declaration made in virtue of article 3 is in force, all women in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more, and, for maternity medical benefit, also the wives of men in these classes.

Art. 49. 1. In respect of pregnancy and confinement and their consequences, the maternity medical benefit shall be medical care as specified in paragraphs 2 and 3 of this article.

2. The medical care shall include at least:

(*a*) Pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives; and

(*b*) Hospitalization where necessary.

3. The medical care specified in paragraph 2 of this article shall be afforded with a view to maintaining, restoring or improving the health of the woman protected and her ability to work and to attend to her personal needs.

4. The institutions or Government departments administering the maternity medical benefit shall, by such means as may be deemed appropriate, encourage the women protected to avail themselves of the general health services placed at their disposal by the public authorities or by other bodies recognized by the public authorities.

Art. 50. In respect of suspension of earnings resulting from pregnancy and from confinement and their consequences, the benefit shall be a periodical

payment calculated in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66. The amount of the periodical payment may vary in the course of the contingency, subject to the average rate thereof complying with these requirements.

Art. 51. The benefit specified in articles 49 and 50 shall, in a contingency covered, be secured at least to a woman in the classes protected who has completed such qualifying period as may be considered necessary to preclude abuse, and the benefit specified in article 49 shall also be secured to the wife of a man in the classes protected where the latter has completed such qualifying period.

Art. 52. The benefit specified in articles 49 and 50 shall be granted throughout the contingency, except that the periodical payment may be limited to twelve weeks, unless a longer period of abstention from work is required or authorized by national laws or regulations, in which event it may not be limited to a period less than such longer period.

PART IX

INVALIDITY BENEFIT

Art. 53. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of invalidity benefit in accordance with the following articles of this part.

Art. 54. The contingency covered shall include inability to engage in any gainful activity, to an extent prescribed, which inability is likely to be permanent or persists after the exhaustion of sickness benefit.

Art. 55. The persons protected shall comprise:

(*a*) Prescribed classes of employees, constituting not less than 50 per cent of all employees; or

(*b*) Prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

(*c*) All residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of article 67; or

(*d*) Where a declaration made in virtue of article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more.

Art. 56. The benefit shall be a periodical payment calculated as follows:

(*a*) Where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66;

(*b*) Where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of article 67.

Art. 57. 1. The benefit specified in article 56 shall, in a contingency covered, be secured at least:

(*a*) To a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be fifteen years of contribution or employment, or ten years of residence; or

(*b*) Where, in principle, all economically active persons are protected, to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least:

(*a*) To a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of five years of contribution or employment; or

(*b*) where, in principle, all economically active persons are protected, to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, half the yearly average number of contributions prescribed in accordance with sub-paragraph (*b*) of paragraph 1 of this article has been paid.

3. The requirements of paragraph 1 of this article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of part XI but at a percentage of ten points lower than shown in the schedule appended to that part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the schedule appended to part XI may be effected where the qualifying period for the pension corresponding to the reduced percentage exceeds five years of contribution or employment but is less than fifteen years of contribution or employment; a reduced pension shall be payable in conformity with paragraph 2 of this article.

Art. 58. The benefit specified in articles 56 and 57 shall be granted throughout the contingency or until an old-age benefit becomes payable.

PART X

SURVIVORS' BENEFIT

Art. 59. Each Member for which this part of this convention is in force shall secure to the persons protected the provision of survivors' benefit in accordance with the following articles of this part.

Art. 60. The contingency covered shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner; in the case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support.

2. National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed, gainful activity or that the benefit, if contributory, may be reduced, and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

Art. 61. The persons protected shall comprise:

(*a*) The wives and the children of breadwinners in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees; or

(*b*) The wives and the children of breadwinners in prescribed classes of the economically active population, which classes constitute not less than 20 per cent of all residents; or

(*c*) All resident widows and resident children who have lost their breadwinner and whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of article 67; or

(*d*) Where a declaration made in virtue of article 3 is in force, the wives and the children of breadwinners in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees in industrial workplaces employing twenty persons or more.

Art. 62. The benefit shall be a periodical payment calculated as follows:

(*a*) Where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of article 65 or with the requirements of article 66;

(*b*) Where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of article 67.

Art. 63. 1. The benefit specified in article 62 shall, in a contingency covered, be secured at least:

(*a*) To a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or 10 years of residence; or

(*b*) Where, in principle, the wives and children of all economically active persons are protected, to a person protected whose breadwinner has completed a qualifying period of three years of contribution and in respect of whose breadwinner, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least:

(*a*) To a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of five years of contribution or employment; or

(*b*) Where, in principle, the wives and children of all economically active persons are protected, to a person protected whose breadwinner has completed a qualifying period of three years of contribution and in respect of whose breadwinner, while he was of working age, half the yearly average number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected whose breadwinner has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution or employment but is less than 15 years of contribution or employment; a reduced benefit shall be payable in conformity with paragraph 2 of this Article.

5. In order that a childless widow presumed to be incapable of self-support may be entitled to a survivor's benefit, a minimum duration of the marriage may be required.

Art. 64. The benefit specified in Articles 62 and 63 shall be granted throughout the contingency.

PART XI

STANDARDS TO BE COMPLIED WITH BY PERIODICAL PAYMENTS

Art. 65. 1. In the case of a periodical payment to which this article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the schedule appended to this part, at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his breadwinner and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The previous earnings of the beneficiary or his breadwinner shall be calculated according to prescribed rules, and, where the persons protected or their breadwinners are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged.

3. A maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that the provisions of paragraph 1 of this article are complied with where the previous earnings of the beneficiary or his breadwinner are equal to or lower than the wage of a skilled manual male employee.

4. The previous earnings of the beneficiary or his breadwinner, the wage of the skilled manual male employee, the benefit and any family allowances shall be calculated on the same time basis.

5. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

6. For the purpose of this article, a skilled manual male employee shall be:

(*a*) A fitter or turner in the manufacture of machinery other than electrical machinery; or

(*b*) A person deemed typical of skilled labour selected in accordance with the provisions of the following paragraph; or

(*c*) A person whose earnings are such as to be equal to or greater than the earnings of 75 per cent of all the persons protected, such earnings to be determined on the basis of annual or shorter periods as may be prescribed; or

(*d*) A person whose earnings are equal to 125 per cent of the average earnings of all the persons protected.

7. The person deemed typical of skilled labour for the purposes of sub-paragraph (*b*) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency in question, or of the breadwinners of the persons protected, as the case may be, in the division comprising the largest number of such persons or breadwinners; for this purpose, the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its seventh session on 27 August 1948, and reproduced in the annex to this convention, or such classification as at any time amended, shall be used.

8. Where the rate of benefit varies by region, the skilled manual male employee may be determined for each region in accordance with paragraphs 6 and 7 of this article.

9. The wage of the skilled manual male employee shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national laws or regulations, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 8 of this article is not applied, the median rate shall be taken.

10. The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.

Art. 66. 1. In the case of a periodical payment to which this article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the schedule appended to this part, at least the percentage indicated therein of the total of the wage of an ordinary adult male labourer and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The wage of the ordinary adult male labourer, the benefit and any family allowances shall be calculated on the same time basis.

3. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

4. For the purpose of this article, the ordinary adult male labourer shall be:

(*a*) A person deemed typical of unskilled labour in the manufacture of machinery other than electrical machinery; or

(*b*) A person deemed typical of unskilled labour selected in accordance with the provisions of the following paragraph.

5. The person deemed typical of unskilled labour for the purpose of sub-paragraph (*b*) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number

of economically active male persons protected in the contingency in question, or of the breadwinners of the persons protected, as the case may be, in the division comprising the largest number of such persons or breadwinners; for this purpose the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its seventh session on 27 August 1948, and reproduced in the annex to this convention, or such classification as at any time amended, shall be used.

6. Where the rate of benefit varies by region, the ordinary adult male labourer may be determined for each region in accordance with paragraphs 4 and 5 of this article.

7. The wage of the ordinary adult male labourer shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national laws or regulations, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 6 of this article is not applied, the median rate shall be taken.

8. The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.

Art. 67. In the case of a periodical payment to which this article applies:

(*a*) The rate of the benefit shall be determined according to a prescribed scale or a scale fixed by the competent public authority in conformity with prescribed rules;

(*b*) Such rate may be reduced only to the extent by which the other means of the family of the beneficiary exceed prescribed substantial amounts or substantial amounts fixed by the competent public authority in conformity with prescribed rules;

(*c*) The total of the benefit and any other means, after deduction of the substantial amounts referred to in sub-paragraph (*b*), shall be sufficient to maintain the family of the beneficiary in health and decency, and shall be not less than the corresponding benefit calculated in accordance with the requirements of article 66;

(*d*) The provisions of sub-paragraph (*c*) shall be deemed to be satisfied if the total amount of benefits paid under the part concerned exceeds by at least 30 per cent the total amount of benefits which would be obtained by applying the provisions of article 66 and the provisions of:

(i) Article 15 (*b*) for part III;
(ii) Article 27 (*b*) for part V;
(iii) Article 55 (*b*) for part IX;
(iv) Article 61 (*b*) for part X.

Schedule to Part XI

PERIODICAL PAYMENTS TO STANDARD BENEFICIARIES

Part	*Contingency*	*Standard beneficiary*	*Percentage*
III	Sickness	Man with wife and two children	45
IV	Unemployment	Man with wife and two children	45
V	Old Age	Man with wife of pensionable age	40
VI	Employment injury:		
	Incapacity for work	Man with wife and two children	50
	Invalidity	Man with wife and two children	50
	Survivors	Widow with two children	40
VIII	Maternity	Woman	45
IX	Invalidity	Man with wife and two children	40
X	Survivors	Widow with two children	40

PART XII

EQUALITY OF TREATMENT OF NON-NATIONAL RESIDENTS

Art. 68. 1. Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes.

2. Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of the relevant part of the convention shall have, under that part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.

PART XIII

COMMON PROVISIONS

Art. 69. A benefit to which a person protected would otherwise be entitled in compliance with any of parts II to X of this convention may be suspended to such extent as may be prescribed:

(*a*) As long as the person concerned is absent from the territory of the Member;

(*b*) As long as the person concerned is maintained at public expense, or at the expense of a social security institution or service, subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary;

(*c*) As long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, and during any period in respect of which he is indemnified for the contingency by a third party, subject to the part of the benefit which is suspended not exceeding the other benefit or the indemnity by a third party;

(*d*) Where the person concerned has made a fraudulent claim;

(*e*) Where the contingency has been caused by a criminal offence committed by the person concerned;

(*f*) Where the contingency has been caused by the wilful misconduct of the person concerned;

(*g*) In appropriate cases, where the person concerned neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries;

(*h*) In the case of unemployment benefit, where the person concerned has failed to make use of the employment services placed at his disposal;

(*i*) In the case of unemployment benefit, where the person concerned has lost his employment as a direct result of a stoppage of work due to a trade dispute, or has left it voluntarily without just cause; and

(*j*) In the case of survivors' benefit, as long as the widow is living with a man as his wife.

Art. 70. 1. Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity.

2. Where in the application of this convention a government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.

3. Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required.

Art. 71. 1. The cost of the benefits provided in compliance with this convention and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected.

2. The total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children. For the purpose of ascertaining whether this condition is fulfilled, all the benefits provided by the Member in compliance with this convention, except family benefit and, if provided by a special branch, employment injury benefit, may be taken together.

3. The Member shall accept general responsibility for the due provision of the benefits provided in compliance with this convention, and shall take all measures required for this purpose; it shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.

Art. 72. 1. Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities.

2. The Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of the Convention.

PART XIV

MISCELLANEOUS PROVISIONS

Art. 73. This convention shall not apply to:

(*a*) Contingencies which occurred before the coming into force of the relevant part of the convention for the Member concerned;

(*b*) Benefits in contingencies occurring after the coming into force of the relevant part of the convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date.

Art. 74. This convention shall not be regarded as revising any existing convention.

Art. 75. If any convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this convention so provides, such provisions of this convention as may be specified in the said convention shall cease to apply to any Member having ratified the said convention as from the date at which the said convention comes into force for that Member.

Art. 76. 1. Each Member which ratifies this convention shall include in the annual report upon the application of this convention submitted under article 22 of the Constitution of the International Labour Organisation:

(*a*) Full information concerning the laws and regulations by which effect is given to the provisions of the Convention; and

(*b*) Evidence, conforming in its presentation as closely as is practicable with any suggestions for greater uniformity of presentation made by the Governing Body of the International Labour Office, of compliance with the statistical conditions specified in:

(i) Articles 9 (*a*), (*b*), (*c*) or (*d*); 15 (*a*), (*b*), or (*d*); 21 (*a*) or (*c*); 27 (*a*), (*b*) or (*d*); 33 (*a*) or (*b*); 41 (*a*), (*b*) or (*d*); 48 (*a*), (*b*) or (*c*); 55 (*a*), (*b*) or (*d*); 61 (*a*), (*b*) or (*d*), as regards the number of persons protected;

(ii) Articles 44, 65, 66 or 67, as regards the rates of benefit;

(iii) Sub-paragraph (*a*) of paragraph 2 of article 18, as regards duration of sickness benefit;

(iv) Paragraph 2 of article 24, as regards duration of unemployment benefit; and

(v) Paragraph 2 of article 71, as regards the proportion of the financial resources constituted by the insurance contributions of employees protected.

2. Each Member which ratifies this convention shall report to the Director-General of the International Labour Office at appropriate intervals, as requested by the Governing Body, on the position of its law and practice in regard to any of parts II to X of the convention not specified in its ratification or in a notification made subsequently in virtue of article 4.

Art. 77. 1. This convention does not apply to seamen or sea fishermen; provision for the protection of seamen and sea fishermen has been made by the International Labour Conference in the Social Security (Seafarers) Convention, 1946, and the Seafarers' Pensions Convention, 1946.

2. A Member may exclude seamen and sea fishermen from the number of employees, of the economically active population or of residents, when calculating the percentage of employees or residents protected in compliance with any of parts II to X covered by its ratification.

PART XV

FINAL PROVISIONS

Art. 78. The formal ratifications of this convention shall be communicated to the Director-General of the International Labour Office for registration.

Art. 79. 1. This convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Art. 80. 1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate:

(*a*) The territories in respect of which the Member concerned undertakes that the provisions of the convention or of any parts thereof shall be applied without modification;

(*b*) The territories in respect of which it undertakes that the provisions of the convention or of any parts thereof shall be applied subject to modifications, together with details of the said modifications;

(*c*) The territories in respect of which the convention is inapplicable and in such cases the grounds on which it is inapplicable;

(*d*) The territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in sub-paragraphs (*a*) and (*b*) of paragraph 1 of this article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of sub-paragraphs (*b*), (*c*) or (*d*) of paragraph 1 of this article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of article 82, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Art. 81. 1. Declarations communicated to the Director-General of the International Labour Office

in accordance with paragraphs 4 or 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the convention or of the parts thereof accepted by the declaration will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the convention or of certain parts thereof will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this convention is subject to denunciation in accordance with the provisions of article 82, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the convention.

Art. 82. 1. A Member which has ratified this convention may, after the expiration of ten years from the date on which the convention first comes into force, denounce the Convention or any one or more of parts II to X thereof by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce the convention or any one of parts II to X thereof at the expiration of each period of ten years under the terms provided for in this article.

Art. 83. 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the convention will come into force.

Art. 84. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Art. 85. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision is whole or in part.

Art. 86. 1. Should the Conference adopt a new convention revising this convention in whole or in part, then, unless the new convention otherwise provides:

(*a*) The ratification by a Member of the new revising convention shall *ipso jure* involve the immediate denunciation of this convention, notwithstanding the provisions of article 82 above, if and when the new revising convention shall have come into force;

(*b*) As from the date when the new revising convention comes into force this convention shall cease to be open to ratification by the Members.

2. This convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

CONVENTION (No. 103) CONCERNING MATERNITY PROTECTION (Revised 1952)

(Maternity Protection Convention (Revised), 1952)
Adopted by the General Conference of the International Labour Organisation, Geneva, on 28 June 1952

Art. 1. 1. This convention applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home.

2. For the purpose of this convention, the term "industrial undertaking" comprises public and private undertakings and any branch thereof and includes particularly:

(*a*) Mines, quarries, and other works for the extraction of minerals from the earth;

(*b*) Undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding, or in the generation, transformation or transmission of electricity or motive power of any kind;

(*c*) Undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;

(*d*) Undertakings engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports.

3. For the purpose of this convention, the term "non-industrial occupations" includes all occupations which are carried on in or in connexion with the following undertakings or services, whether public or private:

(*a*) Commercial establishments;

(*b*) Postal and telecommunication services;

(*c*) Establishments and administrative services in which the persons employed are mainly engaged in clerical work;

(*d*) Newspaper undertakings;

(*e*) Hotels, boarding houses, restaurants, clubs, cafés and other refreshment houses;

(*f*) Establishments for the treatment and care of the sick, infirm or destitute and of orphans;

(*g*) Theatres and places of public entertainment;

(*h*) Domestic work for wages in private households; and any other non-industrial occupations to which the competent authority may decide to apply the provisions of the convention.

4. For the purpose of this convention, the term "agricultural occupations" includes all occupations carried on in agricultural undertakings, including plantations and large-scale industrialized agricultural undertakings.

5. In any case in which it is doubtful whether this convention applies to an undertaking, branch of an undertaking or occupation, the question shall be determined by the competent authority after consultation with the representative organisations of employers and workers concerned where such exist.

6. National laws or regulations may exempt from the application of this convention undertakings in which only members of the employer's family, as defined by national laws or regulations, are employed.

Art. 2. For the purpose of this convention, the term "woman" means any female person, irrespective of age, nationality, race or creed, whether married or unmarried, and the term "child" means any child whether born of marriage or not.

Art. 3. 1. A woman to whom this convention applies shall, on the production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave.

2. The period of maternity leave shall be at least twelve weeks, and shall include a period of compulsory leave after confinement.

3. The period of compulsory leave after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six weeks; the remainder of the total period of maternity leave may be provided before the presumed date of confinement or following expiration of the compulsory leave period or partly before the presumed date of confinement and partly following the expiration of the compulsory leave period as may be prescribed by national laws or regulations.

4. The leave before the presumed date of confinement shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

5. In case of illness medically certified arising out of pregnancy, national laws or regulations shall provide for additional leave before confinement, the maximum duration of which may be fixed by the competent authority.

6. In case of illness medically certified arising out of confinement, the woman shall be entitled to an extension of the leave after confinement, the maximum duration of which may be fixed by the competent authority.

Art. 4. 1. While absent from work on maternity leave in accordance with the provisions of article 3, the woman shall be entitled to receive cash and medical benefits.

2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living.

3. Medical benefits shall include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners as well as hospitalization care where necessary; freedom of choice of doctor and freedom of choice between a public and private hospital shall be respected.

4. The cash and medical benefits shall be provided either by means of compulsory social insurance or by means of public funds; in either case they shall be

provided as a matter of right to all women who comply with the prescribed conditions.

5. Women who fail to qualify for benefits provided as a matter of right shall be entitled, subject to the means test required for social assistance, to adequate benefits out of social assistance funds.

6. Where cash benefits provided under compulsory social insurance are based on previous earnings, they shall be at a rate of not less than two-thirds of the woman's previous earnings taken into account for the purpose of computing benefits.

7. Any contribution due under a compulsory social insurance scheme providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits shall, whether paid both by the employer and the employees or by the employer, be paid in respect of the total number of men and women employed by the undertakings concerned, without distinction of sex.

8. In no case shall the employer be individually liable for the cost of such benefits due to women employed by him.

Art. 5. 1. If a woman is nursing her child she shall be entitled to interrupt her work for this purpose at a time or times to be prescribed by national laws or regulations.

2. Interruptions of work for the purpose of nursing are to be counted as working hours and remunerated accordingly in cases in which the matter is governed by or in accordance with laws and regulations; in cases in which the matter is governed by collective agreement, the position shall be as determined by the relevant agreement.

Art. 6. While a woman is absent from work on maternity leave in accordance with the provisions of article 3 of this convention, it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

Art. 7. 1. Any Member of the International Labour Organisation which ratifies this convention may, by a declaration accompanying its ratification, provide for exceptions from the application of the convention in respect of:

(*a*) Certain categories of non-industrial occupations;

(*b*) Occupations carried on in agricultural undertakings, other than plantations;

(*c*) Domestic work for wages in private households;

(*d*) Women wage earners working at home;

(*e*) Undertakings engaged in the transport of passengers or goods by sea.

2. The categories of occupations or undertakings in respect of which the Member proposes to have recourse to the provisions of paragraph 1 of this article shall be specified in the declaration accompanying its ratification.

3. Any Member which has made such a declaration may at any time cancel that declaration, in whole or in part, by a subsequent declaration.

4. Every Member for which a declaration made under paragraph 1 of this article is in force shall indicate each year in its annual report upon the application of this convention the position of its law and practice in respect of the occupations or undertakings to which paragraph 1 of this article applies in virtue of the said declaration and the extent to which effect has been given or is proposed to be given to the convention in respect of such occupations or undertakings.

5. At the expiration of five years from the first entry into force of this convention, the Governing Body of the International Labour Office shall submit to the conference a special report concerning the application of these exceptions, containing such proposals as it may think appropriate for further action in regard to the matter.

Art. 8. The formal ratifications of this convention shall be communicated to the Director-General of the International Labour Office for registration.

Art. 9. 1. This convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Art. 10. 1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate:

(*a*) The territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(*b*) The territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(*c*) The territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(*d*) The territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in sub-paragraphs (*a*) and (*b*) of paragraph 1 of this article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of sub-paragraph (*b*), (*c*) or (*d*) of paragraph 1 of this article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of article 12, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Art. 11. 1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this convention is subject to denunciation in accordance with the provisions of article 12, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the convention.

Art. 12. 1. A Member which has ratified this convention may denounce it after the expiration of ten years from the date on which the convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this convention at the expiration of each period of ten years under the terms provided for in this article.

Art. 13. 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Art. 14. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Art. 15. At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Art. 16. 1. Should the Conference adopt a new convention revising this convention in whole or in part, then, unless the new convention otherwise provides,

(*a*) The ratification by a Member of the new revising convention shall *ipso jure* involve the immediate denunciation of this convention, notwithstanding the provisions of article 12 above, if and when the new revising convention shall have come into force;

(*b*) As from the date when the new revising convention comes into force this convention shall cease to be open to ratification by the Members.

2. This convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

RECOMMENDATION (No. 95) CONCERNING MATERNITY PROTECTION

(Maternity Protection Recommendation, 1952)
Adopted by the General Conference of the International Labour Organisation,
Geneva, on 28 June 1952

I. MATERNITY LEAVE

1. (1) Where necessary to the health of the woman and wherever practicable, the maternity leave provided for in article 3, paragraph 2, of the Maternity Protection Convention (Revised), 1952, should be extended to a total period of fourteen weeks.

(2) The supervisory bodies should have power to prescribe in individual cases, on the basis of a medical certificate, a further extension of the ante-natal and post-natal leave provided for in paragraphs 4, 5 and 6 of article 3 of the Maternity Protection Convention (Revised), 1952, if such an extension seems necessary for safeguarding the health of the mother and the child, and, in particular, in the event of actual or threatening abnormal conditions, such as miscarriage and other ante-natal and post-natal complications.

II. MATERNITY BENEFITS

2. (1) Wherever practicable, the cash benefits to be granted in conformity with article 4 of the Maternity Protection Convention (Revised), 1952, should be fixed at a higher rate than the minimum standard provided in the convention, equalling, where practicable, 100 per cent of the woman's previous earnings taken into account for the purpose of computing benefits.

(2) Wherever practicable the medical benefits to be granted in conformity with article 4 of the said convention should comprise general practitioner and specialist out-patient and in-patient care, including domiciliary visiting; dental care; the care given by qualified midwives and other maternity services at home or in hospital; nursing care at home or in hospital or other medical institutions; maintenance in hospitals or other medical institutions; pharmaceuticals, dental or other medical or surgical supplies; and the care furnished under appropriate medical supervision by members of such other profession as may at any time be legally recognized as competent to furnish services associated with maternity care.

(3) The medical benefit should be afforded with a view to maintaining, restoring or improving the health of the woman protected and her ability to work and to attend to her personal needs.

(4) The institutions or government departments administering the medical benefit should encourage the women protected, by such means as may be deemed appropriate, to avail themselves of the general health services placed at their disposal by the public authorities or by other bodies recognized by the public authorities.

(5) In addition, national laws or regulations may authorize such institutions or government departments to make provision for the promotion of the health of the women protected and their infants.

(6) Other benefits in kind or in cash, such as layettes or payment for the purchase of layettes, the supply of milk or of nursing allowance for nursing mothers, etc., might be usefully added to the benefits mentioned in sub-paragraphs (1) and (2) of this paragraph.

III. FACILITIES FOR NURSING MOTHERS AND INFANTS

3. (1) Wherever practicable, nursing breaks should be extended to a total period of at least one and a half hours during the working day, and adjustments in the frequency and length of the nursing periods should be permitted on production of a medical certificate.

(2) Provision should be made for the establishment of facilities for nursing and day care, preferably outside the undertakings where the women are working; wherever possible provision should be made for the financing or at least subsidizing of such facilities at the expense of the community or by compulsory social insurance.

(3) The equipment and hygienic requirements of the facilities for nursing and day care and the number and qualifications of the staff of the latter should comply with adequate standards laid down by appropriate regulations, and they should be approved and supervised by the competent authority.

IV. PROTECTION OF EMPLOYMENT

4. (1) Wherever possible the period before and after confinement during which the woman is protected from dismissal by the employer in accordance with article 6 of the Maternity Protection Convention (Revised), 1952, should be extended to begin as from the date when the employer of the woman has been notified by medical certificate of her pregnancy and to continue until one month at least after the end of the period of maternity leave provided for in article 3 of the convention.

(2) Among the legitimate reasons for dismissal during the protected period to be defined by law should be included cases of serious fault on the part of the employed woman, shutting down of the undertaking or expiry of the contract of employment. Where works councils exist it would be desirable that they should be consulted regarding such dismissals.

(3) During her legal absence from work before and after confinement, the seniority rights of the woman should be preserved as well as her right to reinstatement in her former work or in equivalent work paid at the same rate.

V. PROTECTION OF THE HEALTH OF EMPLOYED WOMEN DURING THE MATERNITY PERIOD

5. (1) Night work and overtime work should be prohibited for pregnant and nursing women and their working hours should be planned so as to ensure adequate rest periods.

(2) Employment of a woman on work prejudical to her health or that of her child, as defined by the competent authority, should be prohibited during pregnancy and up to at least three months after confinement and longer if the woman is nursing her child.

(3) Work falling under the provisions of subparagraph (2) should include, in particular:

(*a*) Any hard labour involving

(i) Heavy weight-lifting, pulling or pushing; or

(ii) Undue and unaccustomed physical strain, including prolonged standing;

(*b*) Work requiring special equilibrium; and

(*c*) Work with vibrating machines.

(4) A woman ordinarily employed at work defined as prejudicial to health by the competent authority should be entitled without loss of wages to a transfer to another kind of work not harmful to her health.

(5) Such a right of transfer should also be given for reasons of maternity in individual cases to any woman who presents a medical certificate stating that a change in the nature of her work is necessary in the interest of her health and that of her child.

RESOLUTION CONCERNING THE INDEPENDENCE OF THE TRADE UNION MOVEMENT[1]

Adopted by the General Conference of the International Labour Organisation, Geneva, on 26 June 1952

(1) The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.

(2) The trade unions also have an important role to perform in co-operation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.

(3) To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.

(4) A condition for such freedom and independence is that trade unions be constituted as to membership without regard to race, national origin or political affiliations and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.

(5) When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country.

(6) Governments, in seeking the co-operation of trade unions to carry out their economic and social policies should recognize that the value of this co-operation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

[1] Text of the resolution in: International Labour Organisation, *Seventh Report of the International Labour Organisation to the United Nations*, Geneva, 1953, pp. 238–239.

REPORTS OF THE COMMITTEE ON FREEDOM OF ASSOCIATION

established by the Governing Body of the International Labour Office[1]

SUMMARY

The Committee on Freedom of Association, set up by the Governing Body at its 117th session (Geneva, November 1951) and entrusted with the preliminary examination of allegations concerning trade union rights submitted to the International Labour Organisation held six meetings in 1952. The committee published six reports, the last devoted to the sixth meeting (December 1952), and the seventh meeting (February 1953). All reports were adopted unanimously by the committee; they were approved unanimously by the Governing Body, subject to the abstention of one employer member in the case of the sixth report.

The first meeting of the committee took place in January 1952, the second and third meetings in March 1952, the fourth in May 1952, the fifth in June 1952, the sixth in December 1952, and the seventh in February 1953. In the course of these seven meetings the committee had before it fifty-seven cases consisting of complaints which had either been received directly by the ILO or been referred to it by the Economic and Social Council, and was able to reach final conclusions on fifty of these cases.[2]

The Committee was impressed by the extent to which the same questions constantly recurred in different cases and it therefore formulated certain general criteria for dealing with cases before it. Questions sometimes arise as to whether a particular complaint is to be regarded as having been made by an organization of workers or employers, since it is sometimes suggested that persons purporting to act on behalf of such an organization are not entitled to do so because the organization has been dissolved or because the individuals lodging the complaint have ceased to be resident in the country concerned. The committee considered that it would be altogether inconsistent with the purpose for which the procedure for the examination of allegations had been established for it to admit that the dissolution or purported dissolution of an organization by government action extinguishes the right of the organization to invoke the procedure. Similarly the committee will not regard any complaint as being irreceivable simply because the government in question has, or claims that it has, dissolved the organization on behalf of which the complaint is made or because the person or persons making the complaint have taken refuge outside the country concerned. One of the responsibilities entrusted to the committee[3] being that of reporting that a case does not call for further examination if the Committee finds that the allegations made are so purely political in character that it is undesirable to pursue the matter further, the committee proposes, in taking such decisions, to be guided by the general principle that it is inappropriate for the ILO to discuss political questions directly relating to international security and for it to do so would be inconsistent with its traditions and prejudicial to its usefulness in its own sphere, but that situations which are political in origin may have social aspects which the ILO may be called upon to examine by appropriate procedures. Accordingly the committee proposes to form its own judgement in each case as to whether it should advise the Governing Body that the allegations made are so purely political in character that it is undesirable to pursue the matter further or whether its advice should be that, although the case may be political in origin or present political aspects, it raises questions primarily affecting the exercise of trade union rights which call for further examination. The committee further concluded that it must reject as unfounded allegations which are not sufficiently substantiated to warrant further inquiry, even though the committee, or a majority of its members, may not be convinced that the position of trade unions in the country concerned is in all respects fully satisfactory. A special responsibility accordingly falls on those lodging complaints to formulate their allegations in detail and to substantiate them with satisfactory evidence. In the same way, where precise allegations are made, the committee cannot regard as satisfactory replies from governments which are confined to generalities. The purpose of the whole procedure is to promote respect for trade union rights in law and in fact, and the committee is confident that, if it protects governments against unreasonable accusations, governments on their side will recognize the importance for the protection of their own good name of formulating for objective examination detailed factual replies to such detailed factual charges as may be put forward. In any case in which a government does not respond within a reasonable period indicated by the committee to such a request for more detailed information, the committee will report the circumstances to the Governing Body.

[1] See the background material for the establishment of a Fact-finding and Conciliation Commission on Freedom of Association and of a Committee on Freedom of Association in *Yearbook on Human Rights for 1949*, pp. 293–295; 378–380; *idem for 1950*, pp. 498–499; *idem for 1951*, pp. 574–575.

[2] The complete text of the reports of these meetings may be found in the *Sixth Report of the International Labour Organisation to the United Nations*, Geneva, 1952, pp. 169–237, and in the *Seventh Report of the International Labour Organisation to the United Nations*, Geneva, 1953, pp. 173–396.

[3] For the terms of reference of the Committee see *Yearbook on Human Rights for 1951*, p. 575.

The committee concluded that if the ILO is to fulfil its responsibility in regard to trade union rights it must avoid two opposite dangers: on the one hand it must not be distracted from its task by attempting to deal with a wide range of cases which it is neither appropriate nor necessary to examine internationally; and on the other hand it must not hesitate to discuss in an international forum cases which are of such a character as to affect substantially the attainment of the aims and purposes of the ILO.

In the course of its first three meetings, the committee decided that nineteen cases should be dismissed as not calling for further examination for reasons indicated in the reports of the committee. These cases related to the Anglo-Egyptian Sudan, Egypt, France, France (Tunisia), Hungary, Italy, Iran, Israel, the Netherlands, New Zealand, Peru, the United States and the United Kingdom non-metropolitan territories of British Honduras, Cyprus, the Gold Coast, Hong Kong, Jamaica, Nigeria and Uganda. In one case which relates to Bolivia the committee has, in view of the special arrangements for technical co-operation now in force between the Bolivian Government and the United Nations and the specialized agencies, made certain suggestions for consideration by the Bolivian Government which are indicated in its second report. The committee considered that one case relating to the Dominican Republic merited further examination by the Governing Body. It suggested, however, that the Governing Body should authorize it to afford an opportunity to the government concerned to discuss with the committee the questions at issue before the committee attempted to formulate any further recommendation on the subject for consideration by the Governing Body. In certain other cases governments have supplied observations, but the committee has asked for further information from the governments concerned before making its recommendation. In three cases no observations have been received from the governments concerned within the time limits fixed by the committee.

At its fourth meeting, the committee reached conclusions with regard to fourteen cases and recommended that nine of these fourteen cases (namely those relating to India, Chile, Lebanon, the United Kingdom non-metropolitan territories of Grenada, Kenya, Malaya, Cyprus and British Guiana, and Ceylon) should be dismissed as not calling for further examination. The committee made suggestions for consideration by the Governments of Ceylon, Chile, India, Lebanon, and the United Kingdom in respect of Kenya and Malaya. With regard to a case relating to France (Morocco) the committee decided to ask the French Government for further information. The consideration of cases relating to Brazil and France (Tunisia) were postponed pending receipt of information promised by the governments concerned; the consideration of a case concerning Argentina was postponed in order that this government may have an opportunity of forwarding its observations on a new complaint. In two cases relating to Hungary and Czechoslovakia no replies having been received from the governments of these countries, the committee recommended the Governing Body to ask the Director-General of the ILO to make a further approach to these governments with a view to obtaining observations and to inform the Economic and Social Council of the United Nations of the position with regard to this matter.

At its fifth meeting the committee continued the examination of the case concerning the Dominican Republic and, after having heard the statement made by the representative of that government, considered that, while the legal provisions at present in force in the Dominican Republic appeared to respect the fundamental principles of freedom of association, it would be desirable that a mission on the spot should be enabled to verify whether in practice these legal provisions were applied so as to provide an effective guarantee to those concerned of the exercise of their freedom of association. Upon an invitation received from the Confederation of Dominican Workers and endorsed by the Government of the Dominican Republic, the committee recommended the Governing Body to authorize the acceptance of this invitation on the understanding that the mission should have essentially as its terms of reference the study of the practical application of the legal provisions concerning freedom of association in force in the Dominican Republic; that the Director-General should have received, prior to the departure of the mission, a formal assurance that all facilities would be accorded to the mission to enable it to carry out its mandate and that, in particular, it would be permitted to make all necessary contacts for this purpose; and that the Director-General should also have an assurance, prior to the departure of the mission, that the mission would be free, on its return, to make a report to the Governing Body which might be published.

At its meetings of December 1952 and February 1953, the committee reached conclusions on twenty-one other cases. The committee recommended the Governing Body to decide that seventeen of the twenty-one cases should be dismissed as not calling for further examination for the reasons stated in its reports and subject to the observations contained in those reports. In eight of the seventeen cases the committee made recommendations of substantial importance for consideration by the Government concerned. The seventeen cases related to Argentina (two cases), Brazil, Chile, Colombia, France (Tunisia), Greece (two cases), India, Japan, Pakistan, the Philippines, Turkey, the United Kingdom non-metropolitan territory of British Guiana, the United States of America, the United States of America (Panama Canal Zone), and the United States of

America and Greece (a case concerning both these Governments). The eight cases in which recommendations were made for consideration by the government concerned Argentina, Brazil, France (in respect of Tunisia), Greece, India, Japan, Pakistan and Turkey. In two cases—namely, those relating to Venezuela and the Dominican Republic—which had been before the committee since the first meeting, the committee reached the following conclusions. In the case concerning Venezuela, the committee noted that there had been improvements in the situation of trade unions in the country since the complaint was originally made, and expressed the hope that discussions now proceeding between the Venezuelan Government and the national and international trade union organizations concerned on measures necessary to secure a fuller application of the principles of freedom of association would be continued. The committee recommended that certain recommendations to this effect should be made to the Government of Venezuela. In the case concerning the Dominican Republic, the committee, after deploring that the Government of the Dominican Republic had refused to give its consent to the sending of a mission under the conditions stipulated by the Governing Body at its 119th session (May–June 1952) recommended the Governing Body to communicate to the Government a number of observations relating principally to the application and practice of legal and constitutional guarantees of freedom of association and to the assurance given by the Government that it would take steps without delay with a view to ratifying the Freedom of Association and Protection of the Right to Organize Convention, 1948. In the case of a complaint submitted by the International Confederation of Free Trade Unions concerning Czechoslovakia, a number of communications to the Government concerning the complaint had elicited no reply and the representative of Czechoslovakia on the Economic and Social Council had indicated that the Czecholovak Government had deliberately refrained from making any reply; in the circumstances, and having regard to the fact that the allegations contained in the complaint were of a precise character, the committee recommended that the case merited further examination by the Governing Body. The Governing Body decided to ask the Czechoslovak Government to consent to referral of the case to the Fact-finding and Conciliation Commission. The committee adjourned its examination of the remaining cases relating to the Free Territory of Trieste, France (Morocco), Hungary, the Saar and Uruguay, the governments concerned, with the exception of Hungary, having promised further information.

The reasons why the committee has found unworthy of further consideration a large proportion of the allegations made are, for instance, that these allegations were too vague to make it possible to examine the merits of the case; that the complainant had not offered sufficient evidence to justify further consideration of the matter; that appropriate measures for the redress of the grievances alleged had already been taken by the national authorities concerned; that the alleged facts, if proved, would not have constituted an infringement of the exercise of trade union rights; or that the allegations made had been found to be so purely political in character that it would have been undesirable to pursue them further by means according to the procedure for the safeguarding of trade union rights.

Even though it considered in a number of cases that a complaint did not call for further examination, the committee felt it necessary in certain cases to draw the attention of governments, through the Governing Body, to certain aspects of the situation in law or in fact of occupational associations in a given country. It would appear from information that has since come to the knowledge of the committee that several governments have spontaneously given effect, or have expressed the intention of giving effect, to recommendations contained in the committee's reports. The committee noted such information regarding improvements of the trade union situation in Bolivia, Peru, India, Chile and Greece. This information is referred to in the sixth report of the committee in each case. The committee concluded that, even though it may not be possible to establish a direct relationship of cause and effect in every case between the recommendations of the committee and the measures taken by the governments of these countries, it would appear from the information received that the recommendations of the Committee on Freedom of Association have not been without effect on the evolution of the trade union situation in a fairly considerable number of countries.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

UNIVERSAL COPYRIGHT CONVENTION[1]

Adopted by the Inter-Governmental Copyright Conference
convened by the Director-General of UNESCO
jointly with the Swiss Government,
done at Geneva, 6 September 1952

The Contracting States,

Moved by the desire to assure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

HAVE AGREED as follows:

Article I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

Article II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals.

3. For the purpose of this convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

Article III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 of this article shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 of this article shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed

[1] French, English and Spanish texts published by UNESCO, Paris 1952. By a resolution adopted in Paris at its seventh session, 12 November – 11 December 1952, the General Conference of UNESCO accepted the responsibilities devolving upon the Organization in virtue of the Universal Copyright Convention and the Protocols annexed thereto.

upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protection without formalities the unpublished works of nationals of other Contracting States.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in article IV, such State shall not be required to comply with the provisions of paragraph 1 of this article III in respect of the second or any subsequent term of copyright.

Article IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of article II and this article, by the law of the Contracting State in which protection is claimed.

2. The term of protection for works protected under this convention shall not be less than the life of the author and twenty-five years after his death.

However, any Contracting State which, on the effective date of this convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of first publication.

Any Contracting State which, upon the effective date of this convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be.

If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified above.

3. The provisions of paragraph 2 of this article shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

For the purposes of the application of the preceding provision, if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4 of this article, the work of a national of a Contracting State, first published in a non-contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4 of this article, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

Article V

1. Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this convention.

2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in the national language or languages, as the case may be, of the Contracting State, by the owner of the right of translation or with his authorization, any national of such Contracting State may obtain a non-exclusive licence from the competent authority thereof to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if one of the national languages of such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

The licence shall not be granted when the author has withdrawn from circulation all copies of the work.

Article VI

"Publication", as used in this convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

Article VII

This convention shall not apply to works or rights in works which, at the effective date of the convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State.

Article VIII

1. This convention, which shall bear the date of 6 September 1952, shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization and shall remain open for signature by all States for a period of 120 days after that date. It shall be subject to ratification or acceptance by the signatory States.

2. Any State which has not signed this convention may accede thereto.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article IX

1. This convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession, among which there shall be those of four States which are not members of the International Union for the Protection of Literary and Artistic Works.

2. Subsequently, this convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.

Article X

1. Each State party to this convention undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this convention.

2. It is understood, however, that at the time an instrument of ratification, acceptance or accession is deposited on behalf of any State, such State must be in a position under its domestic law to give effect to the terms of this convention.

Article XI

1. An Intergovernmental Committee is hereby established with the following duties:

(*a*) To study the problems concerning the application and operation of this convention;

(*b*) To make preparation for periodic revisions of this convention;

(*c*) To study any other problems concerning the international protection of copyright, in co-operation with the various interested international organizations, such as the United Nations Educational, Scientific and Cultural Organization, the International Union for the Protection of Literary and Artistic Works and the Organization of American States;

(*d*) To inform the Contracting States as to its activities.

2. The Committee shall consist of the representatives of twelve Contracting States to be selected with due consideration to fair geographical representation and in conformity with the resolution relating to this article, annexed to this convention.

The Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director of the Bureau of the International Union for

the Protection of Literary and Artistic Works and the Secretary-General of the Organization of American States, or their representatives, may attend meetings of the committee in an advisory capacity.

Article XII

The Intergovernmental Committee shall convene a conference for revision of this convention whenever it deems necessary, or at the request of at least ten Contracting States, or of a majority of the Contracting States if there are less than twenty Contracting States.

Article XIII

Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization that this convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in article IX. In the absence of such notification, this convention shall not apply to any such country or territory.

Article XIV

1. Any Contracting State may denounce this convention in its own name or on behalf of all or any of the countries or territories as to which a notification has been given under article XIII. The denunciation shall be made by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

Article XV

A dispute between two or more Contracting States concerning the interpretation or application of this convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

Article XVI

1. This convention shall be established in English, French and Spanish. The three texts shall be signed and shall be equally authoritative.

2. Official texts of this convention shall be established in German, Italian and Portuguese.

Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General of the United Nations Educational, Scientific and Cultural Organization other texts in the language of its choice by arrangement with the Director-General.

All such texts shall be annexed to the signed texts of this convention.

Article XVII

1. This convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that convention.

2. In application of the foregoing paragraph, a declaration has been annexed to the present article. This declaration is an integral part of this convention for the States bound by the Berne Convention on 1 January 1951, or which have or may become bound to it at a later date. The signature of this convention by such States shall also constitute signature of the said Declaration, and ratification, acceptance or accession by such States shall include the Declaration as well as the convention.

Article XVIII

This convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this convention, or between the provisions of this convention and those of any new convention or arrangement which may be formulated between two or more American republics after this convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date this convention comes into force in such State shall not be affected.

Article XIX

This convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this convention, the provisions of this convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this convention comes into force in such State shall not be affected. Nothing in this article shall affect the provisions of articles XVII and XVIII of this convention.

Article XX

Reservations to this convention shall not be permitted.

Article XXI

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall send duly certified copies of this convention to the States interested, to the Swiss Federal Council and to the Secretary-General of the United Nations for registration by him.

He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this convention comes into force, the notifications under article XIII of this convention, and denunciations under article XIV.

APPENDIX DECLARATION RELATING TO ARTICLE XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works, and which are signatories to the Universal Copyright Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Convention of Berne and the Universal Convention,

HAVE, BY COMMON AGREEMENT, ACCEPTED the terms of the following declaration:

(*a*) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after 1 January 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(*b*) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said convention.

RESOLUTION CONCERNING ARTICLE XI

The Intergovernmental Copyright Conference

Having considered the problems relating to the Intergovernmental Committee provided for in article XI of the Universal Copyright Convention

RESOLVES:

1. The first members of the Committee shall be representatives of the following twelve States, each of those States designating one representative and an alternate: Argentina, Brazil, France, Germany, India, Italy, Japan, Mexico, Spain, Switzerland, United Kingdom, and United States of America.

2. The Committee shall be constituted as soon as the Convention comes into force in accordance with article XI of this convention.

3. The Committee shall elect its Chairman and one Vice-Chairman. It shall establish its rules of procedure having regard to the following principles:

(*a*) The normal duration of the term of office of the representatives shall be six years; with one-third retiring every two years;

(*b*) Before the expiration of the term of office of any members, the Committee shall decide which States shall cease to be represented on it and which States shall be called upon to designate representatives; the representatives of those States which have not ratified, accepted or acceded shall be the first to retire;

(*c*) The different parts of the world shall be fairly represented; and

EXPRESSES THE WISH

that the United Nations Educational, Scientific and Cultural Organization provide its secretariat.

PROTOCOL 1 ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION, CONCERNING THE APPLICATION OF THAT CONVENTION TO THE WORKS OF STATELESS PERSONS AND REFUGEES

The States parties hereto, being also parties to the Universal Copyright Convention (hereinafter referred to as "the Convention")

HAVE ACCEPTED the following provisions:

1. Stateless persons and refugees who have their habitual residence in a State party to this protocol shall, for the purposes of the Convention, be assimilated to the nationals of that State.

2. (*a*) This protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of article VIII of the Convention applied hereto.

(*b*) This protocol shall enter into force in respect of each State, on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the Convention with respect to such State, whichever is the later.

PROTOCOL 2 ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION, CONCERNING THE APPLICATION OF THAT CONVENTION TO THE WORKS OF CERTAIN INTERNATIONAL ORGANIZATIONS

The States parties hereto, being also parties to the Universal Copyright Convention (hereinafter referred to as "the Convention"),

HAVE ACCEPTED the following provisions:

1. (*a*) The protection provided for in article II (1) of the Convention shall apply to works published for the first time by the United Nations, by the specialized agencies in relationship therewith, or by the Organization of American States;

(*b*) Similarly, article II (2) of the Convention shall apply to the said organization or agencies.

2. (*a*) This protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of article VIII of the Convention applied hereto.

(*b*) This protocol shall enter into force for each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the convention with respect to such State, whichever is the later.

PROTOCOL 3 ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION, CONCERNING THE EFFECTIVE DATE OF INSTRUMENTS OF RATIFICATION OR ACCEPTANCE OF OR ACCESSION TO THAT CONVENTION

States parties hereto,

Recognizing that the application of the Universal Copyright Convention (hereinafter referred to as "the Convention") to States participating in all the international copyright systems already in force will contribute greatly to the value of the Convention;

HAVE AGREED as follows:

1. Any State party hereto may, on depositing its instrument of ratification or acceptance of or accession to the Convention, notify the Director-General of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as "Director-General") that that instrument shall not take effect for the purposes of article IX of the Convention until any other State named in such notification shall have deposited its instrument.

2. The notification referred to in paragraph 1 above shall accompany the instrument to which it relates.

3. The Director-General shall inform all States signatory or which have then acceded to the Convention of any notifications received in accordance with this protocol.

4. This protocol shall bear the same date and shall remain open for signature for the same period as the Convention.

5. It shall be subject to ratification or acceptance by the signatory States. Any State which has not signed this Protocol may accede thereto.

6. (*a*) Ratification or acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

(*b*) This protocol shall enter into force on the date of deposit of not less than four instruments of ratification or acceptance or accession. The Director-General shall inform all interested States of this date. Instruments deposited after such date shall take effect on the date of their deposit.

AGREEMENTS SIGNED BETWEEN UNESCO AND MEMBER STATES FOR TECHNICAL ASSISTANCE IN THE FIELD OF EDUCATION

in 1950, 1951 and 1952

Afghanistan	
Teacher training	9 May 1951
Technical education	13 March 1952
Bolivia	
Teacher training—Normal school	19 March 1951
Brazil	
University of Brazil (science teaching)	8 March 1952
Burma	
Teacher training	7 July 1951
Fundamental education	7 July 1951

Cambodia
- Fundamental education ..... 27 March 1952

Ceylon
- Fundamental education centre ..... 25 October 1950; 24 April 1952

Chile
- Fundamental education ....
- Secondary education .....
- Technical education .....
  21 August 1951

China
- Fundamental education ..... 12 May 1952

Colombia
- Special educational services .. 24 November 1950

Ecuador
- University education ..... 23 June 1950; 4 October 1951
- Technical education ..... 13 March 1951; 4 October 1951
- Primary and secondary education ..... 23 June 1950; 4 October 1951

Guatemala
- Education for productivity .. 7 April 1951

Haiti
- Fundamental education training centre .....
- Technical education .....
  28 June 1951

Hong Kong
- General education ..... 2 December 1952

India
- Technology for development —Indian Institute of Technology (science teaching).. 15 November 1950
- Central Institute of Education (primary and secondary education)..... 15 November 1950

Indonesia
- Primary and secondary education ..... 2 November 1950
- General educational services . 2 November 1950

Iran
- Technical education ..... 14 June 1951
- Agricultural education ..... 14 June 1951
- Educational broadcasting .... 12 June 1952

Iraq
- Science teaching ..... 15 October 1950; 21 June 1952
- Fundamental education ..... 15 June 1951; 9 March 1952
- Technical education ..... 15 June 1951; 1 December 1951

Israel
- Haifa Technical College (technical education) ..... 16 May 1952

Laos
- Teacher training ..... 3 October 1952

Lebanon
- Teacher training ..... 21 September 1951

Liberia
- Fundamental education ..... 31 May 1952
- Teacher training ..... 31 May 1952; 19 September 1952
- Technical education .....
- University science teaching .
  31 May 1952

Libya
- Technical and clerical training centre ..... 24 December 1951
- Educational training and production centre ..... 24 December 1951
- Teacher training .....
- Adult education.....
- Nomad education .....
  2 May 1952

Pakistan
- Special educational services .. 16 November 1950
- University science teaching .. 2 June 1952

Panama
- Primary education..... 12 July 1951

Peru
- Primary and secondary education ..... 20 July 1951
- Science teaching ..... 20 July 1951; 27 September 1951

Philippines
- Rural-urban education ..... 5 April 1951

El Salvador
- Fundamental education ..... 30 March 1951
- Primary and secondary education ..... 19 October 1951

Syria
- Fundamental education ....
- Technical education .....
  10 May 1951
- Science assistance ..... 1 October 1951

Thailand	
Teacher training	25 November 1952
Chachoengsao educational pilot project	9 April 1951 25 November 1952
Fundamental Education Training Centre (Ubol)	25 November 1952
Yugoslavia	
Institute for school equipment	23 April 1952
Regional Project	
Regional Fundamental Education Training Centre (ASFEC)	15 October 1952 (signed with Egypt)

RESOLUTIONS ADOPTED BY THE GENERAL CONFERENCE OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

at its seventh session, in Paris, 12 November – 11 December 1952[1]

SUMMARY

Among the resolutions adopted in the context of the Programme for 1953, a resolution on teaching about the United Nations and Human Rights should be noted. It authorizes the Director-General of Unesco, in order to encourage the development of education in the aims and activities of the United Nations and the specialized agencies, and in the principles of the Universal Declaration of Human Rights, to assist Member States to carry out educational experiments within the framework of an international plan and to assist teachers and educational agencies by means of publications specially designed for their use.

Another resolution, relating to the campaign against discrimination of race and sex, invites Member States to promote studies relating to the application of the Universal Declaration of Human Rights, to publicize the results of these studies and, in particular, by the dissemination of information and by teaching, to combat racial prejudice and discrimination; it also authorizes the Director-General to continue to assemble and disseminate available knowledge likely to combat racial prejudice; to gather scientific information about the progress achieved, through education, by members of ethnic groups in the process of integration into modern society; and to undertake, in co-operation with the United Nations and the specialized agencies, studies of the social conditions which favour or hinder women's access to education and their effective exercise of the rights and duties of citizenship.

In addition, the General Conference adopted a number of other resolutions calling for action in direct or indirect implementation of fundamental human rights falling within UNESCO's competence.

[1] Text of these resolutions in *Records of the General Conference of the United Nations Educational, Scientific and Cultural Organization, Seventh Session*, Paris 1952, *Resolutions*.

PUBLICATIONS ISSUED BY UNESCO DURING THE YEAR 1952

Publications in 1952 included the final version of the statement on race and racial differences, circulated to scientific reviews for publication. A booklet was also published for the general public, entitled *What is Race? Evidence from Scientists*.—87 pp.

The series on "The Race Question in Modern Science" includes the following publications:

Race and History, by Claude Lévi-Strauss	50 pp.
The Significance of Racial Differences, by G. M. Morant	50 pp.
Race and Society, by Kenneth Little	61 pp.
Race and Class in Rural Brazil—presenting findings of surveys conducted there on ethnic relations	200 pp.

INTERNATIONAL TELECOMMUNICATION UNION

PLENIPOTENTIARY CONFERENCE OF THE UNION

Buenos Aires, October to December 1952

I

Recommendation No. 2

UNRESTRICTED TRANSMISSION OF NEWS

NOTE

The Plenipotentiary Conference of the International Telecommunication Union had before it proposals for the amendment or deletion of article 29 of the International Telecommunication Convention of Atlantic City[1] which reserves the right of Members and Associate Members of the Union "to stop the transmission of any private telegram which may appear dangerous to the security of the state or contrary to their laws, to public order or to decency" and also "to cut off any private telephone or telegraph communication which may appear dangerous to the security of the state or contrary to their laws, to public order or to decency". After discussion, the Conference decided to retain article 29 unchanged in the International Telecommunication Convention, but it adopted the following recommendation entitled "Unrestricted transmission of news":

The Plenipotentiary Conference of the International Telecommunication Union, Buenos Aires,

In view of

1. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948;

2. Articles 28, 29 and 30 of the International Telecommunication Convention, Atlantic City,

Conscious of

the noble principle that news should be freely transmitted;

RECOMMENDS

Members and Associate Members of the Union to facilitate the unrestricted transmission of news by telecommunication services.

II

MODIFICATION OF THE PREAMBLE TO THE INTERNATIONAL TELECOMMUNICATION CONVENTION

The Plenipotentiary Conference of the International Telecommunication Union also amplified the preamble to the International Telecommunication Convention. The preamble now reads as follows:

"While fully recognizing the sovereign right of each country to regulate its telecommunication, the plenipotentiaries of the Contracting Governments, with the object of facilitating relations between the peoples by means of efficient telecommunication services, have agreed to conclude the following convention."

[The former text read as follows:

"While fully recognizing the sovereign right of each country to regulate its telecommunication, the plenipotentiaries of the Contracting Governments have agreed to conclude the following Convention, with a view to ensuring the effectiveness of telecommunication."]

[1] See the text of this Article in *Yearbook on Human Rights for 1948*, p. 417.

UNITED NATIONS CHILDREN'S FUND

AGREEMENTS WITH GOVERNMENTS

NOTE

Each of the agreements concluded between the United Nations Children's Fund and various governments contains an article providing that "The Government undertakes to see that these supplies are dispensed or distributed equitably and efficiently on the basis of need, without discrimination because of race, creed, nationality status or political belief."

In 1951 and 1952 new agreements were concluded between the Fund and the Governments of the following States or territories:[1]

Country or territory	*Date of signature*
	1951
Iran	2 August 1951
Iraq	10 December 1951
Panama	14 June 1951
Paraguay	25 January 1951
Turkey	5 September 1951
Jamaica	2 October 1951
Trinidad and Tobago	5 September 1951
	1952
Cambodia	28 April 1952
Dominican Republic	15 February 1952
Egypt	18 May 1952
Federal Republic of Germany	1 July 1952
Jordan	8 July 1952
Laos	15 August 1952
Liberia	28 April 1952
Libya	15 April 1952
Syria	10 July 1952
Vietnam	29 August 1952
Aden	4 February 1952
Grenada	25 July 1952
St. Lucia	31 December 1952

[1] Ratifications of these agreements were not required save in the cases of Egypt, the Federal Republic of Germany and Jordan. The agreements were not ratified by these three States during 1952. Basic information on the United Nations Children's Fund (with references to sources) and lists of the agreements concluded in 1948, 1949 and 1950 respectively are to be found in *Yearbook on Human Rights for 1948*, p. 434, *idem for 1949*, p. 298, and *idem for 1950*, p. 416. For the complete text of the agreements see: United Nations, *Treaty Series*, vol. 65, pp. 4–105.

REGIONAL AND OTHER MULTILATERAL TREATIES AND AGREEMENTS

ACTIVITIES OF THE RED CROSS IN 1952 RELATING TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949[1]

A. RATIFICATIONS OF CONVENTIONS

1. *Ratifications recorded in 1952*

Seven new accessions and ratifications were recorded during the year by the Federal Political Department in Berne—namely, the accession of the South African Union (31 March), and the ratifications by Guatemala (14 May), Spain (4 August), Belgium (3 September), Mexico (29 October) and Egypt (10 November). The Philippines which had ratified the First Convention (Wounded and Sick) on 7 March 1951, deposited the instruments for the ratification of the Second, Third and Fourth Conventions in Berne on 6 October 1952.

Therefore by 31 December 1952, the States which had ratified or acceded to the four Geneva Conventions of 12 August 1949 (the essential purpose of which is the protection of the human being) numbered 23, as follows, in alphabetical order:

Belgium, Chile, Czechoslovakia, Denmark, Egypt, France, Guatemala, the Holy See, India, Israel, Italy, Jordan, Lebanon, Liechtenstein, Mexico, Monaco, Norway, Pakistan, the Philippines, the South African Union, Spain, Switzerland and Yugoslavia.

The Federal Political Department further announced the receipt of a statement by the Chinese People's Central Government of its intention to ratify the Conventions.

2. *Resolution 15 adopted by the XVIIIth International Red Cross Conference, Toronto*

The XVIIIth International Red Cross Conference,

Considering it of vital importance that the four Geneva Conventions of 12 August 1949, be fully operative as soon as possible, and having been informed of the regrettable fact that until now only nineteen States have ratified these four conventions or adhered to them,

Addresses an urgent appeal to the remaining signatory States requesting them to hasten ratification of the Geneva Conventions of 12 August 1949, in order that the latter may be universally recognized and effective.

3. *Recommendation 29 adopted by the Assembly of the Council of Europe on 26 September 1952*

The Assembly of the Council of Europe recommended to the Committee of Ministers to invite all Member States:

To ratify or support the Geneva Convention of 12 August 1949, on the Protection of Civilians in time of war;

To take appropriate measures to provide the protection advocated in that convention in close collaboration with the National Red Cross Societies, private and public humanitarian bodies and the International Committee of the Red Cross.

B. APPLICATION OF THE CONVENTIONS

Resolution 16 adopted by the XVIIIth International Red Cross Conference

The XVIIIth International Red Cross Conference,

Considering that under article I, which is common to the four Geneva Conventions of 1949, the Powers undertake to respect and to ensure respect for the said Conventions in all circumstances,

Considering that it is in the common interest of all that the Geneva Conventions should always be fully respected everywhere and at all times,

Recommends to the Governments of all countries not involved in a conflict and to the national societies of such countries that they facilitate in every way the material application of these conventions,

Considers in particular that it is the duty of States bordering any territory where a conflict is taking place, and of the National Societies of such countries, to facilitate the passage through such States of persons whose mission it is to aid in the application of the Conventions and in the conveyance of relief to the victims of such conflict.

[1] This note is based on the *Report on the Work of the International Committee of the Red Cross* (1 January – 31 December 1952), published by the International Committee of the Red Cross, Geneva 1953, and on information received through the courtesy of Mr. Claude Pilloud, Chief, Legal Department of the International Committee of the Red Cross, Geneva.

ACTIVITIES OF THE COUNCIL OF EUROPE IN THE FIELD OF HUMAN RIGHTS[1]

I. THE EUROPEAN CONVENTION AND PROTOCOL ON HUMAN RIGHTS (1952)

The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome on 4 November 1950, on behalf of the Governments of Belgium, Denmark, France, the Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Saar, Turkey and the United Kingdom.[2] Later in the same month, Greece and Sweden appended their signatures, thus completing the roster of the fifteen Member States of the Council of Europe. Under the provisions of the Convention, the Contracting Parties undertake to secure to everyone within their jurisdiction a series of rights and freedoms based on the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948; included among these are security of person, freedom from arbitrary arrest, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and freedom of association. A European Commission of Human Rights is then created, to which any Contracting Party may refer any alleged breach of the Convention by another Contracting Party. The Commission has jurisdiction to investigate the complaint and use its good offices to effect a friendly settlement, if possible; in default of such a settlement it is to submit a report to the Committee of Ministers of the Council of Europe, which must then decide by a two-thirds majority whether a violation of the Convention has been committed and, if so, what remedial measures must be taken. The parties undertake to abide by any decision of the Committee.

Early in 1951, negotiations were undertaken for the conclusion of a protocol to the Convention containing a guarantee of three additional rights: the right of property; the right of parents to have their children educated in conformity with their own convictions; and the right of free elections by secret ballot. As reported in the *Yearbook on Human Rights for 1951*,[3] agreement had been reached by the two organs of the Council of Europe by the end of the year on two of these rights, but the Consultative Assembly insisted that it could not accept the text on education proposed by the Committee of Ministers, and recommended the adoption of a formula of its own which it considered more liberal.

In March 1952, the Committee of Ministers agreed to accept the Assembly's text on the right of education, certain governments indicating, however, that this would necessitate the insertion of reservations on their part. On 20 March 1952, the protocol, the text of which is set out below, was signed on behalf of the same fifteen governments signatory to the Rome Convention of 1950.

RATIFICATION OF THE CONVENTION AND PROTOCOL

Both instruments require ten ratifications before they will come into force. The first ratification of the Convention was that of the United Kingdom, which was deposited with the Secretary-General of the Council of Europe on 8 March 1951. This was followed by the ratifications of Norway and Sweden in January and February 1952 and by that of the Federal Republic of Germany in December of that year. By the end of 1952, the Protocol had been ratified by the United Kingdom and Norway.

Apart from the obligations which result automatically from the act of ratification, there are two additional undertakings of an optional character which may be assumed as the result of express declarations made for the purpose. The first of these relates to what is generally known as the right of individual petition. This is the right of "any person, non-governmental organization or group of individuals claiming to be the victims of a violation by one of the Contracting Parties of the rights set forth in the Convention" to address a petition to the Secretary-General of the Council of Europe for consideration by the Commission. Under article 25 of the Convention, such petitions may be made only if the Contracting Party against which the complaint is made has declared that it recognize the competence of the Commission to receive such petitions.

The only country to accept the competence of the Commission to receive individual petitions by the end of 1952 was Sweden.[4]

The second optional undertaking in the Convention relates to the jurisdiction of the European Court of Human Rights. Provision is made for the consti-

[1] Note and text received through the courtesy of Mr. A. Struycken, Political Director at the Secretariat-General of the Council of Europe, Strasbourg. The note was prepared by Mr. A. H. Robertson, member of the Political Directorate.

[2] See *Yearbook on Human Rights for 1950*, pp. 418–426.

[3] Pp. 491–493.

[4] See also p. 254, footnote 5 of this *Yearbook*.

tution of such a court, which will have jurisdiction to hear all cases concerning the interpretation and application of the Convention which the Contracting Parties or the Commission refer to it, subject to two conditions; these are that the Commission has been unable to bring about a friendly settlement, and that the party or parties concerned have agreed to accept the jurisdiction of the court. This acceptance may be limited to the particular case at issue; but it may also result from a declaration made under article 46 of the Convention to the effect that the Contracting Party "recognizes as compulsory *ipso facto* and without special agreement the jurisdiction of the court in all matters concerning the interpretation and application of the Convention."

The court will only be set up when eight Contracting Parties have made declarations recognizing its jurisdiction as compulsory. No such declaration had been received by the end of 1952.

Reservations

Reservations may be made by a party in respect of any particular provision of the Convention or protocol "to the extent that any law in force in its territory is not in conformity with the provision". Reservations of a general character, however, are not permitted (article 64). A number of reservations have in fact been made.

The Norwegian Government has made a reservation relating to article 9 of the Convention, concerning freedom of thought, conscience and religion. Jesuits are banned in Norway under article 2 of the Constitution of 1814[1] and are consequently excepted from the provisions of article 9.

Article 7 of the Convention contains a guarantee against the retroactivity of the law and provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute an offence under national or international law at the time it was committed. The second paragraph of this article continues: "This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations." The Federal Republic of Germany has entered a reservation relating to this paragraph, which it only accepts in so far as allowed by article 103 of the Basic Law, which provides that "any act is only punishable if it was so by law before the offence was committed".[2]

There are also three reservations to the protocol. They all relate to its second article on the right of parents to have their children educated "in conformity with their own religious and philosophical convictions". The word "philosophical" led to much heart-searching during the course of the drafting of the protocol, and its inclusion in the final text provoked reservations by Greece, the United Kingdom and Sweden. The Greek Government stipulated that the application given to this provision in Greece would conform to the relevant provisions of internal legislation; the United Kingdom accepted it "only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure"; and Sweden made the reservation that exemption from the study of the Christian religion in state schools could be granted only to children belonging to some creed other than that of the Swedish church for which there exists a properly organized system of religious instruction.

The text of the protocol is published in this *Yearbook*.

II. SOCIAL SECURITY

The Consultative Assembly of the Council of Europe, during its first session, in September 1949, adopted a recommendation on the subject of the role of the Council in the field of social security and recommended that member States "should be guided by action already taken through bilateral or regional agreements in order to prepare one multilateral agreement which would make their own social security legislation completely applicable to the nationals of other countries". The Assembly thus proposed equality of treatment as regards social security for the benefit of the nationals of all member States.

Subsequently, the Committee of Ministers of the Council of Europe, at its third session, in March 1950, examined this proposal and decided, in view of the complexity of the problem, to convene a committee of experts on social security, to consist of representatives of all members, in order to study this question.

This committee of experts reached agreement on the desirability of concluding a multilateral agreement on social security between the members of the Council, and decided what should be the main principles incorporated therein; it then requested the International Labour Office to prepare the necessary draft. The ILO undertook this task and submitted the draft to the Committee of Experts in May 1951, and then again in a revised form, after various amendments had been agreed, in September of that year. Eventually, two separate draft agreements were worked out, one relating to pensions and one to other forms of social security, because there was reason to believe that some Governments might have difficulty in ratifying one agreement covering the whole field of social security. Subsequently, there has been reason to hope that all member Governments will sign both agreements.

[1] See *Yearbook on Human Rights for 1946*, p. 218.
[2] *Idem for 1949*, p. 82.

Each agreement gives, within its own field, effect to the following main principles:

(*a*) Equal treatment in each contracting State, with respect to the laws and regulations on social security, between its own nationals and the nationals of other contracting States.

(*b*) Extension to the nationals of all contracting States of the benefits derived from the bilateral or multilateral conventions on social security concluded between two or more contracting States.

Taken together, the two agreements will relate to 119 different social security schemes in fifteen countries and to forty bilateral and multilateral agreements.

In May 1952, the Committee of Ministers approved the substance of the texts worked out by the Committee of Experts and submitted them to the Consultative Assembly for its opinion.

The Assembly, in its opinion No. 1 of 28 May 1952, approved the draft agreements and recommended that the Committee of Ministers should sign them as soon as possible and make immediate arrangements for their ratification. The Assembly also proposed that the social security rights established in the agreements should be extended to refugees, in accordance with the Geneva Convention on the Status of Refugees of 1951, and that a Protocol should be prepared for that purpose.

The draft European Interim Agreement on Social Security other than schemes for old age, invalidity and survivors consists of sixteen articles. Annex I to this agreement lists the social security schemes of the various State members of the Council of Europe to which the agreement applies. Annex II lists the bilateral and multilateral agreements between the State members to which the agreement applies and annex III contains reservations to the agreement formulated by certain contracting parties. The European Interim Agreement on social security schemes relating to old age, invalidity and survivors consists likewise of sixteen articles and is followed by three annexes embodying corresponding lists of laws, agreements and reservations.

TEXT OF THE PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS[1]

done at Paris on 20 March 1952

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

HAVE AGREED AS FOLLOWS:

Art. 1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Art. 2. No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Art. 3. The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Art. 4. Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this protocol in respect of any territory.

[1] See the preceding note, p. 409. The text of the Convention for the Protection of Human Rights and Fundamental Freedoms was published in *Yearbook on Human Rights for 1950*, pp. 418-426.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph (1) of article 63 of the Convention.

Art. 5. As between the High Contracting Parties the provisions of articles 1, 2, 3 and 4 of this protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Art. 6. This protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all members of the names of those who have ratified.

TREATY CONSTITUTING THE EUROPEAN COAL AND STEEL COMMUNITY[1]

done at Paris on 18 April 1951

TITLE ONE.—THE EUROPEAN COAL AND STEEL COMMUNITY

Art. 3. Within the framework of their respective powers and responsibilities and in the common interest, the institutions of the Community shall:

. . .

(*e*) Promote the improvement of the living and working conditions of the labour force in each of the industries under its jurisdiction so as to make possible the equalization of such conditions in an upward direction;

. . .

TITLE III.—ECONOMIC AND SOCIAL PROVISIONS

Chapter VIII

WAGES AND MOVEMENT OF LABOUR

. . .

Art. 69. 1. The member States bind themselves to renounce any restriction based on nationality against the employment in the coal and steel industries of workers of proven qualifications for such industries who possess the nationality of one of the member States; this commitment shall be subject to the limitations imposed by the fundamental needs of health and public order.

2. In order to apply these provisions, the member States will work out a common definition of specialities and conditions of qualification, and will determine by common agreement the limitations provided for in the preceding paragraph. They will also work out technical procedures to make it possible to bring together offers of and demands for employment in the Community as a whole.

3. In addition, for the categories of workers not falling within the provisions of the preceding paragraph and where an expansion of production in the coal and steel industries might be hampered by a shortage of qualified labour, they will adapt their immigration regulations to the extent necessary to eliminate that situation; in particular, they will facilitate the reemployment of workers from the coal and steel industries of other member States.

4. They will prohibit any discrimination in remuneration and working conditions between national workers and immigrant workers, without prejudice to special measures concerning frontier workers; in particular, they will work out among themselves any arrangements necessary so that social security measures do not stand in the way of the movement of labour.

5. The High Authority shall guide and facilitate the application by the member States of the measures taken by virtue of the present article.

6. The present article shall not interfere with the international obligations of the member States.

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[1] English text in: Interparliamentary Union, *Constitutional and Parliamentary Information* (published by the Autonomous Section of Secretaries-General of Parliaments), Geneva, 1 November 1952.

THE EUROPEAN DEFENCE COMMUNITY TREATY[1]

done at Paris on 27 May 1952

PART I

FUNDAMENTAL PRINCIPLES

Chapter I

THE EUROPEAN DEFENCE COMMUNITY

. . .

Art. 3. 1. The Community shall act in the least onerous and most efficient manner possible. It shall only take action to the extent necessary for the fulfilment of its task, and in so doing it shall respect essential public liberties and the fundamental rights of individuals. It shall be vigilant to ensure that the interests of Member States receive all the consideration compatible with its own essential interests.

2. To enable the Community to attain its objectives, the Member States shall make available the appropriate contributions, determined according to the provisions of articles 86 and 93 of this treaty.

. . .

[1] English text in *The European Defence Community Treaty* (Miscellaneous No. 11 (1954)) London, H.M. Stationery Office, 1954, Cmd. 9127.

TEXTS ADOPTED BY THE ORGANIZATION OF AMERICAN STATES[1]

I. INTER-AMERICAN COMMISSION OF WOMEN

Introductory Note. The Inter-American Commission of Women is a permanent entity attached to the General Secretariat of the Organization of American States. It was created by the Sixth International Conference of American States, held in Havana, Cuba, in 1928, in order to work for the extension of civil, political, economic and social rights to the women of America; to study their problems and propose means of solving them. It is composed of twenty-one delegates, one for each Republic of the Continent, named by her respective Government.

The Commission of Women held its Eighth Assembly in Rio de Janeiro, 23 July – 8 August 1952, and adopted a series of resolutions directed towards promoting the general objectives of the Commission. Continental campaigns were planned on behalf of the recognition and exercise of women's political rights and of the principle of equal pay for work of equal value; an urgent request was made that the governments of the American States support the draft Convention of the United Nations on the Political Rights of Women, and a similar request for the ratification of the Convention of the United Nations for the Suppression of Traffic in Persons; studies were planned on the status of women in relation to eligibility for public office, on the marriage laws of the American countries, and on family and property rights; arrangements were made to facilitate the completion of the study on the economic status of working women in the Americas then under preparation; the inclusion of domestic workers in labour and social-security legislation and the establishment of courses in rural-domestic education were recommended; and a request was made to the Secretary-General of the United Nations to continue the co-operation then existing between the Inter-American Commission of Women and the United Nations Commission on the Status of Women.

During the course of the year the Inter-American Convention on the Granting of Civil Rights to Women was ratified by Brazil, making in all nine ratifications; the Inter-American Convention on the Granting of Political Rights to Women continued with only eight ratifications. The earlier Montevideo Convention on the Nationality of Women was adhered to by Costa Rica and has now been ratified by eleven states.

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[1] Texts in *Eighth Assembly of the Inter-American Commission of Women*, held in Rio de Janeiro, Brazil, 23 July – 8 August 1952, *Final Act*, Washington, D.C., 1952. Texts received through the courtesy of Professor Charles G. Fenwick, Director, Department of International Law and Organization, Pan American Union, Washington. Professor Fenwick also prepared the introductory note.

REQUEST THAT THE GOVERNMENTS SUPPORT THE DRAFT CONVENTION ON THE POLITICAL RIGHTS OF WOMEN

(Resolution No. II)

Whereas:

The fourteenth session of the Economic and Social Council of the United Nations, now being held at the United Nations headquarters in New York, has approved a draft Convention on the Political Rights of Women submitted to it for consideration by the United Nations Commission on the Status of Women; and

The seventh session of the General Assembly of the United Nations, which will open on 14 October 1952, at the United Nations headquarters in New York, is to consider and approve this draft, after which the Convention on the Political Rights of Women will be opened for signature and ratification by the States,

The Eighth Assembly of the Inter-American Commission of Women

Resolves:

1. To request the governments, through the Secretary-General of the Organization of American States, to support the said draft Convention when it is presented at the seventh session of the General Assembly of the United Nations.

2. To recommend to the delegates on the Inter-American Commission of Women and, through them, to the women's organizations of their respective countries, that they exert every effort to persuade their governments to vote in favour of the above-mentioned draft Convention.

EQUAL PAY FOR WORK OF EQUAL VALUE
(Resolution No. III)

Whereas:

The principle of equal rights for men and women is proclaimed in the preamble to the Charter of the United Nations;

The economic rights and the economic conditions of working women are a problem of great importance to the Inter-American Commission of Women; and

The thirty-fourth session of the International Labour Conference took an important step in June 1951, when it adopted a convention and recommendation on equal remuneration for men and women workers, for work of equal value,

The Eighth Assembly of the Inter-American Commission of Women

Resolves:

1. To recommend to the governments, through the Secretary-General of the Organization of American States, that as soon as possible they introduce suitable laws or other appropriate measures providing that equal pay be given to men and women workers for work of equal value, in accordance with the Convention and recommendation of the International Labour Organisation.

2. To recommend to the governments, through the Secretary-General of the Organization of American States, that, to enable rates of pay to be fixed for men and women workers for work of equal value, they establish, in agreement with the organizations of workers and employers concerned, methods whereby objective evaluations can be made—by work analyses or other means—of the work involved in various occupations, and these occupations can be classified without reference to the sex of the worker.

3. To recommend that the agencies required for the application of such methods of evaluation be composed of men and women in equal number, in accordance with the provisions of resolution III of the seventh assembly of the Inter-American Commission of Women.

4. To recommend to the governments, through the Secretary-General of the Organization of American States, that they sign and ratify, as soon as possible, the Convention of the International Labour Organisation on equal pay for men and women workers, for work of equal value.

VOCATIONAL AND TECHNICAL EDUCATION OF WOMEN
(Resolution No. VII)

The Eighth Assembly of the Inter-American Commission of Women,

Recognizing:

That women are occupying an increasingly important place in the economic and industrial life of the American countries;

Believing:

That the principle of extending equal opportunities for vocational and technical education to men and women is very important, and imperative for the economic development of those countries;

Recognizing:

The importance of improving the economic condition of women while raising their political and social status; and

Agreeing:

That equality of opportunity is possible only if, among other things, boys and girls are given equal access to all levels and kinds of education, including agricultural education,

Resolves:

To recommend to the governments, through the Secretary-General of the Organization of American States, that they take effective measures to:

(*a*) Guarantee to women the right to work on an equal basis with men;

(*b*) Ensure that proper facilities and opportunities are approved for the training and vocational guidance of workers, without distinction as to sex, and that youths and adults be given access to all forms of vocational and technical training, including agricultural training;

(*c*) Establish effective State supervision of the private institutions that offer vocational and technical education to women, so that their curricula may be adjusted to the actual needs of women workers in the various industries; and

(*d*) Take into account the needs of women in this field, when requesting the United Nations and its specialized agencies to extend technical aid for the development of vocational and technical training.

ELIMINATION OF REFERENCES TO LEGITIMACY IN OFFICIAL REGISTERS
(Resolution No. X)

Whereas:

Illegitimacy is a problem affecting the member countries of the Inter-American Commission of Women; and

This condition creates legal and moral inferiority incompatible with human dignity,

The Eighth Assembly of the Inter-American Commission of Women

Resolves:

That the Chairman of the Inter-American Commission of Women, through the Secretary-General of the Organization of American States, recommend to the governments of such countries as still make mention of legitimacy in their official registers that this reference be deleted from such records.

PRE-MARITAL EXAMINATIONS

(Resolution No. XII)

Whereas:

It is necessary to safeguard the health of future generations, and prevent the birth of children who are weak or handicapped as a result of diseases of their parents and who might become burdens on society and the State;

The children of strong and healthy families will be the men and women of tomorrow who, by their activity and intelligence, will make America great;

Although the importance of pre-marital examinations is recognized, this essential measure is still not on the statute books of some of the countries of this hemisphere; and

It is necessary to strengthen the venereal-disease regulations as they now stand in the sanitary codes of the American countries, by adding provisions making treatment obligatory and the communication of venereal disease a crime,

The Eighth Assembly of the Inter-American Commission of Women

Resolves:

That the Chairman of the Inter-American Commission of Women request the Secretary-General of the Organization of American States to transmit the following recommendation to the American governments: that those countries in this hemisphere where a pre-marital examination is not required, make such examinations obligatory by law; and that this law provide that the parties concerned be informed of the results of such examinations so that, even where the marriage has been contracted, if either the husband or wife requires treatment, that person will be compelled to receive it, either from the State public health service or from a private physician, until normal health is attained.

II. FOURTH MEETING OF THE INTER-AMERICAN CONFERENCE ON SOCIAL SECURITY[1]

NOTE

The Fourth Meeting of the Inter-American Conference on Social Security met in Mexico City, 24 March-8 April 1952, and was attended by 160 delegates of the American States together with representatives of the Organization of American States, the United Nations, and other organizations. Among the topics on the agenda was the Extension of Social Security to Farm Workers, and a resolution was adopted containing a series of specific recommendations to the American Governments in that connexion. A resolution was also adopted calling upon the American Governments to establish systems of family allowances or to extend those already in existence, co-ordinating them with other forms of family assistance. Problems of medical and pharmaceutical assistance were also discussed and recommendations adopted looking to continued study of those aspects of social security.

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[1]Note prepared by Professor Charles G. Fenwick, Director, Department of International Law and Organization, Pan American Union, Washington.

BILATERAL AGREEMENT

TRADE AND FINANCIAL AGREEMENT BETWEEN THE REPUBLIC OF ARGENTINA AND THE REPUBLIC OF ITALY[1]

Signed at Rome, on 25 June 1952

During the year 1952 the Argentine and Italian Governments signed a trade and financial agreement in which particular attention is given to the question of migration. Chapter IV, which is entirely devoted to this subject, contains the following provisions:

EMIGRATION

Art. 33. The Government of the Italian Republic and the Government of the Argentine Republic, being fully conscious that an increase in the orderly emigration of Italian workers, and in particular of genuinely agricultural families, to Argentina will be to the social and economic advantage of both countries and will further strengthen the solid bonds of friendship which link the two peoples, will promote the settlement in Argentina of approximately 500,000 persons over a period of five years and will take all measures conducive to that end. They furthermore reaffirm their intention to ensure the most effective and complete observance of the special agreements on migration thus far concluded between the two countries.

Art. 34. The Italian migrants shall be placed on an equal footing with Argentine workers with regard to working status and conditions and shall enjoy all advantages provided by Argentine legislation concerning labour, employment, social insurance and social welfare.

Art. 35. In conformity with the provisions of the Argentine Constitution, all Italian workers without exception shall during their residence in Argentine territory enjoy the same treatment and advantages as are enjoyed by workers of any other origin, and it is understood that all advantages granted to workers of other countries shall be applied automatically to workers of Italian origin. The Argentine Government shall take steps to co-ordinate the mutual interests of the two countries in respect of such consular and cultural matters as may affect Italian immigration.

[1] Spanish text received through the courtesy of the Permanent Representative of Argentina to the United Nations. Information received through the courtesy of Dr. Maria R. Vismara, chief editor of *La Communità Internazionale*, a publication of the Italian Association for the United Nations. English translation from the Spanish text by the United Nations Secretariat.

PART IV

THE UNITED NATIONS AND HUMAN RIGHTS

CHAPTER I

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The action of the General Assembly in adopting and proclaiming the Universal Declaration of Human Rights cannot be considered an isolated event in the United Nations programme to advance human rights throughout the world. For the first time, the international community undertook to formulate and define a universal scheme of human rights for all peoples and all nations. Representatives of many cultures, many religious and ethical traditions, many political and legal systems co-operated to produce a declaration which, with no dissenting vote, was accepted by the great majority of the Members of the United Nations as a goal of endeavour and a standard of achievement. Its text, recorded in the *Yearbook* for 1948, finds a place among the great documents concerning human rights. But its significance and influence extend far beyond the historical event which occurred on 10 December 1948.

Year by year since its adoption and proclamation, more and more of the world's people have been able to read the text of the Universal Declaration in their own language. In 1952, six new translations were added—Assamese, Gurmukhi, Malayalam, Oriya, Samoan and Welsh, so that now the Declaration is available in forty-six languages, including those spoken by the vast majority of the world's people.

The importance of the Declaration has been emphasized by the widespread observance of 10 December as Human Rights Day, officially designated as such by action of the fifth General Assembly in resolution 423(V). Human Rights day 1952 was celebrated in no less than eighty-four countries and territories—four more than in 1951. The United Nations issued a commemorative Human Rights Day stamp.

National observances were marked by official proclamations by heads of States, ceremonies in thousands of schools, conferences and human rights institutes under the sponsorship of national and international non-governmental organizations, widespread attention in the press and in radio broadcasts, and world-wide dissemination of the text of the Declaration in hundreds of thousands of copies.

The tangible effects of the widening currency of ideas contained in the Universal Declaration among the world's people are necessarily difficult to weigh. Of more ponderable significance is the Declaration's impact on the actions of legislators and judges, where its authority is evident in new laws and judicial decisions. A number of such instances have been cited in the *Yearbooks* published since the adoption and proclamation of the Declaration in 1948. Moreover, along with the human rights provisions of the Charter, the Universal Declaration has been invoked in numerous decisions taken by principal organs of the United Nations.

Thus, in 1952 the Universal Declaration was again cited as a basis for action on the question of the treatment of people of Indian origin in the Union of South Africa. In resolution 615(VII), the General Assembly establishes a United Nations Good Offices Commission which it called upon to arrange and assist in negotiations between the Union of South Africa and the Governments of India and Pakistan "in order that a satisfactory solution of the question in accordance with the Purposes and Principles of the Charter and the Universal Declaration of Human Rights may be achieved . . ."

In resolution 644(VII) on racial discrimination in Non-Self-Governing Territories, the General Assembly recommended that the Administering Powers abolish in those territories all "discriminatory laws and practices contrary to the principles of the Charter and of the Universal Declaration of Human Rights".

In resolution 633(VII) on information facilities in under-developed regions of the world, the General Assembly considered that technical assistance for improving these facilities was one of the means of implementing the right of freedom of information as enunciated in the provisions of article 1, paragraph 3, and article 55 of the Charter of the United Nations, and in article 19 of the Universal Declaration of Human Rights.

In resolution 445B(XIV) the Economic and Social Council recommended to the General Assembly that an International Convention on the Political Rights of Women, embodying a preamble citing the Universal Declaration, be opened for signature and ratification. In resolution 640(VII), the General Assembly decided to open for signature and ratification a Convention on the Political Rights of Women which, in its preamble, recognizes "that everyone has the right to take part in the government of his country directly or through freely chosen representatives, and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights, in

accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights . . ."[1]

In resolution 445C(XIV), the Economic and Social Council invited all States, including States which have or assume responsibility for the administration of Non-Self-Governing Territories, "to take immediately all necessary measures with a view to abolishing progressively in the countries and territories under their administration all customs which violate the physical integrity of women, and which thereby violate the dignity and worth of the human person as proclaimed in the Charter and in the Universal Declaration of Human Rights".

In resolution 442C(XIV), in which the Economic and Social Council decided to appoint a special rapporteur on freedom of information, the Council states that "this freedom has frequently proved to be the most vulnerable of the fundamental freedoms embodied in the Charter and the Universal Declaration of Human Rights".

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[1]For the full text of this convention, see Part III, p. 375.

CHAPTER II

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

SECTION I

ECONOMIC AND SOCIAL COUNCIL

(Special Session, 24 March 1952)

The General Assembly, at its fifth session, gave instructions to the Commission on Human Rights concerning its work on the draft international covenant on human rights. At its sixth session, the General Assembly, in resolutions 543(VI) to 549(VI), laid down further directives for the future work of the Commission.[1] The Economic and Social Council, at its special session on 24 March 1952, transmitted those resolutions to the Commission by resolution 415(S-1), with the request that it complete and submit to the Council at its fourteenth session two draft international covenants on human rights along the lines indicated by the General Assembly.

SECTION II

COMMISSION ON HUMAN RIGHTS

(Eighth Session)

The Commission, at its eighth session, held in New York from 14 April to 14 June 1952, proceeded with the drafting of two covenants on human rights, one on economic, social and cultural rights and the other on civil and political rights. It prepared the substantive articles for both covenants, but was unable, in the period of time available, to complete its work on the covenants at that session.

A. *The Right of Peoples to Self-determination*

The General Assembly, in resolution 545(VI), had decided to include in the covenant or covenants on human rights an article on the right of peoples to self-determination. It had also asked the Commission to prepare and submit to the seventh session of the General Assembly recommendations concerning international respect for the self-determination of peoples.

The Commission therefore drafted an article on the right of peoples and nations to self-determination for inclusion as article 1 in the draft Covenant on Economic, Social and Cultural Rights and in the draft Covenant on Civil and Political Rights.[2]

On the question of recommendations concerning international respect for the self-determination of peoples and nations, the Commission adopted two draft resolutions (A and B) for consideration by the Council and subsequently for transmission to the General Assembly. The text of these draft resolutions may be found in annex V of the report of the eighth session of the Commission on Human Rights (E/2256).

B. *Draft Covenant on Civil and Political Rights*

Using as the basis for its work the articles which it had drawn up at its sixth session, the Commission drafted the substantive articles for the covenant on civil and political rights. The text of these articles is reproduced in annex I. The text of articles on the territorial application, measures of implementation and the final clauses of this draft covenant, which the Commission was unable to consider at its eighth session, may be found in the *Yearbook on Human Rights for 1951*.[3]

C. *Draft Covenant on Economic, Social and Cultural Rights*

The Commission had before it certain drafts, memoranda and observations on the form and contents of the proposed covenant on economic, social and cultural rights, which had been submitted by governments and specialized agencies in accordance with General Assembly resolution 543(VI).[4]

The Commission adopted a number of articles on economic, social and cultural rights, revising all but two of the articles it had drafted at its seventh session. The text of the draft covenant on economic, social and cultural rights is reproduced in annex I.

SECTION III

ECONOMIC AND SOCIAL COUNCIL

(Fourteenth Session)

The Council, in resolution 440A(XIV), decided to instruct the Commission to complete its work on the two covenants at its next session in 1953 and to submit them to the Council simultaneously. It rejected a proposal to invite the General Assembly to reconsider its resolution 543(VI) with a view to instructing the Commission to prepare a single draft covenant at its next session.

With regard to draft resolutions A and B of the Commission concerning international respect for the

[1] See *Yearbook on Human Rights for 1951*, pp. 527–529.

[2] For text, see Annex I.

[3] See pp. 534–539.

[4] See documents E/CN.4/654 and addenda; E/CN.4/655 and addenda.

right of self-determination, the Council decided in resolution 440B(XIV) to transmit them, without comment, to the General Assembly for its consideration at its seventh session.

SECTION IV

GENERAL ASSEMBLY

(Seventh Session)

The General Assembly, at its seventh session, discussed the question of recommendations concerning international respect for the self-determination of peoples, including the proposals of the Commission on Human Rights (draft resolutions A and B) transmitted to it by the Economic and Social Council, as well as other proposals and amendments thereto. The General Assembly adopted three resolutions on this subject (resolutions 637A, B and C(VII)). Resolutions 637 B and C indicated the need for further action by the Committee on Information from Non-Self-Governing Territories and by the Commission on Human Rights respectively. In resolution 637A, the General Assembly enunciated and recommended the recognition of the right of peoples and nations to self-determination. The text of this resolution is as follows:

Whereas the right of peoples and nations to self-determination is a prerequiste to the full enjoyment of all fundamental human rights,

Whereas the Charter of the United Nations, under articles 1 and 55, aims to develop friendly relations among nations based on respect for the equal rights and self-determination of peoples in order to strengthen universal peace,

Whereas the Charter of the United Nations recognizes that certain Members of the United Nations are responsible for the administration of Territories whose peoples have not yet attained a full measure of self-government, and affirms the principles which should guide them,

Whereas every Member of the United Nations, in conformity with the Charter, should respect the maintenance of the right of self-determination in other States,

THE GENERAL ASSEMBLY RECOMMENDS that:

1. The States Members of the United Nations shall uphold the principle of self-determination of all peoples and nations;

2. The States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories who are under their administration and shall facilitate the exercise of this right by the peoples of such Territories according to the principles and spirit of the Charter of the United Nations in regard to each Territory and to the freely expressed wishes of the peoples concerned, the wishes of the people being ascertained through plebiscites or other recognized democratic means, preferably under the auspices of the United Nations;

3. The States Members of the United Nations responsible for the administration of Non-Self-Governing and Trust Territories shall take practical steps, pending the realization of the right of self-determination and in preparation thereof, to ensure the direct participation of the indigenous populations in the legislative and executive organs of government of those territories, and to prepare them for complete self-government or independence.

Annex I

A. DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

Note: The text of the preamble and of all articles reproduced below, except articles 9 and 14, were revised during this session of the Commission. This text with all the relevant documentary references is set forth in pages 46 to 50 of the report of the eighth session of the Commission on Human Rights (E/2256). The articles containing the measures of implementation and the final clauses of this draft covenant remain unchanged. The text of these articles (33 to 73) may therefore be found in the *Yearbook on Human Rights for 1951*, pp. 534 to 539.

PREAMBLE

The States Parties hereto,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in this Covenant,

AGREE upon the following articles:

PART I

Article 1

1. All peoples and all nations shall have the right of self-determination, namely, the right freely to determine their political, economic, social and cultural status.

2. All States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization of that right in all their territories, and shall respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter.

3. The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States.

PART II

Article 2

1. Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of this covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in this Covenant.

3. Each State Party hereto undertakes:

(*a*) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) To develop the possibilities of judicial remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent authorities, political, administrative or judicial;

(*c*) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties hereto may take measures derogating from their obligations under this covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 5, 6, 7 (paragraphs 1 and 2), 9, 13, 14 and 15 may be made under this provision.

3. Any State Party hereto availing itself of the right of derogation shall inform immediately the other States Parties to the Covenant, through the intermediary of the Secretary-General, of the provisions from which it has derogated, the reasons by which it was actuated and the date on which it has terminated such derogation.

Article 4

1. Nothing in this covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in this covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any Contracting State pursuant to law, conventions, regulations or custom on the pretext that the present covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 5

1. No one shall be arbitrarily deprived of his life. Everyone's right to life shall be protected by law.

2. In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes pursuant to the sentence of a competent court and in accordance with law not contrary to the principles of the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.

3. Any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

4. Sentence of death shall not be carried out on a pregnant woman.

Article 6

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation involving risk, where such is not required by his state of physical or mental health.

Article 7

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (*a*) No one shall be required to perform forced or compulsory labour.

(*b*) The preceding sub-paragraph shall not be held to preclude, in countries where imprisonment with

hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(*c*) For the purpose of this paragraph, the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (*b*), normally required of a person who is under detention in consequence of a lawful order of a court;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civic obligations.

Article 8

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation.

Article 9

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 10

1. Subject to any general law of the State concerned which provides for such reasonable restrictions as may be necessary to protect national security, public safety, health or morals or the rights and freedoms of others, consistent with the other rights recognized in this covenant:

(*a*) Everyone legally within the territory of a State shall, within that territory, have the right to (i) liberty of movement and (ii) freedom to choose his residence;

(*b*) Everyone shall be free to leave any country, including his own.

2. (*a*) No one shall be subjected to arbitrary exile;

(*b*) Subject to the preceding sub-paragraph, anyone shall be free to enter his own country.

Article 11

An alien lawfully in the territory of a State Party hereto may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by and be represented for the purpose before the competent authority or a person or persons specially designated by the competent authority.

Article 12

1. All persons shall be equal before the courts or tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice; but any judgement rendered in a criminal case or in a suit at law shall be pronounced publicly except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(*a*) To be informed promptly in a language which he understands and in detail of the nature and cause of the accusation against him;

(*b*) To have adequate time and facilities for the preparation of his defence;

(*c*) To defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case where he does not have sufficient means to pay for it;

(*d*) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*e*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(*f*) Not to be compelled to testify against himself, or to confess guilt.

3. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

4. In any case where by a final decision a person has been convicted of a criminal offence and where subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 13

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 14

Everyone shall have the right to recognition everywhere as a person before the law.

Article 15

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to maintain or to change his religion or belief, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 16

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order, or of public health or morals.

Article 17

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 18

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces or of the police.

3. Nothing in this article shall authorize States Parties to the Freedom of Association and Protection of the Right to Organize Convention, 1948, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that convention.

Article 19

All persons are equal before the law. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

B. DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note: The text of the preamble and of all articles, with the exception of articles 9 and 12, were revised during this session of the Commission. This text, with all the relevant documentary references, is set forth in pages 44 to 46 of the report of the eighth session of the Commission on Human Rights (E/2256).

PREAMBLE

The States Parties hereto,

Considering, that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in this covenant,

AGREE upon the following articles:

PART I

Article 1

1. All peoples and all nations shall have the right of self-determination, namely, the right freely to determine their political, economic, social and cultural status.

2. All States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization of that right in all their territories, and shall, respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter.

3. The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States.

PART II

Article 2

1. Each State Party hereto undertakes to take steps, individually and through international co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this covenant by legislative as well as by other means.

2. The State Parties hereto undertake to guarantee that the rights enunciated in this covenant will be exercised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3

The States Parties to the covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in this covenant.

Article 4

The State Parties to this covenant recognize that in the enjoyment of those rights provided by the State in conformity with this covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in this covenant may be interpreted as implying for any State, group or person, any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein or at their limitation, to a greater extent than is provided for in this covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Work being at the basis of all human endeavour, the States Parties to the covenant recognizes the right to work, that is to say, the fundamental right of everyone to the opportunity, if he so desires, to gain his living by work which he freely accepts.

2. The steps to be taken by a State Party to this covenant to achieve the full realization of this right shall include programmes, policies and techniques to achieve steady economic development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the covenant recognize the right of everyone to just and favourable conditions of work, including:

(*a*) Safe and healthy working conditions;

(*b*) Remuneration which provides all workers as a minimum with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and

(ii) A decent living for themselves and their families; and

(*c*) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay.

Article 8

The States Parties to the covenant undertake to ensure the free exercise of the right of everyone to form and join local, national and international trade unions of his choice for the protection of his economic and social interests.

Article 9

The States Parties to the covenant recognize the right of everyone to social security.

Article 10

The States Parties to the covenant recognize that:

1. Special protection should be accorded to motherhood and particularly to maternity during reasonable periods before and after childbirth; and

2. Special measures of protection, to be applied in all appropriate cases within and with the help of the family, should be taken on behalf of children and young persons, and in particular they should not be required to do work likely to hamper their normal development. To protect children from exploitation, the unlawful use of child labour and the employment of young persons in work harmful to health or dangerous to life should be made legally actionable; and

3. The family, which is the basis of society, is entitled to the widest possible protection. It is based on marriage, which must be entered into with the free consent of the intending spouses.

Article 11

The States Parties to the covenant recognize the right of everyone to adequate food, clothing and housing.

Article 12

The States Parties to the covenant recognize the right of everyone to an adequate standard of living and the continuous improvement of living conditions.

Article 13

1. The States Parties to the covenant, realizing that health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, recognize the right of everyone to the enjoyment of the highest attainable standard of health.

2. The steps to be taken by the States Parties to the covenant to achieve the full realization of this right shall include those necessary for:

(*a*) The reduction of infant mortality and the provision for healthy development of the child;

(*b*) The improvement of nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;

(*c*) The prevention, treatment and control of epidemic, endemic and other diseases;

(*d*) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 14

1. The States Parties to the covenant recognize the right of everyone to education, and recognize that education shall encourage the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and the suppression of all incitement to racial and other hatred. It shall promote understanding, tolerance and friendship among all nations, racial, ethnic or religious groups, and shall further the activities of the United Nations for the maintenance of peace and enable all persons to participate effectively in a free society.

2. It is understood:

(*a*) That primary education shall be compulsory and available free to all;

(*b*) That secondary education, in its different forms, including technical and professional secondary education, shall be generally available and shall be made progressively free;

(*c*) That higher education shall be equally accessible to all on the basis of merit and shall be made progressively free;

(*d*) That fundamental education for those persons who have not received or completed the whole period of their primary education shall be encouraged as far as possible.

3. In the exercise of any functions which they assume in the field of education, the States Parties to the covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious education of their children in conformity with their own convictions.

Article 15

Each State Party to the covenant which, at the time of becoming a party to this covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a

reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

Article 16

1. The States Parties to the covenant recognize the right of everyone:

(*a*) To take part in cultural life;

(*b*) To enjoy the benefits of scientific progress, and its applications.

2. The steps to be taken by the States Parties to this covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the covenant undertake to respect the freedom indispensable for scientific research and creative activity.

CHAPTER III

FREEDOM OF INFORMATION

The Sub-Commission on Freedom of Information and of the Press held a final session in March 1952, as had been authorized by the Economic and Social Council in resolution 414B.I(XIII), to complete its work on the draft International Code of Ethics for information personnel. During this year, the Economic and Social Council and the General Assembly also considered a wide range of problems in the field of freedom of information and adopted certain resolutions in relation thereto. Details of these developments are given below.

SECTION I

SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS

(*Fifth Session*)

The Sub-Commission had before it the text of the draft International Code of Ethics which it had formulated at its fourth session (Montevideo, 1950) and an analysis of comments of information enterprises and national and international professional associations (E/CN.4/Sub.1/151 and Add.1) prepared by the Secretary-General in accordance with Economic and Social Council resolution 306E(XI). The Sub-Commission approved a revised text of the draft International Code of Ethics (see Annex I) and adopted a recommendation to the Economic and Social Council concerning the preparation and acceptance of a final text of an International Code of Ethics and its implementation.[1]

The Sub-Commission also discussed and made recommendations to the Economic and Social Council concerning: (*a*) the future work of the United Nations in the field of freedom of information;[2] (*b*) items relating to freedom of information and of the press which it considered should be included on the agenda of the Economic and Social Council;[3] (*c*) the dissemination of resolutions of United Nations organs;[4] (*d*) the encouragement and development of independent domestic information agencies;[5] and (*e*) the establishment on a universal basis of the International Institute of Press and Information, the opening for signature of the Convention on the International Transmission of News and the Right of Correction and the Convention on Freedom of Information.[6] The Sub-Commission also adopted resolutions on the subject of the closing down of the newspaper "La Prensa" of Buenos Aires[7] and the convening of an international conference on the shortage of newsprint.[8]

SECTION II

ECONOMIC AND SOCIAL COUNCIL

(*Fourteenth Session*)

In considering the question of future work in the field of freedom of information and of the press, the Council had before it a report by the Secretary-General based on an inquiry among Member States concerning this matter,[9] as well as the aforementioned suggestions made by the Sub-Commission on Freedom of Information and of the Press.

The Council, in resolution 442C(XIV) decided "to appoint, for an experimental period of one year, and in a personal capacity, a rapporteur on matters relating to freedom of information"; and requested him, "in co-operation with the Secretary-General, the specialized agencies, particularly the United Nations Educational, Scientific and Cultural Organization, and the professional organizations concerned, both national and international, to prepare, for submission to the Council in 1953, a substantive report covering major contemporary problems and developments in the field of freedom of information, together with recommendations regarding practical action which might be taken by the Council in order to surmount those obstacles to the fuller enjoyment of

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[1] See draft resolution No. II, annex B to the Sub-Commission's report, document E/2190.

[2] See draft resolution No. III, Annex B to the Sub-Commission's report, document E/2190.

[3] See draft resolution No. IV, annex B to the Sub-Commission's report, document E/2190.

[4] See draft resolution No. V, annex B to the Sub-Commission's report, document E/2190.

[5] See draft resolution No. VI, annex B to the Sub-Commission's report, document E/2190.

[6] See draft resolution No. VII, annex B to the sub-Commission's report, document E/2190.

[7] See chapter V, paragraphs 85–86, of the Sub-Commission's report, document E/2190.

[8] See chapter V, paragraphs 90–92, of the Sub-Commission's report, document E/2190.

[9] The inquiry was called for by Council resolution 414BIII(XIII). The Secretary-General's report may be found in documents E/2217 and Add.1.

freedom of information which can be surmounted at the present time".

The Council elected Mr. Salvador P. Lopez of the Philippines as its Rapporteur on Freedom of Information.

With regard to the question of an International Code of Ethics for information personnel, the Council adopted resolution 442B(XIV) whereby it requested the Secretary-General "to communicate the draft international code of ethics, together with relevant documents and information concerning its preparation, to national and international professional associations and information enterprises for such action as they may deem appropriate, informing them that, if they think it desirable, the United Nations might co-operate with them in organizing an international conference for the purpose of drawing up an international code of ethics".

In resolution 442D(XIV) the Council made a recommendation to the General Assembly concerning the dissemination of resolutions of United Nations organs.

In resolution 442E(XIV) the Council invited the Secretary-General, in conjunction with UNESCO, "to study ways and means of encouraging and developing independent domestic information agencies, and to report thereon to the Council in 1953".

SECTION III

GENERAL ASSEMBLY

(*Seventh Session*)

At its sixth session, the General Assembly decided, in resolutions 541A(VI) and 541B(VI), to postpone consideration of various freedom of information questions until its seventh session.

At its seventh session the General Assembly also considered the aforementioned resolutions of the Economic and Social Council. The discussion ranged over a wide variety of subjects including the draft Convention on Freedom of Information, the opening for signature of a convention on the international right of correction, the future work of the United Nations in the field of freedom of information, the encouragement and development of independent domestic information enterprises, the question of false and distorted information, the draft International Code of Ethics for information personnel and the dissemination of resolutions of the United Nations. The following decisions were taken by the General Assembly with regard to these matters.

The Third Committee of the General Assembly rejected, by 23 votes to 23, with 8 abstentions, a proposal to proceed to a detailed consideration of the draft Convention on Freedom of Information.

The General Assembly decided to open for signature at the end of its seventh session a convention on the international right of correction. This convention, the text of which may be found in part III of this *Yearbook*[1] reproduces the provisions relating to the right of correction contained in the preamble and articles of the draft Convention on the International Transmission of News and the Right of Correction approved by the General Assembly in resolution 277(III),[2] but not opened for signature. The Assembly decided however to include a new text for an article concerning the territorial application of the Convention (article IX). These decisions were taken in resolution 630(VII) in which the General Assembly, after considering "that establishment of the right of correction on an international basis would help to curb the dissemination of false news and to strengthen peace", went on to urge "all Members of the United Nations and the other States which were invited to the United Nations Conference on Freedom of Information to become parties to the Convention on the International Right of Correction".

With regard to the future work of the United Nations in the field of freedom of information, the General Assembly, in resolution 631(VII), noted that the rapporteur designated by the Council had already undertaken the preparation of his substantive report and decided to consider further at its eighth session the problem of promoting and safeguarding freedom of information, including the draft Convention on Freedom of Information, on the basis of that report after the Economic and Social Council has had an opportunity to examine it.

In resolution 633(VII), the General Assembly supplemented the Council's request (in resolution 442E (XIV)), to the Secretary-General to study ways and means of encouraging and developing independent domestic information agencies to the effect that he also elaborate a programme of concrete action including, *inter alia*, measures to reduce economic and financial obstacles; to organize and promote the exchange of information personnel; to assist the training of information personnel, the raising of professional and technical standards, the provision of fellowships and the holding of regional seminars; and all necessary measures in connexion with the supply of newsprint. It also invited the Council "to recommend to the organizations participating in the technical assistance and other programmes providing aid or assistance at the request of Member States that they give sympathetic consideration to requests which governments may submit for such aid or assistance within the framework of those programmes with a view to improving information facilities and increasing the quantity and improving the quality of information available to the peoples of the world, as one means

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[1] P. 373.

[2] See *Yearbook on Human Rights for 1949*, p. 356.

of implementing the right of freedom of information as enunciated in the provisions of Article 1, paragraph 3, and Article 55 of the Charter of the United Nations, and in article 19 of the Universal Declaration of Human Rights".

In resolution 634 (VII), the General Assembly decided "to recommend that United Nations bodies studying the problems of freedom of information should consider appropriate measures for avoiding the harm done to international understanding by the dissemination of false and distorted information".

In connexion with the aforementioned decision of the Council (resolution 442B (XIV)) concerning an International Code of Ethics for information personnel, the General Assembly, in resolution 635 (VII), requested the Secretary-General, if a representative group of information enterprises and of national and international professional associations expresses a desire to do so, to co-operate with it in organizing an international professional conference for the purpose of preparing and adopting a final text of such a code and of taking such further steps concerning its implementation as it may deem advisable.

After considering the aforementioned recommendation of the Economic and Social Council (resolution 442D (XIV)), the General Assembly adopted resolution 636 (VII) which reads as follows:

The General Assembly,

Having regard to resolution 442D (XIV), adopted by the Economic and Social Council on 13 June 1952,

1. URGES governments, on receipt of any resolutions dealing with questions of substance adopted by any principal organ of the United Nations, to make every effort to disseminate such resolutions through the customary channels;

2. REQUESTS the Secretary-General to assist to the fullest possible extent in the rapid dissemination of all such resolutions of principal organs of the United Nations, particular attention being given to resolutions communicated to governments at the special request of the organ adopting those resolutions;

3. APPEALS to information media to co-operate in disseminating information concerning such resolutions of organs of the United Nations, drawing on the appropriate services of the United Nations for the presentation of those resolutions.

Annex I

DRAFT INTERNATIONAL CODE OF ETHICS FOR INFORMATION PERSONNEL

Note: The following is the text of the draft International Code of Ethics as adopted by the Sub-Commission at its fifth session after re-examination of the text drawn up at the Sub-Commission's fourth session in the light of comments and suggestions received from information enterprises and national and international professional associations:

PREAMBLE

Freedom of information and of the press is a fundamental human right and is the touchstone of all the freedoms consecrated in the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights; and it is essential to the promotion and to the preservation of peace.

That freedom will be the better safeguarded when the personnel of the press and of all other media of information constantly and voluntarily strive to maintain the highest sense of responsibility, being deeply imbued with the moral obligation to be truthful and to search for the truth in reporting, in explaining and in interpreting facts.

This international code of ethics is therefore proclaimed as a standard of professional conduct for all engaged in gathering, transmitting, disseminating and commenting on news and information and in describing contemporary events by the written word, by word of mouth or by any other means of expression.

Art. I. The personnel of the press and of all other media of information should do all in their power to ensure that the information the public receives is factually accurate. They should check all items of information to the best of their ability. No fact should be wilfully distorted and no essential fact should be deliberately suppressed.

Art. II. A high standard of professional conduct requires devotion to the public interest. The seeking of personal advantage and the promotion of any private interest contrary to the general welfare, for whatever reason, is not compatible with such professional conduct.

Wilful calumny, slander, libel and unfounded accusations are serious professional offences; so also is plagiarism.

Good faith with the public is the foundation of good journalism. Any published information which is found to be harmfully inaccurate should be spontaneously and immediately rectified. Rumour and unconfirmed news should be identified and treated as such.

Art. III. Only such tasks as are compatible with the integrity and dignity of the profession should be assigned or accepted by personnel of the press and other media of information, as also by those participating in the economic and commercial activities of information enterprises.

Those who make public any information or comment should assume full responsibility for what is published unless such responsibility is explicitly disclaimed at the time.

The reputation of individuals should be respected and information and comment on their private lives likely to harm their reputation should not be published unless it serves the public interest, as distinguished from public curiosity. If charges against reputation or moral character are made, opportunity should be given for reply.

Discretion should be observed concerning sources of information. Professional secrecy should be observed in matters revealed in confidence; and this privilege may always be invoked to the furthest limits of law.

Art. IV. It is the duty of those who describe and comment upon events relating to a foreign country to acquire the necessary knowledge of such country which will enable them to report and comment accurately and fairly thereon.

Art. V. This code is based on the principle that the responsibility for ensuring the faithful observance of professional ethics rests upon those who are engaged in the profession, and not upon any government. Nothing herein may therefore be interpreted as implying any justification for intervention by a government in any manner whatsoever to enforce observance of the moral obligations set forth in this code.

CHAPTER IV

STATUS OF WOMEN

The sixth session of the Commission on the Status of Women was held at Geneva from 24 March to 5 April 1952. During this year, recommendations and requests by the Commission were considered at the fourteenth session of the Economic and Social Council, the eleventh session of the Trusteeship Council, the eighth session of the Commission on Human Rights, the fourth session of the International Law Commission, and the seventh session of the General Assembly.

SECTION I

CONVENTION ON THE POLITICAL RIGHTS OF WOMEN

The Economic and Social Council, at its fourteenth session, took favourable action on a draft convention on the Political Rights of Women and pursuant to the request by the Commission on the Status of Women[1] recommended[2] to the General Assembly that such a convention embodying the following preamble and substantive clauses be opened for signature and ratification by Member States and such other States as may be invited by the General Assembly:

DRAFT CONVENTION

"*The Contracting Parties,*

"*Desiring* to implement the principle of equality of rights for men and women, contained in the Charter of the United Nations,

"*Recognizing* that every person has the right to take part in the government of his country and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights,

"*Having resolved* to conclude a convention for this purpose,

"HEREBY AGREE as hereinafter provided:

"*Art. 1.* Women shall be entitled to vote in all elections on equal terms with men.

"*Art. 2.* Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men.

"*Art. 3.* Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men."

Subsequently the convention containing, with some amendments, the clauses recommended by the Economic and Social Council and the Commission on the Status of Women, was adopted by the General Assembly in resolution 640 (VII) to be open for signature and ratification or accession by Member States at the close of the seventh session. The full text of the convention is reproduced in part III of this *Yearbook.*[3]

SECTION II

NATIONALITY OF MARRIED WOMEN

The Commission, at its sixth session, was informed that the International Law Commission intended at its forthcoming session to deal with the convention on nationality of married women in connexion with its agenda item "Nationality, including statelessness" and expressed "its satisfaction at the action taken by the different organs of the United Nations to implement its recommendations concerning the nationality of married women".[4]

Subsequently, however, the International Law Commission rejected a proposal[5] by the special rapporteur to draft a convention embodying the principles recommended by the Commission on the Status of Women, and decided to communicate this decision to the President of the Economic and Social Council, together with the draft prepared by the special rapporteur[6] and the records of the discussions.[7]

SECTION III

STATUS OF WOMEN IN PUBLIC LAW AND IN PRIVATE LAW

The Commission noted discrimination against women apparent in the studies based on governments'

[1] E/2208, para. 30.

[2] Economic and Social Council resolution 445 B (XIV).

[3] P. 375.

[4] E/2208, para. 39.

[5] A/CN.4/SR.155, para. 49.

[6] E/1712, para. 37; see *Yearbook on Human Rights for 1950*, pp. 483–484, 486; *idem for 1951*, p. 564.

[7] E/2343, paras. 7 and 8.

replies to part I of the questionnaire on the legal status and treatment of women, which dealt with women in public services and functions and civil liberties for women. It expressed the belief that a publication containing a non-technical summary of significant discriminations would be helpful in familiarizing governments and their citizens with their comparative situation in this respect thus possibly laying the basis for practical action. The Secretary-General was accordingly requested to prepare for the next session of the Commission a draft of such a summary based on governments' replies, and information from other sources including non-governmental organizations on legislation and other methods for removing such discrimination.[1]

SECTION IV

EDUCATIONAL OPPORTUNITIES FOR WOMEN

The Commission at its sixth session expressed its appreciation of the assistance rendered by UNESCO in studying educational opportunities for girls and women and requested that the Secretary-General seek the collaboration of the Director-General of UNESCO and report at the Commission's seventh session on the progress of the UNESCO programmes in relation to the status of women. The Commission also requested a report by the Secretary-General on legal provisions affecting educational opportunities for girls and women to be based on replies by governments received subsequent to the previous report[2] and on "other dependable sources".[3]

With respect to vocational guidance and vocational and technical education of women, the Commission, after noting the ILO report on the subject, expressed the belief "that all forms of employment, trades, and careers should be open to women on an equal footing with men and that, in order to achieve this result, equal access to vocational and technical training opportunities at all levels should be given to boys and girls, men and women".[4] The Commission requested that the Economic and Social Council adopt a resolution containing, *inter alia*, recommendations to governments on vocational guidance and vocational and technical education of women and a request directed to the ILO for information on the exclusion of girls and women from apprenticeship.[4] The Economic and Social Council, at its fourteenth session, complying with the request by the Commission, adopted resolution 445D (XIV) which reads as follows:

"*The Economic and Social Council,*

"*Recognizing* the increasingly important and permanent place being taken by women in the economic and industrial life of many countries,

"*Believing* that there should be equal opportunity for men and women to participate in the economic life of their countries,

"*Believing* also that the principle of equality of opportunity for men and women with respect to vocational training is therefore of great immediate importance to the economic development of the various countries,

"*Recognizing* further the importance of improving the economic status of women while raising their political and social status in all countries,

"*Agreeing* that equality of opportunity is possible only if there is, *inter alia*, equal access to education for boys and girls from primary schools onwards.

"1. *Invites* the International Labour Office to collect information as to the extent to which girls and women are excluded from apprenticeship to certain trades by trade unions, by employers or by legal restriction, and to lay this information before the Commission on the Status of Women at the earliest opportunity;

"2. RECOMMENDS that governments:

"(*a*) Take all possible measures to ensure the right of women to work on an equal footing with men;

"(*b*) Take all possible measures to ensure provision of adequate facilities and opportunities for vocational training and guidance for all workers, without regard to sex, and to give girls and women access to all forms of training and apprenticeship;

"(*c*) Bear in mind the needs of women in making requests for technical assistance to the United Nations and the specialized agencies to develop vocational guidance and vocational and technical education."

SECTION V

EQUAL PAY FOR EQUAL WORK

The Commission requested the Commission on Human Rights to include in the draft Covenant on Economic, Social and Cultural Rights an article providing for the principle of equal pay for equal work for men and women workers. Pursuant to this request, the Commission on Human Rights at its eighth session adopted the following sub-paragraph of article 7 of that draft Covenant:

"The States Parties to the Covenant recognize the right of every one to just and favourable conditions of work, including:

"(*a*) Remuneration which provides all workers as a minimum with

[1] E/2208, para. 44.
[2] E/CN.6/78 and Add.1 and Corr.1.
[3] E/2208, para. 58.
[4] E/2208, para. 66.

"(1) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; . . ."[1]

The Commission on the Status of Women commended the adoption by the 34th Conference of the ILO of a convention on "equal remuneration for work of equal value for men and women workers". Pursuant to the request of the Commission the Economic and Social Council, at its fourteenth session, adopted resolution 445E (XIV) of which the first two operative paragraphs read as follows:

"*The Economic and Social Council*

. . .

"1. *Recommends* that States members of the International Labour Organisation introduce as soon as possible, by means of proper legislation or other measures, equal remuneration for equal work for men and women workers, in accordance with the ILO Convention and Recommendation;

"2. *Urges* adoption and implementation in all countries not members of the International Labour Organisation, of the principle of equal pay for equal work without discrimination on the basis of sex;"

. . .

SECTION VI

ECONOMIC OPPORTUNITIES FOR WOMEN

The Commission considered, in this connexion, part-time work for women, employment opportunities for older women workers and women in the professions. It was decided to request studies on the first two subjects but to postpone the study on women in the professions.

Consequently, the Economic and Social Council, in resolution 445F (XIV) requested the Secretary-General to prepare for the next session of the Commission on the Status of Women a report concerning the use of part-time job schedules by men and women workers, particularly by women with responsibilities for family and children, and the areas where part-time work is of particular significance; and invited the International Labour Office to collaborate in the study by preparing a report on part-time employment. In resolution 445G (XIV), the Council requested the Secretary-General to supply to the Commission on the Status of Women for consideration at its next session any information available on the number and employment status of women as compared with men in the age brackets over forty; and invited the International Labour Office to collaborate in this study and to furnish information it may have on older workers as well as on plans and programmes of the International Labour Organisation concerning older workers.

[1] E/2256, Annex I, p. 45.

SECTION VII

DEPRIVATION OF WOMEN OF CERTAIN ESSENTIAL HUMAN RIGHTS

At its sixth session, the Commission took a position in favour of the abolition of the practice of female circumcision, a custom in some areas of the world, including Trust and Non-Self-Governing Territories.

The Commission sought also to have questions relevant to the status of women included in the questionnaire to which Administering Authorities of Trust Territories submit annual replies for consideration by the Trusteeship Council.

Pursuant to the Commission's request, the Economic and Social Council at its fourteenth session adopted resolution 445C (XIV), which reads as follows:

"*The Economic and Social Council,*

"*Considering* that one of the purposes of the United Nations is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

"*Considering* that there are areas of the world, including certain Trust and Non-Self-Governing Territories, where women are deprived of certain essential human rights, including the right to their physical integrity and moral dignity,

"1. *Invites* all States, including States which have or assume responsibility for the administration of Non-Self-Governing Territories, to take immediately all necessary measures with a view to abolishing progressively in the countries and territories under their administration all customs which violate the physical integrity of women, and which thereby violate the dignity and worth of the human person as proclaimed in the Charter and in the Universal Declaration of Human Rights;

"2. *Invites* the Trusteeship Council, in collaboration with the Administering Authorities, to take immediately all appropriate measures to promote the progressive abolition of such customs in Trust Territories, and to consider the inclusion of the necessary questions in the questionnaires provided for in Article 88 of the Charter as well as the inclusion of the pertinent information received from Administering Authorities in its annual report to the General Assembly;

"3. *Invites* the General Assembly to request the Committee on Information from Non-Self-Governing Territories to take paragraph 1 above into account

in its examination of the information transmitted under heading C of part III of the standard form for the guidance of Members in the preparation of information to be transmitted under article 73e of the Charter adopted by the General Assembly on 7 December 1951 under resolution 551 (VI)."

In consequence, the questionnaire approved by the Trusteeship Council at its eleventh session (T/1010) contains questions relating to the status of women including a question on customs "which violate the physical integrity and moral dignity of women."

With respect to Non-Self-Governing Territories, the General Assembly at its sixth session decided to include a section on the Status of Women in the revised standard form for the guidance of Members which serves as a basis for the annual reports by Administering Authorities of Non-Self-Governing Territories.[1]

Section VIII

PARTICIPATION OF WOMEN IN THE WORK OF THE UNITED NATIONS

The Commission discussed the implications of the information supplied annually by the Secretary-General on the situation of women in the secretariats of the United Nations and the specialized agencies and adopted a resolution noting with disappointment the small number of women in policy-making posts and urging "that the Secretary-General continue to appoint women to senior positions in the Secretariat of the United Nations as envisaged in article 8 of the Charter"; the Commission also requested that future annual reports include information on the number and proportion of women participating at sessions of the General Assembly and in the various organs and commissions of the United Nations and the specialized agencies since the San Francisco Conference.[2]

Section IX

SESSIONS OF THE COMMISSION

Pursuant to the request by the General Assembly,[3] the Economic and Social Council, at its fourteenth session, reconsidered its previous resolution to convene the Commission on the Status of Women for one session every two years,[4] and resolved instead "to continue to convene the Commission on the Status of Women for one session every year".[5]

[1] Resolution 551 (VI).

[2] E/2208, para. 88.

[3] General Assembly resolution 532A (VI), see *Yearbook on Human Rights for 1951*, pp. 564–565.

[4] Economic and Social Council resolution 414 (XIII), section B1 (*g*).

[5] Economic and Social Council resolution 445 I (XIV).

CHAPTER V

PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

During the year 1952, the reorganization of the machinery of the United Nations for consideration of questions of prevention of discrimination and protection of minorities formed the main subject of discussion in the organs directly concerned with this problem.

SECTION I

GENERAL ASSEMBLY

(*Sixth Session*)

The General Assembly, after discussing the decision of the Economic and Social Council to discontinue the Sub-Commission on Prevention of Discrimination and Protection of Minorities,[1] considered in resolution 532B (VI) that "the prevention of discrimination and the protection of minorities are two of the most important branches of the positive work undertaken by the United Nations," and invited the Economic and Social Council to authorize the Sub-Commission to continue its work so that it may fulfil its mission.

SECTION II

ECONOMIC AND SOCIAL COUNCIL

(*Fourteenth Session*)

The Economic and Social Council, in resolution 443 (XIV), decided to convene a session of the Sub-Commission in 1952, requested the Sub-Commission to continue its work in accordance with General Assembly resolution 532B (VI), and to prepare during its fifth session, in 1952, for submission to the Commission on Human Rights, a report on future work in the field of the prevention of discrimination and the protection of minorities.

SECTION III

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(*Fifth Session*)

In accordance with this resolution, the fifth session of the Sub-Commission took place in September–October 1952, and the question of future work formed the principal subject of discussion. In this connexion, the Sub-Commission examined the report prepared by the Secretary-General (E/2229) at the request of the Economic and Social Council on the future work of the United Nations on the prevention of discrimination and the protection of minorities, and adopted a resolution on the future work of the Sub-Commission. The programme of work adopted therein attached equal importance to the two topics, prevention of discrimination and protection of minorities, and foreshadowed the study by the Sub-Commission of discrimination in a number of distinct fields, such as education, employment and occupation, political rights, religious rights and practices, residence and movement, immigration and travel, the right to choose a spouse, and enjoyment of family rights. An immediate start was to be made on the first item on this programme—namely, the study of discrimination in the field of education—and for this purpose a special rapporteur was appointed to formulate a provisional plan of work. The Sub-Commission envisaged that at its sixth session it would also study the variety and scope of measures for the protection of all minority rights through legislation, judicial decisions and administrative practices. It requested the Secretary-General to prepare a compilation and analysis of information received from governments on this matter.[2]

The Sub-Commission also submitted to the Commission on Human Rights for consideration and adoption a number of draft resolutions on a variety of different matters, such as the collection of anti-discrimination provisions included in instruments formulated under the League of Nations system or under the auspices of the United Nations, the collection as precedents for future use of provisions on protection of minorities, the publication of information concerning the work of governments and of the United Nations for prevention of discrimination and protection of minorities, technical assistance, co-operation of non-governmental organizations, protection of newly created minorities, and review of national legislation and administrative practices by Member States with a view to the abolition of discriminatory measures.[3]

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[1] See *Yearbook on Human Rights for 1951*, p. 566.

[2] Report of the fifth session of the Sub-Commission, E/CN.4/670, paragraph 48.

[3] E/CN.4/670, Annex I.

CHAPTER VI

PROCEDURE FOR DEALING WITH COMMUNICATIONS

The present procedure for handling communications concerning human rights is governed by resolutions 75 (V), 76 (V), 116A (VI), 192 (VIII), 275B (X) and 304 (XI) of the Economic and Social Council.[1]

With regard to the possibility of amending this procedure, the General Assembly at its sixth session adopted resolution 542(VI), which noted that the Economic and Social Council had taken no action with respect to the resolution of the Commission on Human Rights adopted at its seventh session,[1] and decided to invite the Economic and Social Council to give instructions to the Commission on Human Rights for its ninth session with regard to communications concerning human rights and to request the Commission to formulate its recommendations on them.

The Commission on Human Rights at its eighth session decided to include for the first time in its report an analysis showing the numbers and types of communications received.

The Commission rejected a draft resolution which would have requested the Economic and Social Council to reconsider resolution 75 (V), as amended, and authorize the Commission on Human Rights to make reports and recommendations to the Council regarding communications concerning human rights.

At its fourteenth session, the Economic and Social Council by resolution 441 (XIV) took note of General Assembly resolution 542 (VI), and, considering the action of the Commission on Human Rights at its eighth session in rejecting a proposal to request reconsideration of resolution 75 (V), as amended, decided not to take any action at that time and to inform the General Assembly of the decision.

At its fourteenth session, the Council also dealt with the question of communications from non-governmental organizations in consultative status which contain complaints against governments of violations of human rights. It was decided (resolution 454 (XIV)) that such communications should be dealt with under resolution 75 (V) of the Economic and Social Council as amended, and not under resolution 288B (X) of the Council (which lays down arrangements for consultation with non-governmental organizations including the subjects of oral hearings and the circulation of written statements).

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[1] See *Yearbook on Human Rights for 1951*, p. 571

CHAPTER VII

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

In 1952, the procedure established jointly in 1950[1] by the Economic and Social Council of the United Nations and the Governing Body of the International Labour Office continued to be applied to allegations regarding infringements of trade union rights.

SECTION I

ECONOMIC AND SOCIAL COUNCIL

Fourteenth Session

At its fourteenth session (20 May to 1 August 1952), when examining its provisional agenda, the Council decided that all new allegations relating to States members of the ILO should be transmitted to this agency for consideration as to referral to the Fact-finding and Conciliation Commission. The Council did not draw preliminary conclusions on the merits of such allegations.

With regard to allegations relating to States which are not members of the ILO, the Council took certain decisions in its resolution 444 (XIV). Noting from a report by the Secretary-General[2] that no replies had been received to the requests for observations sent to the Governments of the USSR, Romania and Spain, in accordance with resolutions 277 (X) and 351(XII), it requested the Secretary-General again to invite these Governments to reply. Since Japan had become a member of the International Labour Organisation, the observations received from that Government[3] were referred to the International Labour Organisation.

New allegations relating to Spain,[4] the Free Territory of Trieste (British-United States Zone[5]) and the Saar,[6] States or territories which are not members of the ILO, were submitted to the Council at its fourteenth session. Following a procedure previously adopted, the Council, in resolution 444 (XIV), requested the Secretary-General to bring to the attention of the governments concerned the allegations as well as the provisions of resolution 277 (X) under which allegations regarding infringements of trade union rights may be referred to the Fact-finding and Conciliation Commission on Freedom of Association, and to invite those governments to submit their observations on the matter.

In its resolution 447 (XIV), the Council noted with appreciation the sixth report of the ILO to the United Nations containing the texts of the first three reports of the Committee on Freedom of Association to the Governing Body of the International Labour Office.

SECTION II

GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE

The Governing Body Committee on Freedom of Association, established by the Governing Body at its 117th session (November 1951) to make a preliminary examination of complaints,[7] held six meetings in 1952.[8]

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[1] See *Yearbook on Human Rights for 1950*, pp. 498–499.

[2] See document E/2222.

[3] See document E/2175/Add.1.

[4] See documents E/2154/Add.18, 21, 30 (second paragraph), 34, 41 and 48.

[5] See document E/2154/Add.20.

[6] See document E/2154/Add.43.

[7] See *Yearbook on Human Rights for 1951*, pp. 574–575.

[8] A summary of the reports of the Committee on Freedom of Association may be found on pp. 394–397 of this *Yearbook*.

CHAPTER VIII

FORCED LABOUR

The *ad hoc* Committee on Forced Labour appointed jointly by the Secretary-General and the Director-General of ILO[1] in accordance with Council resolution 350 (XII), held its second and third sessions during this year. It submitted progress reports on these sessions[2] to the Economic and Social Council and to the Governing Body of the International Labour Office.

SECTION I

AD HOC COMMITTEE ON FORCED LABOUR

(*Second Session*)

The second session, held in New York in June 1952, was devoted to the study of documentation and information and to the hearing of several non-governmental organizations and private individuals. The documentation included replies to the Committee's questionnaire received from forty-two governments,[3] documentation submitted by governments and by one non-governmental organization relating to statements made by their representatives during the debates on forced labour in the Economic and Social Council,[4] and other documentation which had also been cited or referred to in the Council.

On the basis of the procedures established by the Committee during its first session[5] the Committee examined memoranda received from various non-governmental organizations and individuals requesting to be heard or to submit documentary material or information in their possession. The Committee approved the Chairman's recommendations with reference to these requests and, consequently, heard the oral testimony of several non-governmental organizations and private individuals. It also invited those who heard as well as several other organizations and individuals to submit documentary material or information referred to in their memoranda.

[1]The members so appointed were Sir Ramaswami Mudaliar (India), Mr. Paal Berg (Norway), and Mr. Enrique Garcia-Sayan (Peru). (Mr. Enrique Garcia-Sayan was appointed between the first and second sessions to succeed Mr. Palavicini whose death occurred in February 1952.)

[2]E/2276 and E/2341.

[3]E/AC.36/11 and addenda 1 to 17.

[4]E/AC.36/4 and Add.1.

[5]Resolution II (see document E/3154, paragraph 20).

SECTION II

AD HOC COMMITTEE ON FORCED LABOUR

(*Third Session*)

The third session was held in Geneva in October-November 1952, during which, again, several non-governmental organizations and private individuals were heard by the Committee.

The chief task at this session was, however, to make a preliminary study of the allegations made by governments, non-governmental organizations or private individuals and of the documentation submitted by them in support of these allegations, or assembled by the Committee. It then prepared summaries of the allegations and related documentary material concerning twenty-four countries (or territories under their administration, or both) which it decided to transmit to the governments concerned for their comments and observations. In so doing, the Committee emphasized that it had come to no conclusions either on the relevance of the allegations or on the evidential value of the related documentary material and information.

The Committee also decided that its Chairman and Rapporteur, Sir Ramaswami Mudaliar, should draft the substantive part of the final report, taking into consideration the replies of governments to the questionnnaire, the allegations and documentary material which had been summarized and transmitted to the governments concerned at the third session, the comments and observations which might be received from these governments prior to the fourth session, and any further information which might be collected by the Committee.[6]

[6]The fourth session was held in Geneva during April-May 1953.

CHAPTER IX

REFUGEES AND STATELESS PERSONS

SECTION I

THE CONVENTION RELATING TO THE STATUS OF REFUGEES

The Convention relating to the Status of Refugees, which had been signed by the representatives of fifteen States, during 1951,[1] obtained during 1952 the signatures of the following five States: Brazil, France, Greece, the Holy See, and Italy. Denmark ratified the Convention during that period. Six ratifications are required before its entry into force.

SECTION II

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

A. *Branch Offices*

The organization of the Office of the High Commissioner for Refugees continued in 1952, and, with the consent of the governments concerned, branch offices were established in Belgium, Colombia (for Latin American countries), France, Greece, Italy, the United Kingdom and the United States, and a provisional office at Bangkok. An office of the Joint Special Representative of the Intergovernmental Committee for European Migration and of the United Nations High Commissioner for Refugees was established in Hong Kong to deal with the urgent problem of refugees of European origin in China. The work of these branch offices differed from country to country depending on the size of the task to be undertaken and the conditions concerning the protection of refugees.

The operational problems of relief and re-settlement of refugees remained mainly the care of governmental and other agencies, with which the Office of the High Commissioner maintained close liaison, and whose work that office endeavoured, where desired, to facilitate or co-ordinate. The High Commissioner co-operated in certain countries, with the agreement of the governments concerned, in the provision of legal protection for refugees through the issue of certificates of refugee status, or of travel documents.[2]

B. *The Refugee Emergency Fund*

At its sixth session, the General Assembly, upon a request made by the High Commissioner for Refugees, adopted resolution 538 B (VI), which authorized him to appeal for funds for the purpose of giving aid to the most needy groups of refugees within his mandate.

At the seventh session of the General Assembly, the High Commissioner reported on the response to the appeals made by him. The Assembly, in resolution 639 (VII) took note of the fact that contributions thus far received by the High Commissioner would not be sufficient to provide in 1953 for emergency aid to the most needy groups of refugees under his mandate in Europe, the Near East and the Far East, particularly in Shanghai, expressed the hope that further contributions would be forthcoming, and repeated its appeal to all governments, specialized agencies and intergovernmental and non-governmental organizations interested in migration to give to refugees every possible benefit from projects to promote migration, including measures to facilitate the transit, re-settlement and employment of refugees.

C. *The Ford Foundation Grant for Refugees*

In August 1952, the Ford Foundation made a grant of $2,900,000 as a contribution to the permanent solution of the problem raised by the presence in Europe of millions of refugees. The administration in trust of this grant was offered to and accepted by the United Nations High Commissioner for Refugees. The Foundation intended this grant to benefit all refugees in Europe, whatever their nationality or religion. It stipulated categorically that the money must not be used to private the refugees with food or shelter, or to further other merely temporary solutions.[3]

SECTION III

THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

During this year, the United Nations Relief and Works Agency for Palestine Refugees in the Near

[1] See *Yearbook on Human Rights for 1951*, p. 579.

[2] Reports of the United Nations High Commissioner for Refugees, A/2126 and A/2394.

[3] Reports of the United Nations High Commissioner for Refugees, A/2126 and A/2394.

East, which, in accordance with General Assembly resolution 302 (IV), of 8 December 1949, had come into being on 1 May 1950, continued its task of provision of relief and improvement of living conditions of refugees, and the General Assembly adopted resolutions 513 (VI) and 614 (VII), dealing with various aspects of the Agency's work.

In June 1952, there were still on the ration rolls of the Agency more than 880,000 refugees (almost the same number as in 1951) scattered over an area of more than 100,000 square miles in Egypt, Lebanon, Syria and Jordan. Late in June 1952, an agreement was concluded with the Government of Israel under which it assumed responsibility for the 19,000 refugees remaining in Israel. One-third of the registered refugee population was living in camps organized by the Agency.

During 1952 programme agreements were concluded with the Governments of Jordan, Syria, Egypt, and Libya for the rehabilitation of refugees from Palestine.

A detailed description of the Agency's work during 1952 may be found in the Director's reports to the General Assembly.[1]

[1]A/2171 and Add.1, and A/2470.

SECTION IV

PROBLEMS OF STATELESSNESS

The draft Protocol relating to the Status of Stateless Persons, drawn up by the *ad hoc* Committee on Refugees and Stateless Persons established by the Economic and Social Council in 1949, was remitted by the General Assembly to the Council for further study.

The question of the elimination of statelessness and the preparation of a draft convention or conventions on that subject was studied further by the International Law Commission.[2]

The Economic and Social Council deferred consideration of both the draft Protocol relating to the Status of Stateless Persons and of the general problem of the elimination of statelessness, pending the receipt of further government replies concerning the former and of the report of the International Law Commission concerning the latter.

[2]Report of the special rapporteur on Nationality including Statelessness, A/CN.4/50; Report of the International Law Commission, A/2163.

CHAPTER X

MEASURES FOR THE PEACEFUL SOLUTION OF THE PROBLEM OF PRISONERS OF WAR

The *ad hoc* Commission on Prisoners of War, established under the terms of General Assembly resolution 427 (V), of 14 December 1950, held its second and third sessions in 1952 at the European Office of the United Nations.

SECTION I

AD HOC COMMISSION ON PRISONERS OF WAR

(*Second Session*)

The Commission invited the Governments of the following countries directly concerned with the problem of prisoners of war to name representatives to attend its second session: Australia, Belgium, France, Federal Republic of Germany, Italy, Japan, Luxembourg, the Netherlands, Union of Soviet Socialist Republics, United Kingdom, United States. All these Governments, with the exception of the Government of the Union of Soviet Socialist Republics, accepted the Commission's invitation. In addition, the Government of Denmark named an observer.

After hearing statements from representatives of governments at its first open meeting, the Commission continued its consultations with them in a number of closed meetings and also studied additional information that had been submitted to it in reply to requests from the Secretary-General and the Commission itself.

The Commission noted that information submitted by governments concerning former prisoners of war sentenced for war crimes or being held awaiting trial for such crimes was incomplete. It therefore requested all governments detaining persons on charges of war crimes or under sentence for such crimes to send it detailed information concerning these persons.[1] The governments concerned were also invited to submit a list of those cases which were still under investigation by national authorities.

The Commission further decided to address a letter to the Government of the USSR requesting as complete information as possible on prisoners of war who had died while in the custody of the Soviet Union. Out of consideration of the possibility that records and archives might have been destroyed in the war, the Commission requested that the USSR Government furnish the Commission with at least a list of those who had died since 1947.

In addition, the Commission requested certain governments for supplementary information, some of a general character and some relating to specific cases of prisoners of war who might still be detained. In view of the detailed information supplied by the Governments of the Federal Republic of Germany and Japan, and taking into account the strictly objective and impartial method it had followed from the outset, the Commission decided not to avail itself of the invitations from those Governments to visit their countries for the purpose of examining the original records containing data about prisoners of war who were as yet unrepatriated or unaccounted for.

SECTION II

AD HOC COMMISSION ON PRISONERS OF WAR

(*Third Session*)

The same governments that had been invited by the Commission to name representatives to the second session were once more invited to name representatives to the third session. All accepted the Commission's invitation with the exception of the Government of the Union of Soviet Socialist Republics. In addition, the Governments of Brazil and Denmark each named an observer.

After hearing statements both in the opening public meetings and in closed meetings from representatives of governments attending the session, and after studying the information that had been received since the close of the second session, the Commission decided that it was necessary to prepare a special report for submission to the Secretary-General. In this special report,[2] the Commission reviewed its efforts to gain the co-operation of all governments concerned in the problem of prisoners of war and in

[1] The following information was requested: (*a*) name of person prosecuted; (*b*) date of trial; (*c*) place of trial; (*d*) offence with which the person was charged; (*e*) date of judgement; (*f*) conviction or acquittal; (*g*) penalty imposed; and (*h*) place where sentenced person is under detention.

[2] Document A/AC.46/10.

particular its special efforts to gain the co-operation of the Government of the Union of Soviet Socialist Republics. The Commission reported that it had regrettably come to the conclusion that it was unable to perform the basic task for which it was set up and considered it to be its duty to inform the Secretary-General that the lack of co-operation of the USSR Government was paralysing its work and increasing the difficulty of clarifying the large amount of information furnished by other governments. The Commission reported that it intended, at its next session, to prepare the final report on the results of its work together with such conclusions as may be drawn from the documentation in its possession. In the meantime, the Commission stated that it had decided to send this special report to the Secretary-General with the request that he transmit it to the members of the United Nations before the opening of the seventh session of the General Assembly. The Commission hoped that a fresh appeal for international co-operation among the Members of the United Nations and to their spirit of humanity might have the effect of giving a more promising direction to the work that has so far been carried on with only limited success by the *ad hoc* Commission.

At its third session, the Commission also requested a number of governments to furnish additional information and, in accordance with paragraph 3(*a*) of General Assembly resolution 427 (V), addressed an inquiry to the Government of the People's Republic of China concerning Japanese prisoners of war believed still to be in territory under the control of that government.

CHAPTER XI

SPECIFIC QUESTIONS

SECTION I

RACIAL SITUATION IN THE UNION OF SOUTH AFRICA

As requested in a letter dated 12 September 1952, addressed to the Secretary-General by the permanent representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen (A/2183), an item, "The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa", was placed on the agenda of the seventh session of the General Assembly.

After some discussion, the General Assembly adopted resolution 616 (VII), the text of which reads as follows:

A

"*The General Assembly,*

"*Having taken note* of the communication dated 12 September 1952, addressed to the Secretary-General of the United Nations by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, regarding the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa,

"*Considering* that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

"*Recalling* that the General Assembly declared in its resolution 103 (I) of 19 November 1946 that it is in the higher interests of humanity to put an end to religious and so-called racial persecution, and called upon all governments to conform both to the letter and to the spirit of the Charter and to take the most prompt and energetic steps to that end,

"*Considering* that the General Assembly has held in its resolutions 395 (V) of 2 December 1950 and 511 (VI) of 12 January 1952, that a policy of "racial segregation" (*apartheid*) is necessarily based on doctrines of racial discrimination,

"1. *Establishes* a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of article 2, paragraph 7, as well as the provisions of article 1, paragraphs 2 and 3, article 13, paragraph 1 b, article 55 c, and article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusion to the General Assembly at its eighth session;

"2. *Invites* the Government of the Union of South Africa to extend its full co-operation to the Commission;

"3. *Requests* the Secretary-General to provide the Commission with the necessary staff and facilities;

"4. *Decides* to retain the question on the provisional agenda of the eighth session of the General Assembly.

B

"*The General Assembly,*

"*Having taken note* of the communication dated 12 September 1952, addressed to the Secretary-General of the United Nations by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, regarding the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa,

"*Considering* that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

"*Recalling* that the General Assembly declared in its resolution 103 (I) of 19 November 1946, that it is in the higher interests of humanity to put an end to religious and so-called racial persecution, and called upon all governments to conform both to the letter and to the spirit of the Charter and to take the most prompt and energetic steps to that end,

"1. *Declares* that in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on a basis of equality;

"2. *Affirms* that governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under article 56 of the Charter;

"3. *Solemnly calls upon* all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms."

SECTION II

PLIGHT OF SURVIVORS OF CONCENTRATION CAMPS

In 1952, the Secretary-General of the United Nations continued the task entrusted to him by resolution 386 (XIII) of the Economic and Social Council[1] of making available to the Government of the Federal Republic of Germany information concerning the number and nature of the requests for assistance submitted by victims of so-called scientific experiments in nazi concentration camps.

As from 31 December 1952, 468 requests for assistance were transmitted to the Federal Government by the Secretary-General.

In a third progress report, the Secretary-General informed the Economic and Social Council that, according to a note received from the Federal Government, as from 1 April 1952, this government had received 521 requests for assistance which were being examined.

The Federal Government further informed the Secretary-General that up to 1 September 1952 it had taken final decisions in 156 cases and that it had made payments in the amount of DM 351,673.20 to 108 applicants, while forty-eight claims had been rejected.

[1] See *Yearbook on Human Rights for 1951*, pp. 590–591.

SECTION III

SLAVERY

The Secretary-General's report on this subject, called for under Economic and Social Council resolution 388 (XIII)[2] was not before the Council at its fourteenth session, and consequently the item was deferred until the fifteenth session, in 1953.

[2] See *Yearbook on Human Rights for 1951*, p. 578.

SECTION IV

RIGHTS OF THE CHILD, WELFARE OF THE AGED AND RIGHT OF ASYLUM

Questions relating to the rights of the child, welfare of the aged and the right of asylum were on the agenda of the eighth session of the Commission on Human Rights, but it had not time to consider them at that session. Consideration of these items was therefore deferred to its next session in 1953.

SECTION V

THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Convention on the Prevention and Punishment of the Crime of Genocide which came into force on 12 January 1951 was ratified during the year 1952 by Brazil, Canada, Egypt, Honduras, Hungary, Italy, Mexico, Nicaragua and Sweden.

CHAPTER XII

QUESTIONS OF HUMAN RIGHTS IN CERTAIN TERRITORIES

SECTION I

TRUST TERRITORIES

A. *Annual Reports on Trust Territories*

In the course of its tenth and eleventh sessions, the Trusteeship Council considered the annual reports on eleven Trust Territories: Tanganyika, Ruanda-Urundi, Somaliland, Cameroons under British administration, Cameroons under French administration, Togoland under British administration, Togoland under French administration, Western Samoa, Nauru, New Guinea and the Trust Territory of the Pacific Islands.

In reviewing the political, economic, social and educational advancement in these territories, the Council adopted certain conclusions and recommendations referring to questions of human rights.[1]

B. *Petitions*

At its tenth and eleventh sessions, the Council had on its agenda 302 and 358 petitions respectively, which it referred for preliminary examination, to its Standing Committee on Petitions. Many of these petitions referred to questions of human rights. The Council considered and adopted the reports submitted by the Standing Committee on Petitions concerning the above-mentioned eleven territories.

C. *Visiting Missions*

Trust Territories in West Africa

During its tenth session, in March 1952, the Council decided to send a visiting mission to the four Trust Territories in West Africa: Togoland under British administration, Togoland under French administration, Cameroons under British administration, and Cameroons under French administration, to observe the development of political, economic, social and educational conditions in those territories. In its reports (documents T/1040, T/1041, T/1042, T/1043), the mission made certain observations and conclusions relating to human rights.

D. *Action taken by the General Assembly*

At its seventh session, the General Assembly adopted several resolutions referring, *inter alia*, to the promotion of political rights in Trust Territories.

In resolution 649 (VII), on the question of administrative unions affecting Trust Territories, the General Assembly, *inter alia*, expressed the hope "that the Administering Authorities concerned will take into account the freely expressed wishes of the inhabitants before establishing or extending the scope of administrative unions".

In resolution 652 (VII), on the Ewe and Togoland unification problem, the General Assembly, *inter alia*, continued to urge "that the two Administering Authorities concerned [France and United Kingdom] and the peoples involved exert every effort to achieve a prompt, constructive and equitable settlement of the problem, taking fully into account the freely expressed wishes of the people concerned"; expressed its regret that "the election procedures devised did not result in the participation of all the major groups in the two Trust Territories"; recommended that "the Joint Council should be reconstituted, and re-established as soon as possible, by means of direct elections on the basis of universal adult suffrage exercised by secret ballot"; and considered that the freedom of the inhabitants to determine their own political destiny should be exercised through accepted democratic processes.

In resolution 653 (VII), on the participation of the indigenous inhabitants of the Trust Territories in the government of those territories and in the work of the Trusteeship Council, the General Assembly, *inter alia*, expressed the opinion "that the objects of [its] resolution 554 (VI)[2] would be better achieved through the active participation of members of the indigenous population of the Trust Territories in the government of those territories and in the work of the Trusteeship Council"; and shared the hope expressed by the Trusteeship Council "that the Administering Authorities will find it appropriate to associate suitably qualified indigenous inhabitants of the Trust Territories in the work of the Trusteeship Council . . .".

During the seventh session of the General Assembly, the Fourth Committee, in discussing the Ewe and Togoland unification problem, heard oral statements of representatives of three indigenous political organizations.[3] It also heard petitioners from the Trust

[1] The conclusions and recommendations of the Council may be found in the report of the Trusteeship Council to the General Assembly (A/2150).

[2] See *Yearbook on Human Rights for 1951*, p. 606.

[3] See paragraph 4 of resolution 652 (VII).

Territories of the Cameroons under French administration and Somaliland, took note of their statements, and transmitted them to the Trusteeship Council for appropriate action.[1]

E. *Action taken by the Economic and Social Council*

At its fourteenth session, the Economic and Social Council adopted resolution 445 C (XIV) dealing with the status of women in Trust and Non-Self-Governing Territories.[2]

SECTION II

NON-SELF-GOVERNING TERRITORIES

A. *Information submitted under Article 73 e of the Charter*

Under article 73e of the Charter, Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government have undertaken to transmit regularly to the Secretary-General, for information purposes—subject to such limitations as security and constitutional considerations may require—statistical and other information of a technical nature relating to economic, social and educational conditions in the territories.

Part III of the revised standard form approved by General Assembly resolution 551(VI) suggests that information be transmitted concerning, *inter alia*, the implementation of the principles contained in the Universal Declaration of Human Rights. The following governments have transmitted such information: the Government of Australia on Papua (A/2128); the Government of Denmark on Greenland (A/2130); the Government of the United States on American Samoa, Hawaii, Virgin Islands, Guam, Alaska (A/2135/Add.1 and Add.3) and Puerto Rico (A/2414/Add.2).

B. *Action taken by the General Assembly*

The General Assembly at its seventh session, adopted two resolutions which relate to questions of human rights in Non-Self-Governing Territories. Resolution 644 (VII) concerning the abolition of discriminatory laws and practices reads as follows:

"*The General Assembly*,

"*Having regard* to the principles of the Charter and of the Universal Declaration of Human Rights emphasizing the necessity of promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,

"*Having regard* to the principle recognized in Chapter XI of the Charter that the interests of the inhabitants of the Non-Self-Governing Territories are paramount,

"*Recognizing* that there is a fundamental distinction between discriminatory laws and practices, on the one hand, and protective measures designed to safeguard the rights of the indigenous inhabitants, on the other hand,

"1. RECOMMENDS to the Members responsible for the administration of Non-Self-Governing Territories the abolition in those Territories of discriminatory laws and practices contrary to the principles of the Charter and of the Universal Declaration of Human Rights;

"2. RECOMMENDS that the Administering Members should examine all laws, statutes and ordinances in force in the Non-Self-Governing Territories under their administration, as well as their application in the said Territories, with a view to the abolition of any such discriminatory provisions or practices;

"3. RECOMMENDS that, in any Non-Self-Governing Territory where laws are in existence which distinguish between citizens and non-citizens primarily on racial or religious grounds, these laws should similarly be examined;

"4. RECOMMENDS that all public facilities should be open to all inhabitants of the Non-Self-Governing Territories, without distinction of race;

"5. RECOMMENDS that where laws are in existence providing particular measures of protection for sections of the population, these laws should frequently be examined in order to ascertain whether their protective aspect is still predominant, and whether provision should be made for exemption from them in particular circumstances;

"6. RECOGNIZES that the establishment of improved race relations largely depends on the development of educational policies, and commends all measures designed to improve among all pupils in all schools understanding of the needs and problems of the community as a whole;

"7. CALLS THE ATTENTION of the Commission on Human Rights to the present resolution."

In resolution 648 (VII), the General Assembly approved provisionally a list of factors which may serve as a guide in deciding whether a territory has or has not attained a full measure of self-government.

Among the factors indicative of the attainment of independence is the following:

"*Form of government.* Complete freedom of the people of the territory to choose the form of government which they desire."

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[1] Resolutions 655 (VII) and 656 (VII).

[2] See above, p. 437.

Among the factors regarded as indicative of the attainment of other separate systems of self-government are the following:

"*Opinion of the population.* The opinion of the population of the territory, freely expressed by informed and democratic processes, as to the status or change in status which they desire."

"*Participation of the population.* Effective participation of the population in the government of the territory: (*a*) Is there an adequate and appropriate electoral and representative system? (*b*) Is this electoral system conducted without direct or indirect interference from a foreign government?"

Among the factors indicative of the free association of the territory with other component parts of the metropolitan or other country are the following:

"*Opinion of the population.* The opinion of the population of the territory, freely expressed by informed and democratic processes, as to the status or change in status which they desire."

"*Legislative representation.* Representation without discrimination in the central legislative organs on the same basis as other inhabitants and regions."

"*Citizenship.* Citizenship without discrimination on the same basis as other inhabitants."

"*Government officials.* Eligibility of officials from the territory to all public offices of the central authority, by appointment or election, on the same basis as those from other parts of the country."

"*Suffrage.* Universal and equal suffrage, and free periodic elections, characterized by an absence of undue influence over and coercion of the voter or of the imposition of disabilities on particular political parties."

"*Local officials.* Appointment or election of officials in the territory on the same basis as those in other parts of the country."

INDEXES

INDEX OF CONSTITUTIONAL PROVISIONS

Explanatory note. This index contains references to the constitutional provisions concerning human rights in Part I of this issue of the *Yearbook*. The figures following the name of the State refer to the articles of the Constitution. For references relating to the constitutions printed in earlier *Yearbooks*, the reader should consult the index of constitutional provisions in the *Yearbook on Human Rights for 1946* (pp. 431–450), in the *Yearbook on Human Rights for 1947* (pp. 567–581), in the *Yearbook on Human Rights for 1948* (pp. 527–535), in the *Yearbook on Human Rights for 1949* (pp. 403–408), in the *Yearbook on Human Rights for 1950* (pp. 545–550), and in the *Yearbook on Human Rights for 1951* (pp. 615–619).

Several constitutions printed in earlier *Yearbooks* have been replaced by new constitutions in 1952, namely, the Constitutions of Cuba, Poland, Romania and Thailand. Moreover, references are included to modified articles of the Constitutions of Honduras and India. Finally, references are to be found to the Constitution of Eritrea, which came into effect with the ratification of the Federal Act by Ethiopia on 11 September 1951.

For the convenience of the reader, an alphabetical list of all the States included in the index is given below, with an indication of the first page on which the constitutional provisions of the State are to be found.

STATES INCLUDED IN THE INDEX

A

C

W

INDEX OF LAWS, DECREES AND REGULATIONS, ETC.

reproduced, summarized, or referred to in Part I of this *Yearbook*

This index is intended to help readers find any of the texts of the part "States—National Laws" either reproduced or summarized separately, or summarized or referred to in a note on the development of human rights or in other notes in this *Yearbook*.

For constitutional provisions, the index of constitutional provisions in this *Yearbook* should be consulted (pp. 455–459).

Each reference is followed by (T) if it is to a text or excerpts from a text; by (S) if it is to a summary of a text; and by (M) if mention is made only of the title and date of a legal instrument. The number after each title indicates the page of this *Yearbook* on which the text begins.

Laws ratifying or authorizing ratification of international treaties and agreements are not included in this index. References to such texts are to be found in the notes on the development of human rights under Austria, Belgium, Ceylon, Denmark, Dominican Republic, Federal Republic of Germany, Greece, Guatemala, Iceland, Ireland, Israel, Italy, Luxembourg, New Zealand, Nicaragua, Norway, Philippines, Poland, Portugal and Switzerland.

A great number of legislative texts adopted in the forty-eight states of the United States of America are summarized or referred to in the progress note prepared by the United States Government (see p. 303). This material should be consulted in order to obtain a full picture of United States activity, since primary responsibility for the implementation of many of the rights listed in this *Yearbook* rests with the constituent States, and not with the Federal Government. Specific enactments by the states are not included in this index, which refers to such enactments only in a general way. The same applies to certain provincial laws of Canada and cantonal laws of Switzerland.

An index of laws, decrees and regulations, etc., reproduced, summarized or referred to in the *Yearbooks on Human Rights* for 1946–1950 appears in the *Yearbook on Human Rights for 1950*, pp. 551–590. An index covering laws, decrees and regulations published in the *Yearbook on Human Rights for 1951* appears in that *Yearbook* on pp. 620–646.

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INDEX OF CASES

The following is an index of cases which received judicial consideration by national courts in 1952 and which are summarized or referred to in this *Yearbook*. In the first part of this index the cases are arranged in alphabetical order according to countries, and in the second part according to the human rights and fundamental freedoms which were at issue. The figure following each case indicates the page number of this *Yearbook* where the text begins.[1]

[1] The cases of the Federal Republic of Germany as reported do not lend themselves to the arrangement of this index. They may be found on pp. 86–94 of this *Yearbook*.