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HUMAN RIGHTS
FOR 1958

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YEARBOOK ON HUMAN RIGHTS
FOR 1958

INTRODUCTION

In its resolution 683 D (XXVI) of 21 July 1958, the United Nations Economic and Social Council requested the Secretary-General to publish in the *Yearbook on Human Rights* "texts of, or extracts from, new constitutions, constitutional amendments, legislation, general governmental decrees and administrative orders, and reports on important court decisions, relating to human rights as defined in the Universal Declaration of Human Rights, and such introductory and explanatory comments as may be considered necessary to describe trends and to state results obtained in States Members of the United Nations and of the specialized agencies, this information to cover metropolitan areas and Trust and Non-Self-Governing Territories; texts of, or extracts from, international agreements concerning such States or territories bearing on human rights; a table of ratifications of, and accessions to, such agreements; . . . an introduction and an index". This introduction reviews the contents of the present volume of the *Yearbook* in the light of the Council's requirements.

This volume includes extracts from several new constitutions, together with the texts of a number of constitutional amendments.

New constitutions were adopted during 1958 in France, Guinea, Iraq and the United Arab Republic; new Statutes were adopted for the Trust Territories of the Cameroons and Togoland under French administration and new constitutions for Kenya, Mauritius, Sierra Leone and Singapore. Extracts from the Constitution of the Kingdom of the Netherlands of 1956 also appear in the present volume. Also published herein are extracts from the Basic Law on the Knesset of 1958, one of the basic laws reported by the correspondent of Israel as being intended in due course to form the constitution of that country. In Spain the Basic Law of 17 May 1958 proclaimed the Principles of the National Movement.

Amendments were adopted during 1958 to the constitutions of the Swiss Confederation, the Swiss canton of Vaud, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics. The Revised Organic Act of the Virgin Islands was amended, and changes of a constitutional nature also took place in the Trust Territory of Tanganyika, the Trust Territory of the Pacific Islands, the French overseas territories, the Federation of Nigeria and Northern Rhodesia.

Constitutional events during 1958 in Pakistan, Sudan and Thailand are also mentioned in this volume.

Nearly all the legislation, general governmental decrees and administrative orders represented by texts or extracts in this volume fall into a number of main categories. These relate to criminal procedure, nationality, the press and other aspects of freedom of opinion and expression, public assembly, the right of association, elections, social security, public health, conditions of work, the status of women, education, scientific advancement and copyright. (The constitutional texts already mentioned also include, as well as more general provisions on a wide range of rights, more detailed stipulations on some matters such as would often be included in legislation. For instance, the Basic Law on the Knesset, the Mauritius (Constitution) Order in Council, 1958, as amended, the Northern Rhodesia (Electoral Provisions) Order in Council, 1958, the Sierra Leone (Constitution) Order in Council, 1958, and the Singapore (Constitution) Order in Council, 1958, contain details defining the persons entitled to be elected to the legislatures affected; and detailed definitions of the persons entitled to vote are set out in the abovementioned orders in council concerning Mauritius and Northern Rhodesia.)

Legislation affecting criminal procedure from which extracts appear in this volume includes the French Code of Criminal Procedure of 1958, the Criminal Procedure Law of Liberia, the Principles of Legislation concerning the Judicial System of the Union of Soviet Socialist Republics and of the Union and Autonomous Republics, adopted on 25 December 1958, and the Principles of Criminal Procedure in the Union of Soviet Socialist Republics and the Union Republics, also of 25 December 1958. In the Republic of Viet-Nam, Act No. 11/58 of 3 July 1958 provided for the establishment and organization of juvenile courts. The Juvenile Law

proclaimed on 24 July 1958 by Act No. 489 in the Republic of Korea also governed the trial of, and other means of treating, juvenile offenders. Other laws on the treatment of offenders quoted in this volume are Acts Nos. 4840 of 17 February 1958 and 4865, of 28 February 1958, of the Dominican Republic, dealing respectively with the conditional release of prisoners for good conduct and assistance to children of prisoners; the Juvenile Reformatory Law promulgated on 8 August 1958 by Act No. 493 of the Republic of Korea; and the Principles of the Criminal Legislation of the Union of Soviet Socialist Republics and the Union Republics, of 25 December 1958. The extracts from the Penal Code of Ethiopia quoted herein deal mainly with treatment of offenders. In the Republic of Korea the Criminal Compensation law promulgated on 13 August 1958 by Act No. 494 aimed at compensating persons detained then found not guilty.

Nationality laws are represented in the present yearbook by Act No. 3192 of 4 July 1957 of Brazil, Act No. 12,857 of 30 January 1958 of Chile, decree No. 1916 of 5 August 1955 of Costa Rica, the Ghana Nationality and Citizenship Act, 1957, Dahir No. 1-58-250, enacting the Moroccan Nationality Code, of 6 September 1958, and legislative decree No. 82 of 1958, enacting the Nationality Law of the United Arab Republic. The laws of Ghana, Morocco and the United Arab Republic are basic legislation on the subject of nationality, while the remaining enactments mentioned are amendments to previous laws.

A comprehensive press code was promulgated in Morocco in 1958 by Dahir No. 1-58-378 of 15 November. Other laws governing aspects of freedom of opinion and expression were the Defamation Act, 1958, of New South Wales, Australia; the Objectionable Publications Ordinance, 1958, of the Australian Capital Territory; and the Act concerning the Right of Clarification and Correction of 10 December 1958 of Nicaragua. Changes in previous legislation were made, in France by order No. 58-1298, of 23 December 1958, amending the provisions of the Penal Code concerning the publication of comments upon judicial proceedings and amending the Juvenile Publications Act of 1949, in Haiti by the decree of 6 August 1958 amending the Penal Code on the matter of the dissemination of false reports likely to disturb the public tranquillity, and in Tunisia by the decree of 7 November 1956 amending and supplementing the decree of 9 February 1956 respecting printing, book-selling and the press.

Morocco adopted decree No. 1-58-377 relating to Public Assembly and decree No. 1-58-376 governing the right of association, both of 15 November 1958. (The former included also provisions on demonstrations on a public thoroughfare.) The Industrial Relations Act, 1958, of Ghana included provisions designed to protect members and officers of trade unions against unfair labour practices. The Labour Code of 15 November 1958 of the Trust Territory of Somaliland also contained provions concerning trade unions.

Laws governing the right to vote which are quoted from in this yearbook are the following: the order of 29 December 1958 amending articles 2, 15 and 22 of the Regulations for Elections to the Supreme Soviet of the Byelorussian Soviet Socialist Republic; the General Law on Elections of 10 June 1958 and the General Law on Electoral Registration of 31 July 1958, both of Chile; and the Elections (House of Representatives) Regulations, 1958, of the Federation of Nigeria.

The right to be elected to legislative or executive office was the concern of: Act No. 3506, of 27 December 1958, of Brazil; legislative decree No. 70, of 1958, laying down certain provisions regarding elections, of Colombia; order No. 58-998, of 24 October 1958, enacting an organic law concerning the conditions of eligibility for election to parliament and incompatibility of offices, of France; Act No. 58-30, of 20 February 1958, concerning the election of members of the Legislative Assembly, of the Trust Territory of Togoland under French administration; and the Singapore Colony (Electoral Provisions) Order in Council, 1958.

Both the right to vote and the right to be elected were the subject matter of the following: the order of 27 December 1958 abolishing deprivation of electoral rights by court decision, of the Byelorussian Soviet Socialist Republic; the order of 29 December 1958 amending articles 2, 14 and 21 of the regulations for elections to the Soviets of Working People's Deputies of regions, districts, cities, rural localities and settlements of the Byelorussian Soviet Socialist Republic; the Chamber of Deputies' Electoral Law (proclamation No. 152 of 1956) of Ethiopia; the election laws for the President and Vice-President, for the members of the House of Representatives and for the members of the House of Councillors, of the Republic of Korea; the Electoral Act, 1958, of the Federation of Rhodesia and Nyasaland; the Electoral Act, No. 36, of 23 December 1958, of San Marino; the Act of 25 December 1958 abolishing deprivation of electoral rights by court decision, of the Union of Soviet Socialist Republics

decree No. 234, of 23 May 1958, promulgating the Electoral Act, of Venezuela; and the Political Elections Act (No. 26) of 12 December 1958 of the Trust Territory of Somaliland.

The above-mentioned legislation of Chile, the Republic of Korea, the Federation of Rhodesia and Nyasaland, Venezuela, the Trust Territory of Somaliland and the Federation of Nigeria included also provisions governing electoral propaganda.

Aspects of social security were governed by legislative decree No. 40 of 1958 on social insurance pensions of Hungary, and regulation No. 4 of 1958 of Iraq concerning the distribution of survivors' benefits.

Public health was the concern of order No. 1/1958 (III. 23) of the Ministry of Health on the Public Health Services and order No. 6/1958 (XI. 12) of the Ministry of Health on the reduction of hospital fees for the treatment of certain diseases, both of Hungary.

In the Trust Territory of Somaliland, legislative decree No. 25 of 15 November 1958 promulgated a labour code. Conditions of work were also affected in Italy by Act No. 339 of 2 April 1958 concerning the conditions of employment of domestic workers; in Panama by Act No. 60 of 18 December 1958 concerning weekly rest, payment of wages during national holidays and days of national mourning and payment for work done on holidays and days of national mourning; in Thailand by announcement No. 19 of 31 October 1958; and in the Ukrainian Soviet Socialist Republic by an amendment of 1958 to the Labour Code, protecting workers against discharge without the approval of a factory, plant or local trade union committee.

In Belgium, the Act of 30 April 1958 relating to the respective rights and duties of spouses made a number of changes in connexion with the legal status of married women. Dahir No. 1-57-343 of 22 November 1957, of Morocco, promulgated books I and II of the Code of Personal Status and Succession, dealing with, respectively, marriage and its dissolution. In Hungary, decree No. 21, of 1958, concerned the safeguarding of the obligation of maintenance under the criminal law. These laws touched upon the status of women, as did also, in Italy, Act No. 75 of 20 February 1958 concerning the abolition of regulated prostitution and suppression of the exploitation of the prostitution of others, described by the correspondent of Italy as undoubtedly the most important piece of legislation relating to human rights enacted in Italy during 1958.

General laws on education adopted during 1958 included Act No. 58-118, of 4 November, of Tunisia, and the Act of 24 December concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Union of Soviet Socialist Republics. In Guatemala, the government order of 17 October 1958 approved regulations concerning the provision of free and optional religious instruction in official establishments.

In the Philippines, Republic Act No. 2067, of 13 June 1958, was enacted "to integrate, co-ordinate, and intensify scientific and technological research and development and to foster invention". In Brazil, Act No. 3447 of 23 October 1958 amended the Civil Code in relation to authors' rights.

Several laws from which extracts appear in this yearbook contained a variety of provisions dealing with a wide range of rights. These are the Act of 29 January 1958 concerning the state budget of the Byelorussian Soviet Socialist Republic for 1958, the French Act No. 58-59 of 5 February 1958 on the institutions of Algeria, the Act concerning the state budget of the Ukrainian Soviet Socialist Republic for 1958, and various laws on public order and state security.

The summaries and commentaries furnished by various governments or government-appointed correspondents deal with further examples of the types of legislation reviewed above; they also concern other categories of law, the most important of which are now briefly mentioned. In the realm of civil and administrative procedure, mention may be made of various relevant legislative developments in the Federal Republic of Germany and of the Code of Civil Procedure of 8 December 1956 of Yugoslavia. The question of capital punishment was dealt with in the Suspension of Capital Punishment Act, No. 20 of 1958, of Ceylon. The rights of aliens and the right of asylum were both treated in the Finnish Act No. 187, of 25 April 1958, on aliens. In relation to property rights, reference may be made to the events in this area mentioned in the contribution of Austria and to the Local Authorities (Vesting of Public Property) Act, 5718-1958, of Israel. Access to public employment was dealt with in the Public Employment (Requirement as to Residence) Act, 1957, of India, Dahir No. 1-58-008 of 24 February 1958 of Morocco and the Act concerning Public Servants of 11 December 1957 of Yugoslavia. The principle of equal pay for equal work for men and women workers was the subject

of the Industrial Arbitration (Female Rates) Amendment Act, 1958 (New South Wales) and was applied to some workers by Act No. 23 of 4 February 1958 of Italy. Holidays with pay were legislated upon by the Australian and Canadian federal legislatures and also in the Canadian provinces of Nova Scotia, Saskatchewan and New Brunswick. The promotion of housing was the subject, in Bulgaria of a regulation of 1958 respecting the extension of credit for housebuilding, in Portugal of Act No. 2092, in Switzerland of a federal order of 31 January 1958, and of various federal and state laws in the United States of America. Finally, attention may be drawn to the following legislation concerning the welfare of children: certain amendments of Ontario and Alberta, Canada; Ordinance 58-1298 of France; the Child Welfare Amendment Act of 1958 of New Zealand; the Act of 11 April 1958 (No. 2) of Norway on the Guardianship of Minors; an Order of 18 July 1958 of Poland; the Code of Parentage of Sweden and Act No. 58-27 of 4 March 1958 on public guardianship, of Tunisia.

A number of the legal or constitutional provisions quoted from or referred to in this volume laid down machinery for the protection of, or otherwise affected, human rights in general or a wide range of rights.

Thus, in Switzerland, a federal Act of 14 March 1958 regulated the liability, towards injured parties, of the Confederation, the members of the federal authorities and federal officials; an ordinance of 30 December 1958 implemented the Act. In Israel, the procedure in civil actions against the State was the subject of the Civil Procedure Revision (State Litigation) Act, 5718-1958, while the Administrative Procedure (Reasons) Act, 5719-1958, imposed a duty upon public officers who are legally competent to take any decision affecting a private right, or imposing a duty upon any person, in general to give reasons in writing for any such decision. Petitions were the subject matter of article 8 of the Constitution of the Kingdom of the Netherlands of 1956 and of section 11 of the Singapore (Constitution) Order in Council, 1958. In Monaco, sovereign ordinance No. 1792 of 7 May 1958 established a procedure of "appeal against administrative action".

Provisions concerning access to courts, available remedies, legal aid and the independence of the judiciary are important from the point of view of the protection of rights in general. Article 170 of the Constitution of the Kingdom of the Netherlands of 1956 provided that no one was to be removed against his will from the jurisdiction of his lawful judge. Section 2 (4) of the Laws (Continuance in Force) Order, 1958, of Pakistan specified the writs which it was within the power of the Supreme Court and the high courts of Pakistan to issue. In Ceylon, the Conciliation Boards Act, No. 10 of 1958, provided for the establishment of such boards in certain areas and endowed them with powers aimed at furthering the amicable settlement out of court of civil disputes and some criminal cases. In the United Kingdom of Great Britain and Northern Ireland, the Tribunals and Inquiries Act, 1958, was adopted with the object of ensuring the effective administration of justice in tribunals set up under Acts of Parliament by Ministers of the Crown for the purpose of those Ministers' functions. A provision in the basic law proclaiming the Principles of the National Movement, of 17 May 1958, of Spain, laid down that independent justice was to be free for all Spaniards who lacked the means to pay for it, while the contribution of Japan to this yearbook describes the system of legal aid operating in that country. Provisions concerning the independence of the judiciary were included in the French Constitution of 1958 (article 64), the Constitution of Guinea of 1958 (article 35), the Provisional Constitution of Iraq of 1958 (article 23), the Principles of Legislation concerning the Judicial System of the Union of Soviet Socialist Republics and of the Union and Autonomous Republics of 25 December 1958 (article 9), the Principles of Criminal Procedure in the Union of Soviet Socialist Republics and the Union Republics of 25 December 1958 (article 10), the Provisional Constitution of the United Arab Republic of 1958 (article 59), the Judiciary Ordinance 1957 of the Trust Territory of Nauru and the Statute of the Republic of Togoland of 30 December 1958 (article 21).

In the area of the prevention of discrimination attention should be drawn to the functions of the Council of State the setting up of which was envisaged in section 47 of the Kenya (Constitution) Order in Council, 1958, and those of the Anti-Discrimination Commission provided for in an Act adopted in Ontario, Canada, in 1958. Detailed relevant provisions were contained in the Liberian Act of 14 February 1958, to amend the penal law to make racial segregation and discrimination a crime and to prescribe the punishment therefor. Aspects of equality before the law or the prevention of discrimination were also touched upon in article 2 of the French Constitution of 1958, the preamble to and article 45 of the Constitution of Guinea of 1958, article 9 of the Provisional Constitution of the Republic of Iraq of 1958 and article 7 of

the Provisional Constitution of the United Arab Republic of 1958. Relevant legislative provisions were adopted in the Union of Soviet Socialist Republics on 25 December 1958, as article 5 of the principles of legislation concerning the judicial system of the Union of Soviet Socialist Republics and of the Union and Autonomous Republics, article 8 of the principles of criminal procedure in the Union of Soviet Socialist Republics and the Union Republics and article 11 of the Act concerning criminal liability for crimes against the State. Elsewhere, provisions concerning prevention of discrimination or protection of minorities were adopted in the Transactions with Natives Ordinance 1958 (Papua and New Guinea), in a decree of 2 December 1957 of the Belgian Congo and in section 1(14) of the Singapore (Constitution) Order in Council, 1958.

The use of tax exemptions in relation to human rights was illustrated in Brazil by Act No. 3193, of 4 July 1957, which implemented article 31 (V) (*b*) of the Constitution, which it reiterated in its article 1: "The Union, the States, the federal district and the municipalities may not levy any tax upon places of worship of any denomination, nor upon the goods and services of political parties, educational institutions and social welfare institutions, on condition that their income is applied entirely within the country for the appropriate purposes."

Other techniques or procedures which affect economic, social and cultural rights in particular relate to the settlement of labour disputes, the representation of workers in relation to management, labour inspection, the conclusion of collective agreements, and the extension by statute of the scope of collective agreements. The contribution to this yearbook of the Ukrainian Soviet Socialist Republic includes the text of an amendment to its Labour Code relating to the procedure for the consideration of labour disputes. In the Union of Soviet Socialist Republics a decree of 15 July 1958 approved regulations concerning the rights of factory, works and local trade union committees. The correspondent of Yugoslavia has included in his contribution summaries of the regulations concerning the federal labour inspectorate of 7 February 1956 and of the instructions concerning collective agreements and the work of the social arbitration councils of 16 September 1958. In Monaco, the purpose of Act No. 639, of 11 January 1958, was to safeguard the personal situation in industrial undertakings of representatives elected by their fellow workers. There were further examples in 1958 of the implementation in Switzerland of the federal Act of 28 September 1956 permitting the cantons to extend the scope of collective agreements so as to bind employers and workers in the branch of industry or the profession in question and not already bound by the agreement.

Certain instruments adopted in 1958 made reference to the Universal Declaration of Human Rights in its entirety. Article 5 of the Statute of the Cameroons of 30 December 1958 provided that Cameroons laws and regulations were to respect, *inter alia*, the Universal Declaration. Article 1 of the Statute of Togoland of 24 August 1956, as amended by decree No. 58-187 of 22 February 1958, referred to Togoland as a republic based upon, *inter alia*, the principles set forth in the Universal Declaration.[1] According to the preamble to the Constitution of Guinea of 1958, the State of Guinea "fully endorses . . . the Universal Declaration of Human Rights".

Articles 202-3 of the Constitution of the Kingdom of the Netherlands of 1956 illustrate the general provisions, commonly included in constitutions containing provisions concerning human rights, permitting exceptions to be made to these provisions in defined emergency situations.

Reports on court decisions are included in the contributions to this volume of the governments or government-appointed correspondents of Australia, Austria, Canada, Ceylon, Costa Rica, the Federal Republic of Germany, France, India, Iran, Israel, Italy, Japan, Mexico, the Philippines, Poland, Thailand and the United States of America. (The greater part of the contribution of the Federal Republic of Germany is made up of summaries of decisions on the part of federal or Land courts.) It is impossible adequately to summarize in a short space the information on judicial decisions contained in this yearbook, but mention may be made of the instructive decisions touching upon aspects of equality which are summarized in the sections on Austria, the Federal Republic of Germany, India, Israel, Italy and the United States of America. Decisions of the courts on the validity of laws or executive acts in the light of constitutional provisions bearing on human rights are included in the sections on Austria, the Federal Republic of Germany, India, Italy, Japan, Mexico, the Philippines and the United States of America.

[1] The Statute for the Republic of Togoland of 30 December 1958 did not contain a reference to the Universal Declaration.

Parts I and II of this volume include information furnished by various governments or correspondents concerning action taken upon international agreements; the action in question has in some instances an effect in the internal legal system of the State concerned. Part III (International Agreements) contains the texts of the Discrimination (Employment and Occupation) Convention, 1958, and the Discrimination (Employment and Occupation) Recommendation, 1958, of the International Labour Organisation, extracts from the Charter of the United Arab States of 8 March 1958 and a section entitled "Status of Certain International Agreements". This last-named section contains information relating to 1958 on ratifications of, accessions to, and where applicable entry into force of thirty-seven selected multilateral agreements (and protocols to some of these) adopted since the beginning of 1946 mainly under the aegis of the United Nations, the International Labour Organisation, Unesco, the Organization of American States and the Council of Europe.

The present volume also contains a bibliography of works on human rights prepared by the United Nations headquarters library on the basis of lists of titles furnished by governments and specialized agencies under resolution 630 D (XXII) of the United Nations Economic and Social Council. It is expected that a further such bibliography will be included in the next issue of the yearbook.

Part I of this volume surveys developments in sixty-eight States and Part II events in various Trust and Non-Self-Governing Territories under the administration of six States. Most of the information contained in a volume of the *Yearbook on Human Rights* is contributed by governments or government-appointed correspondents, and these contributions occasionally refer to political or geographical entities concerning whose status or title no complete international agreement exists. For this reason it is necessary to state that the designations employed and the presentation of the material in this publication do not imply the expression of any opinion on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of the frontiers of any country or territory.

Since the appearance of the *Yearbook on Human Rights for 1957*, there has been published in English and French the first supplementary volume of the *Yearbook on Human Rights*, entitled *Freedom from Arbitrary Arrest, Detention and Exile*. This contains statements on the subject furnished by fifty-six governments.

July 1960

PART I

STATES

ARGENTINA

ACT No. 14455, MAKING LEGAL PROVISION FOR INDUSTRIAL ASSOCIATIONS OF EMPLOYEES

of 8 August 1958 [1]

SUMMARY

This Act was to govern all associations whose object is to defend the occupational interests of employees.

Employees were to be entitled to establish and become affiliated to industrial associations and trade unions in full freedom and without previous authorization. A member of an industrial association was not to forfeit his right to belong to that association because of his retirement, injury, sickness, invalidity, unemployment or military service.

Industrial associations were forbidden to discriminate between their members on grounds of political ideology, religious belief, nationality, race or sex; every industrial association was to be open to all the employees in the occupational activity concerned. All members of an association were to have the same rights and obligations.

The Act laid down the rights and duties of registered industrial associations. Industrial associations of a membership sufficient to enable them to represent a certain category of workers were, under certain conditions, to be entitled to recognition as industrial associations with trade status. When possessed of this status, an industrial association was to acquire legal personality, together with the rights and obligations laid down by law.

Employers were forbidden to take certain steps aimed at either impeding an employee from joining an association or at encouraging him to join a particular industrial association.

In addition to the right to organize and become members of industrial associations, employees were recognized as having various other rights for the purpose of defending their occupational interest, including the right to petition the authorities or their employers, either directly or through representatives.

Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1958 — Arg. 1.

[1] Published in *Boletín Oficial* No. 18747, of 24 September 1958.

AUSTRALIA

HUMAN RIGHTS IN AUSTRALIA 1958[1]

I. LEGISLATION

National Health Act 1958 (Commonwealth)

Sickness Benefits

This Act extends the existing system of Government assisted voluntary health insurance to make provision for aged persons and persons suffering from pre-existing or chronic illnesses.

Under the Act medical and hospital insurance organizations will be invited to establish special accounts for the payment of benefits to the aged and to persons with pre-existing ailments and to the chronically ill. Persons coming within those descriptions will be enabled to contribute to medical and hospital insurance at normal rates and will be paid normal rates of benefit out of the special accounts. Any deficit on the special accounts is to be made up by the Commonwealth.

Industrial Arbitration (Female Rates) Amendment Act, 1958 (New South Wales)

Equal Pay for Equal Work

This Act makes provision with respect to equal pay for male and female employees.

In the first place the Act requires the Industrial Commission of New South Wales to work on a basic wage for women fixed at 75 per cent of the male basic wage. (From 1950 the basic wage was £ 1 less than 75 per cent.)

The Act further provides that where the Industrial Commission is satisfied that male and female employees are performing work of the same or a like nature and of equal value, the same marginal rates of wages shall be fixed irrespective of the sex of the employees. Where the same marginal rates of wages have been fixed under this provision the basic wage component for the female employees is to be adjusted in accordance with the following schedule:

Year commencing 1 January	*Percentage of the appropriate basic wage for adult males*
1959	80
1960	85
1961	90
1962	95
1963 or any subsequent year	100

That is, by January 1963 female employees who have been held to be doing work equal to men's will receive equal pay.

Annual Holidays (Amendment) Act, 1958 (New South Wales)

Right to Periodic Holidays with Pay

This Act amends the Annual Holidays Act, 1944, by increasing from two to three weeks the annual holidays with pay to which workers are entitled.

Long-service Leave Act, 1958 (Western Australia)

Right to Periodic Holidays with Pay

This is an Act to provide for the granting of long-service leave to employees whose employment is not regulated under the Industrial Arbitration Act, 1912, of Western Australia.

An employee is entitled, in accordance with and subject to the provisions of the Act, to long-service leave on ordinary pay in respect of continuous employment with the same employer or with a person who is deemed to be the same employer. The entitlement in the case of an employee who has completed at least twenty years' continuous employment is thirteen weeks' leave; in respect of each additional ten years' continuous employment the entitlement is six and one-half weeks' leave. In the case of an employee who has completed at least fifteen years' continuous employment and whose employment is terminated by his death or in any circumstances other than by his employer for serious misconduct, there is an entitlement to a proportionate amount of long-service leave. In the case of an employee who has completed at least ten years' but less than fifteen years' continuous employment and whose employment is terminated (1) by his death; (2) by his employer for any reason other than serious misconduct; or (3) by the employee on account of sickness of, or injury to, the employee or domestic or other pressing necessity where such sickness or injury or necessity justifies the termination, there is an entitlement to a proportionate amount of long-service leave (section 8).

The Act sets up a Board of Reference which has the function of determining questions and disputes arising under the Act which are referred to it (section 14). An appeal lies from the Board of Reference to the Court of Arbitration (section 18).

The Act contains provisions for the enforcement of

[1] Note kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

the Act and of determinations made under the Act (sections 20-24).

Defamation Act, 1958 (New South Wales)

Protection against Attacks upon Honour and Reputation—Freedom of Expression

This is an Act to state and amend the law of New South Wales relating to defamation. The Act is patterned on the provisions relating to defamation contained in the Criminal Code of Queensland, enacted in 1899. (The Queensland provisions have already been adopted by Tasmania and Western Australia.)

Section 5 of the New South Wales Act defines defamatory matter as follows:

"Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter."

It is unlawful to publish defamatory matter unless the publication is protected and justified or excused by law (section 9).

The Act sets out the occasions on which the publication of defamatory matter is protected or justified or excused by law. Thus absolute protection from liability for defamation is extended to parliamentary and judicial proceedings (sections 11 and 12). It is lawful to publish in good faith for the information of the public certain matters of public interest (section 14). It is lawful to publish a fair comment on certain matters, including the public conduct of any person who takes part in public affairs, or respecting the character of any such person so far as his character appears in that conduct (section 15). It is lawful to publish defamatory matter if the matter is true and if it is for the public benefit that the publication complained of should be made (section 16).

The unlawful publication of defamatory matter is made an actionable wrong in respect of which damages may be recovered in civil proceedings (section 10).

Any person who unlawfully publishes any defamatory matter is liable upon criminal conviction to imprisonment for a term not exceeding one year or a penalty of such amount as the court may award, or both. If the offender knows that the defamatory matter is false, he is liable upon conviction to imprisonment for a term not exceeding two years, or a penalty of such amount as the court may award, or both (section 26).

A criminal prosecution cannot be commenced unless an order of a judge of the Supreme Court or of a district court has been obtained. Application for the order is to be made on notice to the person accused, who is to have an opportunity of being heard against the application (section 33).

Objectionable Publications Ordinance, 1958 (Australian Capital Territory) — Freedom of Expression: Limitations for Securing Morality, Public Order and General Welfare

The ordinance defines "objectionable" to mean "obscene or unduly emphasizing horror, gross cruelty or crimes of violence". "Obscene" includes "unduly emphasizing matters of sex".

Section 5 provides as follows:

"5. For the purposes of this ordinance, the court, in determining whether a publication is objectionable, shall have regard to

(*a*) The general character of the publication;

(*b*) The persons or classes of persons to or amongst whom it was published or was intended or likely to be published; and

(*c*) The tendency of the publication to deprave or corrupt those persons or persons included in any of those classes of persons, to the intent that the publication may be held to be objectionable when it tends or is likely to deprave or corrupt any of those persons or persons included in any of those classes of persons, notwithstanding that other persons may not be similarly affected."

Section 6 (1) creates a number of offences in relation to the distribution of objectionable publications. A person who contravenes any of the provisions of section 6 (1) is guilty of an offence punishable by a penalty not exceeding a fine of £500 where the offence is committed by a corporation, or in any other case a fine of £100 or imprisonment for six months (section 6 (2)). A person shall not be convicted of an offence against section 6 unless the court is satisfied that he knew or suspected or ought to have known or suspected that the publication was objectionable (section 6 (3)).

Where it appears to a magistrate by reason of an information on oath laid before him that section 6 (1) has been or is being contravened in any premises, he may issue a warrant authorizing any member of the police force to enter those premises and search for and seize all publications which appear to the member to be objectionable (section 7 (1)).

Where a publication has been seized by a member of the police force but no person has been charged with an offence under the ordinance in respect of the publication, a magistrate shall, on the application of a member of the police force, issue a summons requiring the occupier of the premises or the person from whom the publication was seized, or both, to appear before the court and show cause why the publication seized should not be forfeited (section 8 (3)).

In proceedings following on a summons, the court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the publication to intervene in the proceedings for the purpose of maintaining that the publication is not objectionable (section 8 (5)).

Where a publication has been seized and, at the expiration of fourteen days after the seizure, no person has been charged with an offence against the ordinance in respect of the publication and a summons has not been issued under section 8 (3), the publication shall be returned to the person from whom it was seized or the occupier of the premises from which it was seized (section 8 (7)).

Section 9 provides as follows:

"9.(1) For the purposes of this ordinance, the court shall not find a publication to be objectionable if it is a publication of literary or artistic merit or of a bona fide medical, legal, political, religious or scientific character unless the court is satisfied that the conduct of the person alleged to have contravened a provision of sub-section (1) of section 6 of this ordinance in relation to the publication was not justified in the circumstances of the particular case having regard, in particular, to the persons or classes of persons into whose hands the publication was intended or was likely to come.

"(2) In proceedings under this ordinance in relation to a publication alleged to be objectionable, evidence (including expert opinion) is admissible as to the literary or artistic merit, or the medical, legal, political, religious or scientific character, of the publication."

An offence against the ordinance shall not be prosecuted except with the consent of the Attorney-General or of a person authorized by him to give such consent (section 10).

II. COURT DECISIONS

Tanos v. *Commissioner of Police*

High Court of Australia[1]

Right to Hearing

Section 3 (1) of the Disorderly Houses Act, 1943 (New South Wales), provides that upon the affidavit of a superintendent or inspector of police showing reasonable grounds for suspecting that all or any of certain conditions obtain on premises, any judge of the Supreme Court may declare such premises to be a disorderly house. Drastic consequences follow on a declaration.

Regulation 1 of the regulations made under the Act provide that, if the judge is of opinion that reasonable grounds have been shown, (i) he may make a declaration immediately or (ii) if he thinks that an opportunity should be given to the owner or occupier or both to oppose the making of the declaration, he may direct them to be served and notified of the day on which the matter will be dealt with.

A judge of the Supreme Court made an *ex parte* declaration in respect of certain premises. He held that reasonable grounds had been shown for suspecting that liquor was unlawfully sold or supplied on or from the premises or had been so sold or supplied and was likely to be so sold again.

Held: that the declaration should be set aside as it had been made *ex parte*, without the party affected having an opportunity to be heard.

The following is a summary of the relevant part of the judgement of the court:

It is a deep-rooted principle of the law that before anyone can be punished or prejudiced in his person or property by any judicial or quasi-judicial proceedings he must be afforded an adequate opportunity of being heard. A long course of judicial authority has established that, although there are no positive words in a statute requiring that a party shall be heard, the justice of the common law will supply the omission of the legislature.

The rule is subject to a sufficient indication of an intention of the legislature to the contrary. Such an intention is not to be assumed; nor is it to be spelled out from indirect references, uncertain inferences or equivocal considerations. In the present statute no such evidence of a contrary intention is discoverable. But it is in a broad sense a procedural matter; and, while the general principle must prevail, it is apparent that exceptional cases may be imagined in which, because of some special hazard or cause of urgency, an immediate declaration is demanded. A power to regulate procedure might be treated as authorizing regulations allowing an *ex parte* order in such cases. Under the power conferred by s. 15 of the Act upon the Governor-in-Council to make regulations this very course seems to have been adopted.

Regulation 1 should be understood as meaning that, *prima facie*, the course provided for in paragraph (ii) should be followed, and only in exceptional and special cases should an immediate declaration be made.

In the present case no exigency existed warranting an *ex parte* declaration. The proper course, therefore, is to set aside the declaration.

ex parte *Blume:* re *Oswald*

Supreme Court of New South Wales[1]

Right to Hearing by Independent and Impartial Tribunal

A lessor, Mrs. Fischer, applied to the Fair Rents Board for an increase of the fair rent of certain flats owned by her. The stipendiary magistrate constituting the Fair Rents Board which heard the application was a friend of the applicant's husband and because of that the magistrate considered that he should not decide the application. However, other magistrates declined to hear the case and the Under-Secretary of the Department of Justice expressed the view to the magistrate that he should proceed with the hearing. The magistrate decided to go on with the case.

[1] 98 Commonwealth Law Reports 383.

[1] 75 *Weekly Notes of New South Wales* 411.

Held: that the decision of the magistrate to proceed with the hearing amounted to a failure of natural justice, in that there was a real likelihood of bias, and he should be prohibited from proceeding.

In its judgement, the court laid down the following principles:

A real likelihood of bias must be proved to exist before proceedings will be vitiated on the ground of bias. It is a likelihood of bias (whether conscious or unconscious), not certainty, that must be shown. Mere suspicion is not enough, and courts will not act on unsubstantial grounds or flimsy pretexts of bias. Mere acquaintance with the litigant should ordinarily be no ground for alleging bias, and, in a country district especially, the magistrate would be well known to men of the business community, and his personal acquaintance and social contacts with both landlords and tenants would be perfectly natural. It is a question of degree in every case.

A magistrate stands in a somewhat special position. He is at once the holder of a judicial office and a public servant subject to certain directions on administrative matters by the departmental head and to the provisions of the Public Service Act, 1902, as amended. It is a departmental rule of long standing that the judicial functions of magistrates are not interfered with by the department, and that it is not competent for the minister or any member of the executive to give any direction affecting his judicial functions as a judicial officer. In the present case the Under-Secretary had no authority to direct the magistrate. However, the court felt that the Under-Secretary did not intend to give any such direction.

in re *Beard* v. *W. R. Rolph & Sons Pty. Ltd.*

Supreme Court of Tasmania[1]

Right to Fair Hearing — Freedom of Expression

Beard, the medical superintendent of a public hospital conducted under the Hospitals Act, 1918 (Tasmania), brought an action for defamation against a newspaper in respect of statements which appeared in the newspaper. The statements related to a dispute concerning the administration of the hospital.

Subsequently, the same newspaper published an article containing a number of questions about the dispute addressed to the Minister for Health, who was responsible for the administration of the Hospitals Act and was a party to the dispute. The questions in the article referred to Beard in such a way as to be likely to lower him in the eyes of the public.

Beard applied to the Supreme Court for an order committing the managing director of the newspaper on the ground that the second article constituted contempt of court.

Held: that (1) The publication of the article would prejudice the fair trial of the defamation action and was a contempt of court;

(2) The interest of the public in being informed on matters of legitimate public concern did not outweigh the interest of the public that individual litigants should have a fair trial;

(3) The managing director, though legally responsible for the contempt, should not be imprisoned and, having apologized, should only pay costs.

The following is an extract of the judgement of Gibson, J.:

"During the hearing of the application there was some discussion of the competing principles of the interest of the public in being informed by the press of the country of matters of legitimate public concern, and the interest of the public in the principle that individual litigants are entitled to be protected from prejudice in popular estimation while their causes are pending. In *ex parte* Bread Manufacturers Ltd.; *re* Truth and Sportsman Ltd. (37 State Reports of New South Wales 242, at p. 244), Jordan, C. J., giving the judgement of the full court, indicated that in some cases the interests of a litigant in proceeding to trial without prejudice might be required to yield to "other and superior considerations", involving the discussion of public affairs and the denunciation of public abuses, provided there were no intention to prejudice. But recently, in *ex parte* Kear; *re* Consolidated Press Ltd. (71 *Weekly Notes of New South Wales* 52, at p. 54) the judgement of the full court of the Supreme Court of the same state, after referring to the freedom of the press, proceeds: — "But there are definite limits to this freedom, and it can never be allowed to degenerate into a licence to publish material which tends to obstruct or pervert the course of justice, and nothing can excuse the publication of such material."

"The limits of publication of the facts of an alleged crime are discussed in *Packer* v. *Peacock* (13 *Commonwealth Law Reports* 577) and *Davis* v. *Baillie* (1946) (*Victorian Law Reports* 486), and in both cases the principle that pending trials must not be prejudiced one way or the other by publications in newspapers is treated as paramount. Possibly, in civil cases at least, the rule might be relaxed in circumstances where the prompt and full discussion of matters of great public importance is desirable, and the interest of the individual litigant might not be allowed to stand in the way, for both principles rest on public policy. But in the present case I do not think that the applicant is required to have his right to an unprejudiced trial abated for the purpose of satisfying the entirely natural and legitimate interest of the public in the administration of public hospitals and the proper limits of ministerial supervision and intervention. But the existence of public interest in those matters and the right and duty of the press to gratify that interest in a proper manner — a task calling for considerable editorial discretion — is a matter which may fairly be taken into consideration in the matter of penalty."

[1] (1955) *Tasmanian State Reports* 19.

Jones v. *Gordon and Gotch (Australasia) Ltd.*; ex parte *Jones*

Supreme Court of Queensland[1]

Freedom of Expression — Limitations for Securing Morality, Public Order and General Welfare

Section 10 (2) of the Objectionable Literature Act 1954 (Queensland)[2] provides that a person shall not distribute any literature at any time when the distribution of that literature is prohibited by an order of the Literature Board of Review. Section 10 (3) (*a*) (i) provides that an order prohibiting the distribution of any literature shall apply with respect to all copies of that literature including, in appropriate cases, all copies of every edition, part, number or series thereof. Section 18 (2) provides:

"In determining whether or not literature alleged in any proceeding under or for a purpose of this Act to be the subject of an order of prohibition made by the Board, is the literature subjected to that order, the court shall disregard any and every reconstruction (whether by way of alteration in title, change of subject characters, story or other features, or otherwise however) of that literature made on or after the date when the order became effective, and while that order remains in force, and evidence proving or tending to prove any such reconstruction shall be admissible."

A company was charged before a stipendiary magistrate with distributing literature — namely, a publication entitled *First Kiss*, at a time when the distribution in Queensland of that literature under the title *Love Secrets* was prohibited by an order of the Literature Board of Review made under the Objectionable Literature Act.

The two publications were of the romance comic *genre* and there were close similarities between the set-up of both publications.

Held: (1) that it had not been shown that *First Kiss* was a copy of any edition or of any part of or of any number of any series of the banned literature *Love Secrets* and therefore the offence charged had not been established.

(2) The general theme of both booklets was the same, but the theme was one common to thousands of books both classical and non-classical.

(3) Section 18 (2) directed that "reconstruction" must be disregarded, but did not say what should be regarded. What had to be regarded were the matters set out in section 10 (3) (*a*) (i), and that section did not effectively extend the banning of *Love Secrets* to include *First Kiss*.

[1] (1958) *Queensland Reports* 302.

[2] See *Yearbook on Human Rights for 1954*, p. 9.

AUSTRIA

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JUDICIAL DECISIONS, 1958 [1]

A. LEGISLATION

(Acts and Ordinances)

I. Fundamental Freedoms

1. *Right to own Property*

(*a*) The Fifth, Sixth, Seventh and Eighth State Treaty Administration Acts (*BGBl.* Nos. 16, 131, 148 and 149/1958) regulate matters of property rights arising in connexion with the Austrian State Treaty.

(*b*) Federal Act *BGBl.* No. 285/1958 embodied several amendments to the Act respecting reception organizations (*BGBl.* No. 73/1957), by which "collection agencies" were established for the purpose of receiving claims for the property, legal rights and interests referred to in article 26, paragraph 1, of the Austrian State Treaty (see *Yearbook on Human Rights for 1957*, p. 13).

(*c*) Federal Act *BGBl.* No. 294/1958 amends Federal Act *BGBl.* No. 269/1955 (which laid down rules for the implementation of article 26 of the State Treaty in respect of ecclesiastical property), and in particular provides for advance payments to meet the claims of certain churches.

(*d*) Federal Act *BGBl.* No. 130/1958 is designed to provide compensation for infringements of personal property rights arising from the seizure of life insurance claims by the German Reich.

(*e*) The Act governing implementation of the Property Agreement (*BGBl.* No. 132/1958) provides measures in connexion with the Agreement between the Federal Republic of Germany and the Republic of Austria governing their relations in respect of property law (*BGBl.* No. 119/1958).

(*f*) Federal Acts *BGBl.* No. 29 and 36/1958 cater for the protection of intellectual property (protection of patents and trade-marks), and are also designed to clear up certain situations caused by the war.

(*g*) Under the Act relating to damage sustained during the occupation (*BGBl.* No. 126/1958) and the Act relating to physical damage sustained during the war and as the result of persecution (*BGBl.* No. 127/1958), the State undertakes to provide compensation to some extent for certain varieties of property damage sustained as the result of political persecution or as the result of events occurring during or after the war.

(*h*) The Inheritance Act (*BGBl.* No. 106/1958) lays down special provisions governing succession with regard to certain types of agricultural enterprise.

2. *Right to a Proper Hearing*

Through the Civil Service Procedure Act (*BGBl.* No. 54/1958), the procedure to be followed by government offices in their official, legal relations with bodies within the territory is now subject to detailed legal regulation.

3. *Right to Effective Remedies*

The right to effective remedies against violations of fundamental rights was given broader scope by Federal Constitutional Act *BGBl.* No. 12/1958, the competence of the Constitutional Court being extended to cover the verification of election results.

4. *Right to Participate in the Formation of National Policy*

The Referendum Act (*BGBl.* No. 13/1958) lays down rules for carrying out the referenda provided for in the Austrian Federal Constitution.

II. Cultural Rights

1. In an ordinance dated 20 June 1958 (*BGBl.* No. 158), the Federal Ministry of Education issued new regulations concerning the membership of the Austrian National Commission for UNESCO.

2. Federal Act *BGBl.* No. 282/1958 deals with the ban on the export and sale of objects of cultural or historical value.

III. Social Rights

1. The Hospitals Act (*BGBl.* No. 1/1957), referred to in *Yearbook on Human Rights for 1957*, p. 13, was amended by Federal Act *BGBl.* No. 27/1958, which provides for a government subsidy to meet the operating deficit of public hospitals.

2. Under Federal Act *BGBl.* No. 157/1958, social insurance is provided for persons practising the visual arts.

3. Federal Act *BGBl.* No. 159/1958 lays down rules governing retirement and maintenance benefits for employees of the Federal Theatre. On 30 July 1958, the Federal Ministry of Education issued an administrative ordinance (*BGBl.* No. 181) for this Act dealing in particular with pre-service credits.

[1] Information kindly furnished by courtesy of the Permanent Representative of Austria to the United Nations. Translation by the United Nations Secretariat.

Authors' Rights

Act No. 3447 of 23 October 1958 (*Collection of Acts*, 1958, vol. VII, page 5) amended article 649 of the Civil Code so as to read as follows:

"*Art. 649.* The author of a literary, scientific or artistic work shall have the exclusive right to reproduce that work.

"1. The heirs and successors of the author shall enjoy this right for a period of sixty years from the date of his death.

"2. If the author dies without heirs or successors up to the second degree, the work shall become public property.

"3. If the succession falls to the children, parents or spouse of the author, the time-limit specified in paragraph 1 shall not apply, and the right shall only be extinguished at the death of the successor."

BULGARIA

NOTE ON HUMAN RIGHTS LEGISLATION IN THE PEOPLE'S REPUBLIC OF BULGARIA IN 1958[1]

I. NATIONAL LEGISLATION

1. *Status of Manual and Nonmanual Workers — Social Insurance*

As stated in the *Yearbook on Human Rights for 1957*, substantial improvements were made in Bulgaria during that year with respect to the social and economic rights of manual and non-manual workers, as also in the matter of social insurance. In 1958 this legislation was further developed by the promulgation of a series of regulations dealing in detail with certain chapters of the Labour Code and gradually establishing a more systematic and comprehensive body of regulations on the subject.

Examples of that development in the matter of the social and economic rights of manual and non-manual workers are to be found in the ordinance respecting leave for manual and non-manual workers (*Izvestia* of the Presidium of the National Assembly, No. 20, of 11 February 1958),[2] the ordinance respecting the hours of work and rest of manual and non-manual workers (*Izvestia* of the Presidium of the National Assembly, No. 21, of 14 March 1958),[3] the ordinance respecting the remuneration payable in the event of stoppages of work, replacement, parallel employment, etc. (*Izvestia* of the Presidium of the National Assembly, No. 58, of 22 July 1958), and so forth. In the co-operative sector, mention should be made of the Ordinance respecting indemnities payable in the event of termination or of loss of membership in craftsmen's co-operatives (*Izvestia* of the Presidium of the National Assembly, No. 86, of 28 October 1958).

In the matter of social insurance, the entire subject of pensions, indemnities and relief benefits in cash to manual and non-manual workers has been dealt with in detail in the regulations respecting the application of chapter III of the Labour Code (*Izvestia* of the Presidium of the National Assembly, No. 30, of 15 April 1958). Similarly, an ordinance published in *Izvestia* No. 29, of 11 April 1958, lays down social insurance regulations for men of letters, lawyers and drivers working with their own vehicles; thus the social insurance scheme is being extended to persons whose occupation lies outside the public or co-operative sector.

2. *Increased Participation of Workers and Their Organizations in Economic Life*

A major step was taken in this field with the enactment of order No. 55 of the Central Committee of the Bulgarian Communist Party, the Council of Ministers and the Central Council of Trade Unions, respecting the extension of rights of heads of undertakings, trade union organs and organizations, and the eventual participation of workers in production (*Izvestia* of the Presidium of the National Assembly, No. 27, of 4 April 1958).

3. *Legal Protection of the Rights of Citizens in Respect of Labour*

Legislation in this field was expanded in 1958. For example, the regulations respecting labour disputes (*Izvestia* of the Presidium of the National Assembly, No. 17, of 28 February 1958) define in detail the provisions of the Labour Code governing proceedings before conciliation boards, trade union organs, administrative bodies and courts of law. Furthermore, a judicial right of appeal has been instituted against the decisions of urban and rural co-operative organizations; cf. article 12, paragraph 4, of the Act amending and supplementing the Act respecting co-operatives (*Izvestia* of the Presidium of the National Assembly, No. 90, of 11 November 1958) and article 10 of the decree on the approval of the model statute of co-operative farms and on state supervision and control of agricultural co-operatives (*Izvestia* of the Presidium of the National Assembly, No. 14, of 18 February 1958).

4. *Housing*

The regulations respecting the extension of credit for house building (*Izvestia* of the Presidium of the National Assembly, No. 94, of 25 November 1958) contain extensive provisions governing the granting of State loans to Bulgarian citizens for purposes of house building, in line with the general scheme of housing economy, and the more particular cases of loans to miners, industrial workers and others, loans to owners of expropriated buildings for housing construction, and loans to victims of social calamities. The granting of short-term bank loans to the people's

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[1] Note prepared in French by Professor Anguel Anguéloff of the University of Sofia, Legal Adviser to the Ministry of Foreign Affairs, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] See International Labour Office: *Legislative Series* 1958 — Bul. 4.

[3] See International Labour Office: *Legislative Series* 1958 — Bul. 3.

councils for the construction of housing to be sold to citizens is also dealt with (articles 73 *et seq.*).

II. INTERNATIONAL AGREEMENTS[1]

1. Decree No. 215, of 10 July 1958 (*Izvestia* of the Presidium of the National Assembly, No. 64, of 12 August 1958) ratifies the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery.

2. An agreement regarding social insurance was concluded between the People's Republic of Bulgaria and the Federal People's Republic of Yugoslavia (ratified by decree No. 115, published in the *Izvestia* of the Presidium of the National Assembly, No. 69, of 29 August 1958).

3. The cultural agreement concluded on 19 October 1957 between the People's Republic of Bulgaria and the Republic of Egypt was published in the *Izvestia* of the Presidium of the National Assembly, No. 62, of 5 August 1958. Some of the provisions of the agreement are designed to ensure the recognition of mutual rights in the cultural field — e.g., the establishment of an equivalence of degrees and scientific diplomas conferred by the universities and educational institutions of the two countries.

[1] See also p. 312–313.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC[1]

FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1958

Extracts from the report of the Statistical Board of the Byelorussian SSR

The following information illustrates the improvement in the material well-being and cultural level of the Byelorussian people during 1958.

The republic is making good progress in carrying out the decision of 20 November 1957 of the Central Committee of the Byelorussian Communist Party and the Council of Ministers of the Byelorussian SSR, concerning the development of housing construction in the Byelorussian SSR.

The 1958 target set by this decision for housing to be brought into use by both state and individual building was more than fulfilled. Houses providing over 950,000 square metres of living space were constructed and brought into use by state and co-operative organizations. Houses providing over 700,000 square metres of living space were built in towns, urban settlements, machine and tractor stations, tractor repair stations, state farms and lumber camps by private individuals at their own expense and with the aid of state loans. In addition, over 28,000 houses were built by collective farmers and members of the rural intelligentsia.

The annual plan of capital investment in housing construction financed by appropriations under the state plan was fulfilled in the republic as a whole by 101 per cent.

During the past year, there was an increased state investment in the construction of buildings providing educational, cultural, public health and other community services.

The average number of manual and non-manual workers employed in the national economy of the Byelorussian SSR for the year 1958 exceeded 1,480,000.

The number of workers employed in industry and construction, on state farms and in transport and communications increased during the year by over 55,000, while the number of workers employed in schools, other educational establishments, institutions engaged in scientific research, cultural education and public health, and in trade and community services rose by 20,000.

In 1958, approximately 22,000 young skilled workers graduated from institutes and schools of the labour reserves system and were assigned to industry, construction, transport or agriculture. In the same year, more than 170,000 manual and non-manual workers improved their qualifications or acquired new skills through individual training as a member of a team or by taking courses of instruction.

Sales of various types of foodstuffs in state and co-operative shops showed the following increases over 1957: meat, sausages and other meat products, 20 per cent; animal oil, 22 per cent; milk and milk products, 19 per cent; sugar, 21 per cent; and confectionery, 5 per cent.

Sales of many manufactured goods increased. Woollen fabrics by 31 per cent; ready-made clothing by 14 per cent; knitted goods by 22 per cent; leather footwear by 18 per cent; furniture by 20 per cent; sewing machines by 12 per cent; refrigerators by 68 per cent; television sets by 160 per cent.

The year 1958 was marked by further progress in the development of culture and public health. The number of students attending general education schools, including schools for workers, young people in rural areas and adults, in the 1958/59 academic year, was over 11,000 higher than in the preceding academic year. There was an increase in the number of secondary schools.

Approximately 111,000 students (including correspondence-course students) took courses of study at higher and specialized secondary educational establishments. Of the students admitted to the day departments of higher educational establishments in 1958, 52 per cent were young people who had completed a period of practical work after finishing their secondary studies.

In 1958, the number of workers studying in higher and specialized secondary educational establishments without separation from production were 40,200, or 13 per cent more than in 1957.

Over 26,000 young specialists graduated from higher and specialized secondary educational establishments of the Byelorussian SSR in 1958. They included some 8,000 engineers and technologists — or 41 per cent more than in 1957 — who went into industry, construction, transport and communications.

The number of scientific workers in the Republic rose to 9 per cent above the 1957 figure.

[1] Texts kindly furnished by the Minister for Foreign Affairs of the Byelorussian Soviet Socialist Republic. Translation by the United Nations Secretariat.

Theatre and cinema attendances showed increases over 1957 of 12 per cent in the case of cinema attendances, and 13 per cent in the case of theatre attendances.

New hospitals, crèches and kindergartens were opened. The number of hospital beds rose by 6 per cent, and of places in permanent crèches by 11 per cent. The number of children who spent holidays in pioneer camps and day camps in 1958 was 6 per cent higher than in 1957.

(Published in the newspaper *Sovetskaya Byelorussiya*, No. 19/8417, 23 January 1959.)

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC FOR 1958

of 29 January 1958

EXTRACTS

The Supreme Soviet of the Byelorussian Soviet Socialist Republic hereby resolves:

Art. 1. To approve the state budget of the Byelorussian SSR for 1958 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the Budget Commission of the Supreme Soviet of the Byelorussian SSR, providing for total revenue and expenditure of 9,938,087,000 roubles.

Art. 2. To establish the revenue from state and co-operative undertakings and organizations under the state budget of the Byeolorussian SSR for 1958 at the sum of 8,554,256,000 roubles.

Art. 3. To provide for investment in the national economy funds of 8,462,298,000 roubles, of which the sum of 5,392,275,000 roubles shall be appropriated under the state budget of the Byelorussian SSR for 1958, and the sum of 3,070,023,000 roubles shall be provided by undertakings and economic organizations from their own resources.

Art. 4. To appropriate under the state budget of the Byelorussian SSR for 1958 funds totalling 3,914,459,000 roubles for social and cultural expenditure — general education schools, specialized vocational secondary schools, higher education institutions, scientific research establishments, libraries, clubs, theatres, the Press and other educational and cultural activities; hospitals, crèches, sanatoria and other public health and physical culture establishments; pensions and allowances. . . .

(Published in the proceedings of the seventh session of the Supreme Soviet of the Byelorussian SSR (fourth convocation), 28-29 January 1958, Minsk, 1958.)

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ABOLISHING DEPRIVATION OF ELECTORAL RIGHTS BY COURT DECISION

of 27 December 1958

In accordance with the Act of 25 December 1958 of the USSR abolishing deprivation of electoral rights by court decision, the Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

1. To abolish deprivation of electoral rights by court decision as a penalty for criminal offences.

All sentences of deprivation of electoral rights pronounced by courts of the Byelorussian SSR are hereby annulled.

2. To submit for the consideration of the Supreme Soviet of the Byelorussian SSR a proposal for the corresponding amendment of article 110 of the Constitution of the Byelorussian SSR.

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 12, December 1958.)

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLES 2, 14 AND 21 OF THE REGULATIONS FOR ELECTIONS TO THE SOVIETS OF WORKING PEOPLE'S DEPUTIES OF REGIONS, DISTRICTS, CITIES, RURAL LOCALITIES AND SETTLEMENTS OF THE BYELORUSSIAN SSR

of 29 December 1958

In accordance with the order of the Presidium of the Supreme Soviet of the Byelorussian SSR of 27 December 1958 abolishing deprivation of electoral rights by court decision, articles 2, 14 and 21 of the regulations for elections to the Soviets of working people's deputies of regions, districts, cities, rural localities and settlements of the Byelorussian SSR shall be amended to read as follows:

Article 2. In accordance with article 110 of the Constitution of the Byelorussian SSR, elections of deputies are universal: all citizens of the Byelorussian SSR who have reached the age of eighteen, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, have the right to vote in the election of deputies and to be elected to Soviets of working people's deputies, with the exception of persons who have been duly adjudged insane.

Article 14. The names of persons who have been duly adjudged insane shall not be included in electoral registers.

Article 21. Errors in an electoral register (omission or removal from the register, incorrect surname, Christian name or patronymic) shall be reported to the executive committee of the Soviet of working people's deputies which published the register; the said committee shall examine every report of an error in the electoral register within a period of three days.

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 12, December 1958.)

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLES 2, 15 AND 22 OF THE REGULATIONS FOR ELECTIONS TO THE SUPREME SOVIET OF THE BYELORUSSIAN SSR

of 29 December 1958

In accordance with the order of the Presidium of the Supreme Soviet of the Byelorussian SSR of 27 December 1958 abolishing deprivation of electoral rights by court decision, articles 2, 15 and 22 of the regulations for elections to the Supreme Soviet of the Byelorussian SSR shall be amended to read as follows:

Article 2. In accordance with article 110 of the Constitution of the Byelorussian SSR, elections of deputies are universal: all citizens of the Byelorussian SSR who have reached the age of eighteen, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, have the right to vote in the election of deputies, with the exception of persons who have been duly adjudged insane.

Article 15. The names of persons who have been duly adjudged insane shall not be included in electoral registers.

Article 22. Errors in an electoral register (omission or removal from the register, incorrect surname, Christian name or patronymic) shall be reported to the executive committee of the soviet of working people's deputies which published the register: the said committee shall examine every report of an error in the electoral register within a period of three days.

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 12, December, 1958).

CAMBODIA

NOTE

The Minister for Foreign Affairs of Cambodia has informed the Secretary-General of the United Nations that no statutes or decrees affecting human rights were adopted in Cambodia in 1958.

CANADA

HUMAN RIGHTS IN 1958[1]

I. FEDERAL LEGISLATION

Hospital Insurance

The Hospital Insurance and Diagnostic Services Act (*Yearbook on Human Rights for 1957*, p. 26), which was designed to bring into effect a national hospital insurance scheme, was amended in 1958 to remove the stipulation that federal contributions would only be made when at least six provinces had concluded agreements with the Federal Government and had their provincial hospital insurance laws in force.[2] The amending Act authorized federal contributions to be made as of 1 July 1958 to any participating province with a plan in operation. Regulations were issued[3] providing that insured persons moving from the province of residence will retain their residence for the purposes of the Act for a period of up to three months. Agreements with the provinces of Manitoba, Newfoundland, Saskatchewan, Alberta and British Columbia became effective on 1 July 1958; and with Ontario and Nova Scotia on 1 January 1959.

Annual Vacations

An Act was passed providing that in the designated interprovincial industries subject to federal jurisdiction employees are to be given an annual paid vacation of one or two weeks depending on length of service. An employee with two years' or more service is entitled to at least two weeks' vacation each year. A change of ownership of the undertaking in which he is employed does not affect this right.[4]

Censorship of Imports

Under the Customs Tariff Act, books, pamphlets, pictures or representations of any kind of a treasonable or seditious, or of an immoral or indecent character, are listed among the prohibited goods which may not be imported into Canada.[5]

In 1958 an amendment to the Customs Act[6] changed the procedure for hearing appeals from a decision of a customs official under this provision. A procedure has now been established for the hearing of appeals by district court judges instead of by the Tariff Board as formerly.

II. PROVINCIAL LEGISLATION

Hospital Insurance

The carrying out of the hospital insurance scheme has to be achieved through provincial legislation. Two provinces, Saskatchewan and British Columbia, have had hospital insurance plans in operation for a number of years. Their legislation was amended in 1958 to provide for cost-sharing agreements with the federal government.[7]

The Alberta legislation was amended to integrate various hospitalization schemes in effect in the province into a single plan and to make it possible to secure the federal contribution.[8] Similarly Hospital Insurance Regulations[9] were issued under the Hospital Insurance (Agreement) Act, 1957, in Newfoundland to provide for participation in the federal-provincial programme.

The Nova Scotia Hospital Insurance Act,[10] the New Brunswick Hospital Care Insurance Act,[11] the Ontario Hospital Services Commission Amendment Act[12] and the Manitoba Hospital Services Insurance Act[13] made provision for the introduction of hospital insurance, with federal assistance, in those provinces.

Anti-discrimination Legislation

In Ontario, an Act was passed providing for the establishment of an Anti-discrimination Commission to give advice and make recommendations concerning the three provincial anti-discrimination Acts[14] and to develop and conduct an educational programme designed to acquaint the public with the requirements of the law and to promote the elimination of discriminatory practices.[15]

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[1] Note kindly furnished by the Permanent Representative of Canada to the United Nations.

[2] *Statutes of Canada*, 1958, c. 6.

[3] Amendment to *Hospital Insurance Regulations*, SOR/58-84, approved by P.C. 1958-916, June 27, 1958 (SOR/58-261).

[4] *Statutes of Canada*, 1958, c. 24.

[5] *R.S. Canada*, 1952, c. 60, Schedule C, s. 1201.

[6] *Statutes of Canada*, 1958, c. 26.

[7] *Statutes of Saskatchewan*, 1958, c. 32; *Statutes of British Columbia*, 1958, c. 20.

[8] *Statutes of Alberta*, 1958, c. 26.

[9] *Hospital Insurance Regulations*, 1958, May 20, 1958.

[10] *Statutes of Nova Scotia*, 1958, c. 3.

[11] *Statutes of New Brunswick*, 1958, c. 8.

[12] *Statutes of Ontario*, 1958, c. 39.

[13] *Statutes of Manitoba*, 1958, c. 24.

[14] See *Yearbook on Human Rights for 1951*, pp. 38-40; and *Yearbook on Human Rights for 1954*, p. 44.

[15] *Statutes of Ontario*, 1958, c. 70.

Labour Relations

In Manitoba, an amendment to the Labour Relations Act[1] gave collective bargaining rights to employees of certain Crown companies.

The Prince Edward Island Trade Union Act[2] was amended to provide for a conciliation service to assist parties to industrial disputes in settling their differences.

Annual Paid Vacations

The Nova Scotia Legislature passed a Vacation Pay Act providing for one week's vacation after one year's employment, effective from 1 January 1959.[3] The Saskatchewan Annual Holidays Act, which had provided for a two-week vacation after a year's service, was amended to give employees an additional week after five years.[4] The New Brunswick Vacation Pay Act, previously limited to mining and construction, was extended to employees engaged in the processing of fish, fruit or vegetables.[5]

Workmen's Compensation

A number of provincial workmen's compensation laws were amended to provide increased benefits to workmen or their dependents. In Manitoba,[6] the amounts of compensation payable to widows, invalid widowers and dependent children were increased with corresponding changes in the maximum compensation payable in death cases. The New Brunswick Legislature[7] raised the rate of compensation for disability, brought the pensions of widows and invalid widowers who had been paid according to a lower scale of benefits up to the current level and authorized increased expenditures for the rehabilitation of injured workmen. In Prince Edward Island,[8] the ceiling on annual earnings that may be taken into account in computing compensation was raised, as was the maximum monthly amount payable to a widow and children. In Ontario,[9] the allowance for funeral expenses and the lump sum payment to a widow upon the death of her husband were increased. The Newfoundland Legislature[10] authorized increased expenditures for rehabilitation purposes.

Child Welfare

Changes were made in legislation governing adoption in Ontario and in Alberta. The effect of the amendments in Ontario[11] is to ensure that for all purposes the adopted child, upon an adoption order having been made by the court, becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child as if the adopted child had been born in lawful wedlock to the adopting parent. The previous legislation left the status of an adopted child in doubt in some respects. Safeguards were also added to ensure that the natural parent or parents, in giving consent to adoption, appreciate fully the significance of the decision. An amendment to the Vital Statistics Act[12] requires the registrar of births, on receiving a certified copy of an adoption order, to make a new registration of birth in accordance with the facts on the adoption order. Where an application is made for a birth certificate, it is to be issued in accordance with the new registration.

Similar amendments to clarify the position of an adopted child were made in Alberta.[13]

III. JUDICIAL DECISIONS

On 28 January 1958, the Supreme Court of Canada dismissed the appeal of two municipal police officers whom a provincial appeal court had found liable for damages for false arrest and imprisonment.

The case arose when a deputy chief constable ordered a woman arrested without warrant, after receiving complaints that she had been acting in a disorderly manner and appeared to be mentally ill. The order was made under authority of section 15 of the Saskatchewan Mental Hygiene Act, which provides:

"Any person, apparently mentally ill or mentally defective and conducting himself in a manner which in a normal person would be disorderly, may be apprehended without warrant by any constable or peace officer and detained until the question of his mental condition is determined under section 12."

When arrested, she was at her office and behaving in a normal manner. She was taken to the psychiatric ward of the local hospital and then transferred to the provincial mental hospital, where she was examined by two experts in mental illness, given treatment and then discharged.

More than six months later, the woman sued for damages for false arrest. The trial court dismissed the action, but the court of appeal allowed the appeal and awarded her damages for false imprisonment. The two police officers then appealed to the Supreme Court of Canada.

The Supreme Court affirmed the judgement of the Court of Appeal, holding that the arrest was not authorized by section 15 because the woman was acting normally at the time of arrest.

The officers, said the Court, were not protected by the section of the Act which prohibits proceedings against persons acting under section 15 provided they

[1] *Statutes of Manitoba*, 1958, c. 29.
[2] *Statutes of Prince Edward Island*, 1958, c. 31.
[3] *Statutes of Nova Scotia*, 1958, c. 14.
[4] *Statutes of Saskatchewan*, 1958, c. 93, 94.
[5] *Statutes of New Brunswick*, 1958, c. 16.
[6] *Statutes of Manitoba*, 1958, c. 75.
[7] *Statutes of New Brunswick*, 1958, c. 59.
[8] *Statutes of Prince Edward Island*, 1958, c. 33.
[9] *Statutes of Ontario*, 1958, c. 123.
[10] *Statutes of Newfoundland*, 1958, c. 3.
[11] *Statutes of Ontario*, 1958, c. 11.
[12] *Statutes of Ontario*, 1958, c. 122.
[13] *Statutes of Alberta*, 1958, c. 8.

act in good faith and with reasonable care because they failed to act with reasonable care in ordering and executing such a stringent action as arrest without warrant when the woman was not disorderly and had not been disorderly for some time.

The six-month limitation on proceedings also did not apply because the provision only applies to cases where there is a *bona fide* belief in the facts. In the opinion of the Court, the appellants could not have had a *bona fide* belief in the justifying fact, that the respondent was acting disorderly, for the simple reason that she was obviously acting quite normally. The Court therefore dismissed the appeal with costs. (Beatty and Mackie *v.* Kozak (1958), 13 D.L.R. (2d), part 1, p. 1.)

CEYLON

NOTE[1]

I. LEGISLATION

1. *Paddy Lands Act, No. 1 of 1958*

This is an Act to provide security of tenure to tenant cultivators of paddy lands; to specify the rent payable by tenant cultivators to landlords; to enable the wages of agricultural labourers to be fixed by cultivation committees and agricultural labourers to be appointed as tenant cultivators and collective farmers; to provide for the consolidation of holdings of paddy lands, the establishment of collective farms for paddy cultivation, and the regulation of the interest on loans to paddy cultivators and the charges made for the hire by paddy cultivators of implements and buffaloes; to make provision for the establishment of cultivation committees; to specify the powers and duties of such committees; to confer and impose certain powers and duties on the Commissioner of Agrarian Services; to abolish the liability of proprietors within the meaning of the Irrigation Ordinance, No. 32 of 1946, to pay remuneration to the irrigation headman; to control the alienation of paddy lands to persons who are not citizens of Ceylon; to repeal the Paddy Lands Act, No. 1 of 1953; and to provide for matters connected with or incidental to the matters aforesaid.

2. *Maternity Benefits (Amendment) Act, No. 6 of 1958*

This Act provided against the termination of employment of women workers because of pregnancy or confinement or of illness in consequence thereof. It prohibited the employer from employing a woman during her pregnancy on any such work as may be injurious to her or her child, and provided for heavy penalties for the contravention of the provisions of the Act. This Act also extended the scope of the establishments to which the provisions of the Act would apply. Whereas before the passing of this Act the provisions for maternity benefits applied to a shop, mine, estate or factory in which the women workers were employed, this Act provided for any establishment to be prescribed by name or for the Act to apply to any establishment in which any prescribed trade, business, industry or occupation is carried on. Further, the Act sought to place the onus on an employer to prove that the employment of a woman worker was terminated by reason of some fact other than pregnancy or confinement or any illness consequent to pregnancy or confinement whenever such employer was prosecuted for terminating the employment of a woman on the ground of pregnancy or confinement.

3. *Conciliation Boards Act, No. 10 of 1958*

This is an Act to provide for the establishment of conciliation boards in village areas and in such other areas as may be determined by the Minister of Justice, to define the powers and duties of such boards, and to make provision for matters consequential or incidental thereto. The objects and reasons of this Act are as follows:

(i) To establish Conciliation Boards in village areas and such other areas as may be determined by the Minister of Justice by Order published in the Gazette.

(ii) To empower such Boards –

(*a*) To settle amicably civil disputes occurring within the limits of the jurisdiction of such boards;

(*b*) In the case of any such offence specified in part I of the schedule to the Act as is committed within the aforesaid limits, to compound that offence with the consent of the parties concerned; and

(*c*) In the case of any such offence specified in part II of the schedule to the Act as is committed within the aforesaid limits, to recommend to the Attorney-General, with the consent of the parties concerned, that his consent may be given to the compounding of that offence.

(iii) To permit proceedings in respect of a civil dispute that has occurred within the area of jurisdiction of a conciliation board to be instituted in a court only if such board has failed to settle such dispute, or if a settlement of such dispute made by such board has been repudiated by all or any of the parties to it;

(iv) To permit a prosecution for any such offence specified in part I of the schedule to the Act as is alleged to have been committed within the area of jurisdiction of a conciliation board to be instituted in a court only if the alleged offence has been inquired into by such board and has not been compounded;

(v) To permit a prosecution for any such offence specified in part II of the schedule to the Act as is alleged to have been committed within the area of jurisdiction of a conciliation board to be instituted in a court only if the alleged offence has been inquired into by such board, and a recommendation has or has not been made to the Attorney-General that his consent may be given to the compounding of that offence.

[1] Note kindly furnished by the Minister of External Affairs of Ceylon.

Litigation and prosecutions in court not only are expensive and protracted, but also aggravate the enmity among the parties concerned. The Conciliation Boards Act is intended to provide an inexpensive and speedy means of promoting harmony among persons estranged by civil disputes or breaches of certain penal laws by amicably settling those disputes and compounding the offences arising out of those breaches.

4. *Employees' Provident Fund Act, No. 15 of 1958*

The object of this Act was to establish a provident fund for the benefit of certain classes of employees, and to provide for matters connected therewith or incidental thereto. The Act was made to apply to all employees in an employment declared by regulation under the Act to be a covered employment. The word "employee" was given a wide interpretation in this Act, and included even an apprentice or a learner who was paid remuneration.

5. *Suspension of Capital Punishment Act, No. 20 of 1958*

The object of this Act was to suspend the imposition of capital punishment for murder and the abetment of suicide, and to prescribe other punishments for these offences. The punishment thus substituted in lieu of the sentence of death under this Act was rigorous imprisonment for life. The Act was to continue in force for a trial period of three years, and then expire unless Parliament by resolution declares the Act to continue in force for such further period as may be specified in the resolution.

6. *Medical Wants (Amendment) Act, No. 35 of 1958*

This Act provided for improved remuneration to be paid by superintendents of estates for medical services rendered to sick labourers. It also provided for the supply to each child under the age of one year resident upon the estate, at the cost of the estate, of such quantity of milk as may be prescribed.

II. JUDICIAL DECISIONS

The following are among the important judicial decisions of the Supreme Court of Ceylon, and of the Privy Council on appeals from the Supreme Court, concerning human rights.

1. *Tennekoon (Commissioner for Registration of Indian and Pakistani Residents)* v. *P. K. Duraisamy (Privy Council) (1958)*. 59 New Law Reports, *p. 481*

It was held in this case, among other things, that section 6 (1) of the Indian and Pakistani Registration (Citizenship) Act No. 3 of 1949, read with section 22 (as amended by section 4 of Act No. 37 of 1950), places upon the applicant for registration the burden of proving that he has "permanently settled in Ceylon" and, "in addition", of proving the matters set out in section 6 (2). In order to discharge this burden of proof, he must supply evidence that at the time of his application he has the intention of settling permanently in Ceylon. An applicant provides evidence of this intention if, having satisfied all the other conditions laid down in the Act, he demonstrates it by electing irrevocably to apply for registration. Such evidence, however, establishes only a *prima facie*, and not conclusive, case for registration as a citizen of Ceylon; it does not preclude the Commissioner from coming to a decision, after considering all relevant matters, that at the time of his application the applicant had not a genuine intention to settle permanently in Ceylon.

The question of proving a change of Indian domicile is not involved in the consideration of the evidence that is necessary to prove permanent settlement in Ceylon.

The fact that the applicant made declarations of temporary residence in Ceylon in "B forms" for the purpose of remitting a few sums of money to his dependants in India does not *per se* negative the fact of his permanent settlement in Ceylon, especially when the declarations were not "fortified and carried into effect by conduct and action consistent with the declared expression".

2. *Tennekoon (Commissioner for Registration of Indian and Pakistani Residents)* v. *Murugapillai Panjan (Privy Council) (1958)*. 59 New Law Reports, *p. 512*

In this case, in an application made by an Indian resident for registration as a citizen of Ceylon, under section 4 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, it was held that, for the purpose of proving permanent settlement in Ceylon, (*a*) it was not necessary for the applicant to prove a change of his Indian domicile, (*b*) too much weight should not be attached to the statement as to temporary residence in Ceylon made by the applicant in the "Form M.O." which he signed for the purpose of remitting certain sums of money to India. It was held further that the applicant should prove that he was "an Indian resident", as defined in section 22, at the date of his application and not at the date of the coming into operation of the Act.

3. *Vythinathan* v. *The Commissioner for Registration of Indian and Pakistani Residents (1958)*. 60 New Law Reports, *p. 85*

In this case the Commissioner for Registration of Indian and Pakistani Residents refused to register as citizens an Indian resident, his wife and four minor children on the ground that their permanent settlement in Ceylon was negatived by evidence relating to the birth and education of the children in India, which the Commissioner considered as not being indicative of a genuine intention to settle permanently in Ceylon.

It was held that the question whether the applicant had permanently settled in Ceylon was primarily one for decision by the Commissioner, and that where it could not be said that the decision was one which the Commissioner could not fairly or reasonably have reached on the evidence before him, the Supreme Court would not, in the absence of misdirection on the part of the Commissioner, interfere with his decision.

CHILE

NOTE[1]

Among the important decisions taken in 1958 in the republic of Chile in connexion with the Universal Declaration of Human Rights, special mention should be made of the repeal of Act No. 8987 of 1948 regarding the Permanent Defence of Democracy[2] and its replacement by Act No. 12927 of 1958 on the Internal Security of the State, which is designed to strengthen measures for safeguarding the security of the State, the maintenance of order and the public peace and the normal course of the nation's activities, and also to restore the franchise to certain political elements which were deprived of it by the repealed Act.

Act No. 12927 of 2 August 1958 establishes the text of the Act on the Internal Security of the State; repeals Act No. 6026 of 1937 on the same subject; repeals Act No. 8987 of 1948, which approved the Act regarding the Permanent Defence of Democracy, with the exception of article 4, paragraphs 9, 10, 11 and 12, article 5, paragraph 4, and article 6, which were incorporated in Act No. 12891 establishing the revised text of the General Law on Elections (see below); repeals articles 32 and 33 of legislative decree No. 313 of 1956 (relating to labour), which approved the Statute of Workers in the Copper Industry; and repeals decree No. 5839 of 1948 of the Ministry of the Interior,[3] which consolidated in a single Act the legislative provisions constituting the Act regarding the Permanent Defence of Democracy.

Extracts from Act No. 12927 appear below.

Mention should also be made of the amendments to the General Law on Elections, which are embodied in Acts Nos. 12889 and 12891, and in Acts Nos. 12900, 12922 and 12938 on entries in electoral registers, all these Acts having been passed in 1958. The purpose of these amendments is to expedite registration and to make it permanent in order thus to implement as effectively as possible the fundamental right to vote, with the participation of all citizens, and to strengthen the power of the State.

Extracts from Act No. 12891, of 10 June 1958, and Act No. 12922, of 31 July 1958, appear below.

Act No. 12857, of 30 January 1958 (*Diario Oficial* No. 23971, of 13 February 1958), adds to article 2 of decree No. 3690, of 16 July 1941, which consolidates the text of legislative decree No. 747, of 15 December 1925, as amended, the following final paragraph: "A naturalization certificate may also be granted to the children of naturalized Chilean parents, who have attained the age of eighteen years and satisfy the other requirements set forth in the first paragraph of this article. Such persons shall be included among those exempted under the provisions of article 4 (*i*)."

Act No. 12875, of 27 February 1958 (*Diario Oficial* No. 23994, of 12 March 1958), provides that those educational institutions providing vocational training of an agricultural, technical or industrial character which have been recognized as co-operating in the educational work of the State shall be entitled to the benefits set forth in Act No. 9864 of 1951,[4] which provides for the payment of an average assistance grant per pupil to the institutions listed therein.

Decree No. 569, of 29 October 1958 (*Diario Oficial* No. 24195, of 15 November 1958), orders the entry into force, as a law of the republic, of the agreement between the republic of Chile and the Spanish State regarding dual nationality, signed at Santiago, Chile, on 24 May 1958.

Decree No. 613, of 7 November 1958 (*Diario Oficial* No. 24205, of 27 November 1958), orders the entry into force, as a law of the republic, of the agreement between the republics of Chile and Argentina on the reciprocal payment of compensation for industrial accidents, signed at Buenos Aires on 11 June 1946.

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[1] Information kindly furnished by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Yearbook on Human Rights for 1948*, pp. 36-42.

[3] See *Yearbook on Human Rights for 1948*, p. 36, footnote 1.

[4] See *Yearbook on Human Rights for 1951*, p. 45.

ACT No. 12927 ON THE INTERNAL SECURITY OF THE STATE of 2 August 1958[1]

Title I

OFFENCES AGAINST THE NATIONAL SOVEREIGNTY AND THE EXTERNAL SECURITY OF THE STATE

Art. 1. In addition to the offences provided for in book II, title I, of the Penal Code, in book III, title II, of the Code of Military Justice and in other laws, an offence against the national sovereignty shall be considered to have been committed by any person who:

(*a*) Actually and gravely offends against the patriotic sentiment or impairs the political independence of the nation;

(*b*) In speech or writing or by any other means, fosters the incorporation of all or part of the national territory into a foreign State;

. . .

(*f*) Joins with other persons in a political party, movement or group in order to commit any of the aforementioned offences.

Art. 2. The offences provided for in the preceding article shall be punishable by minor penal servitude, minor forced residence or minor exile (*presidio, relegación o extrañamiento menores*) within the medium and maximum degrees.

The prescribed penalties shall also entail the subsidiary penalties of disqualification for public offices and posts and for the exercise of political rights, as provided in articles 29 and 30 of the Penal Code.

. . .

Title II

OFFENCES AGAINST THE INTERNAL SECURITY OF THE STATE

Art. 4. Without prejudice to the provisions of book II, title II, of the Penal Code or the provisions of other laws, an offence against the internal security of the State shall be considered to have been committed by any person who rebels against the established government or provokes civil war, and in particular by any person:

(*a*) Who incites to, or induces, subversion of law and order, who incites to, or induces, revolt, resistance or the overthrow of the established government, or who for such purposes incites to, induces or provokes the commission of an offence provided for in book II, titles I and II, of the Penal Code or the offence of homicide, robbery or arson or an offence provided for in article 480 of the Penal Code;

(*b*) Who, in speech or writing or by any other means, incites or induces the armed forces, the carabineers, the gendarmerie or the police, or individual members of those bodies, to commit breaches of discipline or to disobey the orders of the established government or of superior officers;

(*c*) Who attends, arranges or facilitates meetings the purpose of which is to propose the overthrow of the established government or to conspire against its stability;

(*d*) Who incites to, induces, finances or assists in the setting-up of a private militia, combat group or similar organization, or who becomes a member thereof, with the purpose of replacing or attacking the police or interfering with the exercise of their duties, or of rebelling against the established government;

. . .

(*f*) Who, in speech or writing or by any other means, propagates or fosters any teaching aimed at the destruction or violent overthrow of the social order or of the republican and democratic form of government;

(*g*) Who, in speech or writing or by any other means, disseminates inside the country or sends abroad or, being a Chilean national resident or staying outside the country, disseminates outside the country any false or tendentious news or information aimed at destroying the republican and democratic system of government, or at disturbing the constitutional order, national security, the economic or monetary system, the normal scale of prices, the stability of government securities or the provision of goods for the people.

. . .

Title III

OFFENCES AGAINST LAW AND ORDER

Art. 6. An offence against law and order shall be considered to have been committed by any person:

(*a*) Who provokes disorder or any other act of violence aimed at disturbing the peace;

(*b*) Who publicly insults the flag, emblem or name of the country or who defames, slanders or calumniates the president of the republic, a minister of state, a senator or deputy or a member of a higher court of justice irrespective of whether such defamation, slander or calumny is in connexion with the duties of the person at whom it is directed;

(*c*) Who incites to, or himself causes, the destruction, disablement, interruption or stoppage of any public or private facility for the provision of light, electric power, drinking water, gas or the like, or who commits an act as aforesaid for the purpose of halting,

[1] Published in *Diario Oficial* No. 24114, of 6 August 1958, kindly made available by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

interrupting or destroying the components or elements of any public-service or public-utility undertaking;

(*d*) Who openly defends or publicizes any teaching, system or method advocating crime or violence in any form as a means of bringing about political, economic or social changes or reforms.

. . .

Art. 8. It shall be unlawful for any telegraph or communications service, whether State or privately owned, to transmit information or communications inciting to the commission of an offence punishable under this Act.

The persons directly in charge of any such service shall suspend the transmission of any information or communication contravening the aforesaid prohibition and shall forthwith send a copy of the information or communication thus kept back to the competent intendant or governor, and another copy to the competent judge of the criminal court, who shall briefly and summarily decide whether or not to allow the material to be transmitted.

If the intendant or governor considers that the prohibition set out in the first paragraph is not applicable to the said information or communication, he shall order the transmission to proceed.

. . .

Art. 9. It shall be unlawful for postal, telegraph, cable, customs or transport facilities to be used for the distribution, carriage or transmission of newspapers, periodicals or other printed matter or of news constituting an offence punishable under this Act: provided that this prohibition shall not apply to the dissemination of philosophical doctrines or of material of a historical, technical or theoretical character.

The competent intendant or governor or the chief, the administrator or other person in charge of any of the facilities aforesaid may suspend the carriage, dispatch, transport or transmission of such printed matter, documents or periodicals for a period not exceeding twenty-four hours and shall, within the same period, so inform the competent judge of the criminal court, who shall briefly and summarily decide whether or not to allow the dispatch, transport, transmission, communication or distribution of the material to proceed.

. . .

Except in the cases expressly provided for by law, no authority may withhold or open correspondence or censor press, telephone or radio communications.

. . .

Title IV

Offences Disrupting the Normal Operation of National Activities

Art. 11. Any collective interruption or suspension of, stoppage of or strike against public-service, public-utility, production, transport or commercial activities shall, if it is carried out with disregard for the law and if it disturbs law and order or disrupts public services or services required to operate by law or impairs any vital industry, constitute an offence and be punishable by minor penal servitude or minor forced residence (presidio o relegación menores) within the minimum and medium degrees.

Any person who induces, incites to or promotes any of the unlawful acts referred to in the preceding paragraph shall be liable to the same penalty.

Art. 12. A person carrying on an undertaking, or the head of a firm, who declares a lock-out or is in any way implicated in an offence referred to in the preceding article shall be punished by penal servitude (presidio) or forced residence (relegación) within the minimum and medium degrees and by a fine of 100 to 1,000 pesos.

Art. 13. The penalty specified in the previous article, with the exception of the fine, shall also apply to:

(*a*) The head of a firm or an employer who, having set off or received an amount representing the family allowance due to the salaried employees or wage-earners under his supervision, retains such amount for more than thirty days after the date on which it was set off or received;

(*b*) The head of a firm or an employer who, having withheld an amount representing the lawful taxes payable by salaried employees or wage-earners, fails, barring an act of God or unforeseen circumstances, to report such amount to the proper social insurance fund within sixty days from the date on which the taxable salary or wages were paid;

(*c*) The head of a firm or an employer who pays salaries or wages lower than those prescribed by law.

. . .

Title V

General Provisions

. . .

Art. 16. If any of the offences punishable under this Act are committed through the medium of press or radio, the competent courts may suspend publication of the offending newspaper or periodical for a period equivalent to six issues thereof or may suspend the broadcasts of the offending broadcasting station for a period of not more than six days. Without prejudice to the foregoing provision, the court may, in serious cases, order immediate seizure of any issue containing a flagrant abuse of publicity punishable under this Act.

The persons affected by a court decision as aforesaid may lodge an appeal with the competent court of appeal in any form or manner, and the court shall briefly and summarily decide the case, after hearing both parties, and shall render its decision within twenty-four hours of the lodging of the appeal.

If the person affected by the original decision is

acquitted, he shall be entitled to compensation from the Treasury.

Art. 17. Where an offence punishable under this Act is committed by means of the press, the following persons shall be held liable and be regarded as principal offenders:

(*a*) The author of the published material, unless he can prove that it was published without his consent.

In the case of any article published in exercise of the right of reply and of published material, such as contributions, insertions, manifestos or the like, that is signed, the author shall be liable if he can be clearly identified;

(*b*) In the case of any newspaper, review or periodical publication, the editor or his representative;

(*c*) In default of the author, the editor or the editor's representative, the owner of the newspaper, review or periodical. If the owner is an incorporated company, liability shall rest with the persons by whom the company is legally represented, and if some other kind of company, with the administering members;

(*d*) In default of all the persons aforesaid, the printer.

Art. 18. The persons referred to in paragraphs (*b*), (*c*) and (*d*) of the preceding article may disclaim liability on condition that the author of the published material comes forward and that the author does not enjoy any immunity or privilege and may, without prejudice to the provisions of article 21, be tried without further formality.

. . .

Title VII

PREVENTION OF THE OFFENCES DEALT WITH IN THIS ACT

Art. 31. In the event of a war, outside attack or invasion which has already occurred or seems very likely to occur, the President of the Republic may declare a state of emergency in respect of all or part of the national territory.

Art. 32. The decree proclaiming a state of emergency shall be signed by the Ministers of National Defence and of the Interior.

Art. 33. Upon a state of emergency being declared, the affected area shall be placed under the immediate jurisdiction of a senior military officer of command rank, who shall be appointed by the Government and shall assume military command with such powers and duties as are prescribed by this Act. In the exercise of his function in the various areas where the state of emergency is in force, he may delegate authority to officers of any of the three branches of the armed forces under his jurisdiction.

The administrative authorities shall remain at their posts and continue to perform their customary tasks.

Art. 34. The commanding officer shall be required in particular:

. . .

(*c*) To prohibit the dissemination of military information, establishing such censorship over the press, telegraph and radio-telegraph services as he considers necessary;

(*d*) To suppress anti-patriotic propaganda, whether carried on through the press, radio, cinema, theatre or any other medium;

. . .

Title VIII

ORDINARY POWERS OF THE PRESIDENT OF THE REPUBLIC IN SAFEGUARDING THE SECURITY OF THE STATE, MAINTAINING LAW AND ORDER, GUARDING THE PEACE AND ENSURING THE NORMAL OPERATION OF NATIONAL ACTIVITIES

Art. 37. In the case of domestic disturbance, the President of the republic may forthwith propose to the Congress that one or more areas of the national territory shall be declared to be in a state of siege, or may, if the Congress is not in session, make such declaration, with effect for a specified period, on his own authority. The Congress, in the first case, shall make its decision in accordance with the most expeditious procedure provided for in the rules of procedure of each chamber and, in the second case, shall, immediately upon convening, approve, repeal or amend the declaration made by the President of the republic while the Congress was in recess.

The provisions of the foregoing paragraph shall be without prejudice to the provisions of article 44, item 13, of the Political Constitution of the State.

Art. 38. In the case of a stoppage of industries vital to the national economy, of transport undertakings, of undertakings producing or processing articles or goods essential to national defence or to the needs of the people, or of public-service or public-utility undertakings, the President of the republic may make a decree ordering a return to work and call on the civil or military authorities for assistance in enforcing such order.

In the case of such a stoppage, all salaried employees and wage-earners shall return to work under the conditions prescribed in the report of the Permanent Board of Conciliation, such conditions to be no less favourable than those in force at the time when the dispute arose.

No decree ordering a return to work may be made until the board has given its report.

In every case, the *interventor* shall take steps for bringing about a final settlement of the dispute.

Final Title

Art. 39. The present Act supersedes Acts Nos. 6026 and 8987,[1] and supreme decree No. 5839,[2] of

[1] See *Yearbook on Human Rights for 1948*, pp. 36-42.

[2] See *Yearbook on Human Rights for 1948*, p. 36, footnote 1.

30 September 1948, which was published in the *Diario Oficial* for 18 October 1958 and embodies the amended and co-ordinated text of the Act regarding the Permanent Defence of Democracy. The present Act also supersedes articles 32 and 33 of the Statute of Workers in the Copper Industry, as embodied in decree No. 313, of 15 May 1956, and all provisions contrary to, or incompatible with, the provisions of the present Act.

. . .

ACT No. 12891: GENERAL LAW ON ELECTIONS of 10 June 1958[1]

Chapter I

ELECTION OF THE PRESIDENT OF THE REPUBLIC AND OF THE NATIONAL CONGRESS

Introductory Title

ELECTIONS IN GENERAL

Art. 1. Ordinary and extraordinary elections for the president of the republic, deputies and senators shall be governed by the provisions of this Act.

. . .

Art. 7. In elections for municipal councillors, deputies or senators or for the president of the republic, all kinds of campaigning by means of the press, the radio, notices, posters, placards, cloth signs, bills or similar means and, in particular, the use of walls for campaign purposes is hereby prohibited up to four months before the date of the election. Within that period, campaign publicity in the form of placards, posters, cloth signs, bills and similar means shall, in urban communes, be permitted in the streets and squares and in other public premises only with the authorization of the respective municipality.

The administrative authority shall remove such items of campaign publicity as contravene the prohibition specified in the preceding paragraph, and in the case of publicity by means of the press or the radio, the offender or offenders shall incur a fine equivalent to three times the cost of such publicity.

. . .

Part Two

VOTING AND ELECTORAL CLAIMS

Title VII

VOTING

Para. 1. — *Obligation to vote, Secrecy of the Ballot and Independence of the Elector*

Art. 60. Every elector shall be obliged to vote unless for some legitimate reason he is prevented from doing so.

Any elector who fails to vote shall incur the penalty provided for in article 154.

For the purposes of this Act, an elector is a citizen whose name has been entered in an electoral register and is included in the electoral list of the republic, the said list to be published before each ordinary election for the National Congress or the president of the republic, and to be brought up to date annually by the director of the electoral register as prescribed by law.

Art. 61. Voting shall be a secret and personal act on the part of each individual elector and shall not be subject to any pressure whatever.

In order to safeguard the independence of the elector, the chairman of the polling committee, its members, party representatives and the authorities shall ensure that each elector is unaccompanied when he approaches the committee.

If the foregoing provision is contravened, the chairman on his own initiative or at the request of any committee member or party representative may, after the ballot paper has been deposited, cause the elector and the persons accompanying him to be taken before the judge of the criminal court so that the penalties provided for in article 136 may be imposed.

The mere fact of accompanying an elector is sufficient cause for arrest, without prejudice to the penalties provided for in articles 135 and 137 in the case of bribery.

Para. 2. — *Location of Campaign Offices*

Art. 62. Campaign offices and all offices and organizations designed to provide services to electors shall remain closed from forty-eight hours before the date of the election up to midnight of election day.

Any commercial premises, place of public entertainment, restaurant, hotel, soda fountain or other establishment or any private house which on the day of the election is used for campaigning or for providing services to electors shall be closed until 6 p.m. on that day.

Notwithstanding the foregoing provision, the official headquarters of parties and of groups sponsoring independent candidates may, if situated in the capital of a province, department or commune or in any other place where polling committees are functioning, remain open, even on the day of the election, under the supervision of the authorities, but may not engage in campaigning or political activities or provide services to electors: provided that the provision and assignment of party representatives shall be permitted up to 10 a.m. . . .

[1] Promulgated by decree No. 3663, published in *Diario Oficial* No. 24079, of 26 June 1958, kindly made available by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

On the day of the election, public entertainments and sporting events of all kinds shall be suspended until 6 p.m.

. . .

Part Four

GENERAL PROVISIONS — PENALTIES AND JUDICIAL PROCEDURE

Title XVI

General Provisions

. . .

Para. 3. — *Independence and Inviolability of Polling Committee Members and Electors*

. . .

Art. 122. As from thirty days before the date appointed for the election, citizen electors whose names are entered in the military registers shall not be required to present themselves at their barracks or to perform any other military service, nor shall they be detained on any pretext.

No authority may require citizen electors, or civilian employees having the same status as civilian electors of the Army and Navy, to perform any service or work which will prevent them from voting.

. . .

Para. 5. — *Law and order, arrest and police force*

. . .

Art. 129. . . .

The wearing of banners, emblems or other devices shall be prohibited throughout the day of the election. Persons contravening this provision shall be liable to imprisonment for a term of fifteen days.

. . .

Art. 132. On the day of the election the police may not arrest and detain any citizen who has been charged with committing an electoral offence without first establishing the truth of such charge.

In the event of the arbitrary detention of a citizen elector, the official guilty of such abuse of power shall be held criminally liable and shall be subject to the penalties provided for in article 138 of this Act.

Art. 133. From 12 noon of the day preceding election day up to two hours after the closing of the polls on the day of the elections, no public demonstrations or meetings of any kind may be held.

. . .

Title XVII

Penalties

. . .

Art. 137. . . .

The same penalty [minor penal servitude (presidio menor), within the minimum to medium degrees, not commutable] shall apply to any person or persons who, through insults, threats, abuse or any other kind of violent demonstration, attempt to limit the freedom to vote of the elector or to intimidate him after he has exercised his right to vote.

. . .

Art. 147. . . .

The same penalty [absolute disqualification from the holding of public posts and offices, in the minimum degree, and imprisonment for a term of 541 days] shall apply to the provincial intendant, the departmental governor or Juez de Letras (qualified judge), and, in general, to any government or municipal official as specified in article 260 of the Penal Code who in any manner exerts pressure on citizens or restricts their freedom to vote.

. . .

Art. 154. Any elector failing to fulfil the obligation to vote and any person failing to fulfil the obligation to be registered in an electoral register shall be punished by imprisonment within the medium to maximum degrees, which shall be commutable into a fine of 500 pesos per day of imprisonment, the said fine accruing to the Municipality. Proceedings shall be instituted on the application of any citizen or on the initiative of the competent judge.

Any person failing to fulfil the obligation to be registered in an electoral register shall, whether or not the relevant penalty has been applied, be disqualified, in relation to public authorities and public services of all kinds, to Municipalities and to semi-governmental autonomous agencies, from exercising such rights conferred upon him by law as affect his interests alone.

The aforementioned penalties shall not be incurred by a person whose failure to fulfil his obligation was due to illness, absence from the country, residence in a different electoral district from that in which he is required to vote, absence from the electoral district in which he is required to be registered or to any other serious impediment as supported by evidence placed before the competent judge, who shall weigh such evidence in good faith.

The disqualification referred to in the second paragraph of this article shall be suspended as soon as the offender furnishes proof of the existence of one of the exceptions referred to in the preceding paragraph of this article, such proof to be in the form of a certified copy of the relevant judicial decision and to be issued by the court at the request of the person concerned on condition that no proceedings have been instituted against him. In such cases the decision of the judge shall be based solely on the merits of such evidence as he considers relevant.

The disqualification shall be definitively cancelled by the fact of registration.

. . .

Art. 156. Any penalty imposed by virtue of this Act shall carry with it the loss of voting rights for a period ten times longer than the prescribed period of the penalty.

. . .

ACT No. 12922: GENERAL LAW ON ELECTORAL REGISTRATION of 31 July 1958[1]

Title III

REGISTRATION AND THE CANCELLATION AND SUSPENSION OF REGISTRATION

. . .

Art. 24. It shall be the duty of every Chilean to cause his name to be entered in the electoral registers, provided that he satisfies the following requirements:

(*a*) He must have attained the age of twenty-one years;

(*b*) He must know how to read and write.

. . .

Art. 25. The following persons may not be registered, even though they satisfy the conditions laid down in the preceding article:

(1) Non-commissioned officers and men in the Army, Navy, carabineers, police, gendarmerie and prison guards and personnel attached to the said services;

(2) Persons deprived of their rights as citizens because of physical or mental disability rendering them incapable of free and intelligent action;

(3) Persons under prosecution or who have been convicted for offences incurring severe penalties;

(4) Persons who have served enemies of Chile or its allies during a war; those who have been naturalized in another country; or those whose naturalization papers have been cancelled;

(5) Persons charged with or convicted of offences under title I of the Act regarding the Permanent Defence of Democracy, and those who are members of the associations, entities, parties, factions or movements referred to in that title; the registration boards shall not, however, be competent to determine the existence of the latter disqualification; application for exclusion of the persons concerned may be made to the regular courts in accordance with the provisions of articles 45 and 84, where applicable, or under the provisions of the following article;

(6) Persons who have not fulfilled their obligations under the Recruitment Act.

Persons coming within the scope of paragraphs 3, 4 and 5 may be registered as soon as they have regained their civic rights.

In the cases mentioned in paragraph 5, civic rights shall be automatically restored five years after the sentence has been served if the penalty imposed is for a term exceeding five years, or earlier, if expressly authorized by the president of the republic, in respect of offences not incurring severe penalties.

Registration may not be refused for any other cause or reason except in the case of persons whose previous registration has been cancelled by virtue of article 2 of the transitional provisions of the Act regarding the Permanent Defence of Democracy.

Art. 26. Persons belonging to the associations, entities, parties, factions or movements referred to in title I, articles 1 and 13, of the Act regarding the Permanent Defence of Democracy may not be enrolled in the electoral or municipal registers, but the respective registration boards shall not be competent to determine the existence of this disqualification.

. . .

Art. 27. The following persons are entitled to be registered in the municpal register: aliens, male and female, over twenty-one years of age, who show proof of more than five consecutive years of residence in the country, who can read and write and are domiciled in the municipality, sub-delegation or civil registration district covered by the registers in which they are registered.

. . .

[1] Promulgated by decree No. 4919, published in *Diario Oficial*, No. 24121, of 14 August 1958, kindly made available by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat. The Act entered into force on publication in the *Diario Oficial*.

CHINA

NOTE[1]

On 29 January 1958, the Government promulgated and put into force an Act which provided for compulsory insurance of government employees. The insurance covered sickness, injury and disability, with hospitalization; maternity benefits for the insured or the insured's spouse; old age and burial subsidy (including that of dependants). Upon separation from government service, the insured could claim the premium paid by himself if he had in no case financially benefited from the policy, or he could continue the policy if he chose to pay the full premium. When an insured's policy had carried over thirty years, he was to be entitled thereafter to draw all the benefits from the policy without further payments. The premium was to be 7 per cent of the salary of the insured, 35 per cent of which was to be borne by himself and 65 per cent to be subsidized by the Government.

[1] Note kindly furnished by the Permanent Mission of China to the United Nations.

COLOMBIA

LEGISLATIVE DECREE No. 0070 OF 1958, LAYING DOWN CERTAIN PROVISIONS REGARDING ELECTIONS

of 11 March 1958 [1]

The Military Governing Board of the Republic of Colombia, by virtue of its constitutional powers, and in particular those vested in it under article 121 of the National Constitution,

Considering that article 2 of the constitutional reform approved in the plebiscite of 1 December 1957 [2] provides that for the next twelve years, as an effective means of re-establishing normal government and the ensuring of public tranquillity, "the posts for each electoral district shall be allocated equally between the traditional parties, the Conservative and the Liberal", and

That the nomination and election of candidates for public office who do not belong to the traditional parties but nevertheless make use of the names of those parties solely for electoral purposes is a violation of article 2 of the constitutional reform approved on 1 December 1957,

Decrees as follows:

Art. 1. The election as members of the legislative chambers, the departmental assemblies or the municipal councils of citizens not belonging to either of the two traditional parties, the Conservative and the Liberal, shall be null and void. The proceedings for declaring such an election null and void shall take place before the Council of State and shall not be subject to appeal. Such proceedings shall take precedence over other business, and shall be conducted in accordance with the procedure laid down in articles 209 *et seq.* of Act 167 of 1941, except that the time-limits laid down in that Act shall be reduced by half.

Art. 2. It shall be presumed that a violation of article 2 of the constitutional reform approved in the plebiscite of 1 December 1957 has been committed if the name of a registered candidate has appeared in previous elections in the list of candidates of a party other than the two traditional parties.

This presumption shall cease upon proof being shown that the person in question, prior to his registration as a candidate, performed some act clearly indicating his intention to rejoin one of the traditional parties, such as standing for office as a member of such party, accepting executive office in the party or the like.

Art. 3. The same procedure shall be followed in the case of election to the aforementioned offices of persons who have been deprived of the exercise of their political rights.

Art. 4. This decree shall supersede any statutory provisions at variance with it.

Art. 5. This decree shall enter into force on the date on which it is issued.

[1] Text in *Informe del Registrador Nacional del Estado Civil, Brigadier-General Francisco Rojas Scarpetta, a la Honorable Corte Electoral,* dated December 1958.

[2] See *Yearbook on Human Rights for 1957*, pp. 38-9.

COSTA RICA

JUDICIAL DECISION[1]

Malaquías Solano v. *National Institute of Housing and Town Planning*

APPEAL AGAINST EXPROPRIATION

Penal Court of First Instance, San José, 23 June 1958

(*Boletín Judicial* No. 160, 29 July 1958)

The National Institute of Housing and Town Planning, a governmental agency, had taken the necessary legal steps for the expropriation of some land owned by Malaquías Solano, which it required for public purposes. The courts, however, had neither approved the expropriation of Solano's land nor fixed the compensation to which he would be entitled, and Solano had not, of course, received such compensation.

The National Institute of Housing and Town Planning nevertheless occupied the land and commenced work upon it.

The Penal Court of First Instance declared the appeal (recurso de amparo) valid and held that no State body could deprive a citizen of his property without judicial authorization and prior payment of judicially determined compensation.

[1] Summary kindly furnished by Dr. Fernando Fournier, formerly Ambassador of Costa Rica to the United States of America, government-appointed correspondent of the *Yearbook on Human Rights*.

DECREE No. 1916 of 5 August 1955[1]

Art. 1. Articles 11, 12, 14 and 16 of the Aliens and Naturalization Act of 29 April 1950 are revised as follows:

. . .

A paragraph shall be added to article 11, to read as follows:

"Notwithstanding the general provisions of this Act, applications for naturalization from persons over twenty-five years of age born in Costa Rica of alien parents shall be dealt with by special procedure and the Registrar-General shall make the necessary entries without further formalities, provided that the persons concerned undertake to maintain their regular residence in the republic and produce proof that:

(*a*) They were born in Costa Rica;

(*b*) They have been domiciled in Costa Rica for the period required by article 14 of the Constitution for the relevant groups of nationalities; and

(*c*) They are of good conduct and have an occupation or a known means of livelihood. . . ."

. . .

Art. 2. This Act shall enter into force on publication.

[1] Published in *La Gaceta*, year LXXVII, No. 177, of 11 August 1955. Translation by the United Nations Secretariat. Extracts from the Aliens and Naturalization Act No. 1155 of 29 April 1950 appear in *Yearbook on Human Rights for 1950*, p. 52. The complete text appears in *Laws Concerning Nationality* (United Nations publication, Sales No. 1954.V.1).

CZECHOSLOVAKIA

NOTE[1]

1. *Act of 17 October 1958, No. 70/1958 of the Collection of Laws, relating to the Tasks of Enterprises and National Committees in the Field of Care for the Worker*

This Act shows that the citizen's right to work, guaranteed in the Constitution of 9 May 1948,[2] is applied in practice, and does not remain a mere proclamation. In section 1 of the Act it is laid down that the attained level of development of the forces of production permits the regulation of the recruitment of workers for the national economy in such a way that the initiative of the working people, the responsibility of enterprises and the leading role of the national committees are exercised to the maximum. The question of acquiring the necessary number of workers is primarily the concern of the enterprises themselves, while the national committees take care that every citizen is ensured the right to work. The executive organs of the district national committees organize boards which advise, free of charge, on working opportunities, and the committees also recommend the enterprises to employ workers, taking into account their abilities and the needs of the national economy. Enterprises must not refuse to employ a worker, recommended by a national committee, who has the necessary qualification for filling a vacancy unless they have serious grounds to do so. The Act requires the enterprises to notify the executive organs of the district national committee of any vacancy and to recruit workers with the consent of that organ. The executive organs of the district national committee also supervise the employment of workers and, in particular, establish whether the enterprises take due care of the workers, fulfill their obligations under contracts of service, observe the relevant regulations concerning the employment of workers.

2. *Act of 12 December 1958, No. 89/1958 of the Collection of Laws, relating to the Training of Apprentices for their Future Profession (Apprenticeship Act)*

The State devotes great care to the training of apprentices for their future profession. The aim of the Act is to ensure that this training under a contract of apprenticeship is directed and performed in such a way as to educate for the socialist society class conscious, politically mature and skilled workers able to master the most modern techniques and progressive working methods.

The contract of apprenticeship is concluded on the basis of a deed of apprenticeship, the main points of which are specified in section 3 of the Act. The Act stresses the responsibility of enterprises in the education of apprentices as well as the obligations of apprentices. Accordingly, the enterprise is liable to provide for technical and general education of the apprentice within the range outlined in the educational plans and curricula, to arrange for his extra-curricular education and to give him adequate remuneration according to the wage scale. In turn, the apprentice is obliged to study diligently and assiduously, to acquire the knowledge of and skill in his type of work and to master new techniques and progressive working methods.

The Act specifies cases in which the contract of apprenticeship can be changed. It proceeds, however, from the principle that such changes should be made only exceptionally and in justified cases, in order not to disturb the educational process. It specifies also the cases in which the contract of apprenticeship can be terminated prior to the expiry of the training period under the contract. The Act provides also that notice can be given by the employer as well as by the apprentice. The Act lists grounds for the termination of the contract of apprenticeship. The Act secures employment for apprentices on completion of their training period by committing the enterprise which concluded the contract of apprenticeship with the apprentice to give him employment corresponding to his qualification and to enable him to improve his qualifications in the company of other workers.

Apprentices are trained in technical centres.

3. *Act of 17 April 1958, No. 22/1958 of the Collection of Laws, relating to Cultural Memorials*

The State takes care that cultural memorials are preserved, properly administered, suitably utilized for social purposes and made accessible to the people and that they thus become an important part of the cultural and economic life of the socialist society. Therefore, all cultural memorials are protected by the State and every citizen is bound to help in their protection.

The Act requires the proprietors, administrators and possessors of memorials to keep them in good condition, and to do everything necessary for their preservation in accordance with the directives of the executive organ of the regional national committee.

[1] Note kindly furnished by the Permanent Mission of Czechoslovakia to the United Nations.

[2] See *Yearbook on Human Rights for 1948*, p. 51.

If the proprietor or administrator of a memorial does not comply with these duties, the executive organ of the regional national committee may decide that measures necessary for the preservation of the memorial shall be taken at the expense of the proprietor.

In order to make cultural memorials accessible, the Act requires the proprietor to enable duly authorized persons to examine the memorial and, if an object of general interest, to make it available free of charge for a reasonable period not only for scientific, but also for exhibition purposes.

4. Act of 17 October 1958, No. 71/1958 of the Collection of Laws, relating to Liability for Indemnity in respect of Damage caused by an Employee through Neglect of Duties during Employment

In Czechoslovakia, great emphasis is being laid on teaching workers how to acquire correct relationships in respect of socialist property as well as on the creation of conditions precluding possible damage to this property. This end is equally pursued by the legislation concerning responsibilty for damage caused to the enterprise by workers through neglect of duties during employment.

The Act regulates only liability in respect of damage caused by neglect on the part of workers in performing their duties. The legislation is based upon the fact that even a small lack of precaution may cause great damage. In such cases indemnity for the damage cannot be recovered from the worker in full, because that would constitute an unbearable burden for him and his family. Since the wage is in principle the sole source of living of the worker and his family, the law forbids the recovery of indemnity in full. The worker who caused damage through neglect is in principle responsible only to a limited extent. The Act provides that the amount of indemnity recoverable from an individual must not exceed a sum equivalent to three times the worker's average monthly wage. In justified cases the indemnity may be less than the actual damage and may be even lower than three times the monthly wage. In determining the indemnity, the following factors must be taken into consideration: the worker's general performance and discipline as well as his relation to socialist property, the degree of blame, the social importance of the damage, and the personal circumstances of the worker and in particular his wage. The worker is never liable to compensate for lost profits.

DENMARK

NOTE

There was no legislation of any importance, and no judicial development, in the field of human rights in Denmark during 1958.[1]

[1] Information kindly furnished by Professor Max Sørenson, University of Aarhus, government-appointed correspondent of the *Yearbook on Human Rights*.

DOMINICAN REPUBLIC

NOTE [1]

1. Act No. 4840, of 17 February 1958, sets out the conditions under which persons sentenced to penalties involving deprivation of liberty who have acquired industrious habits and whose conduct has been irreproachable may be set at liberty by the Executive.

The text of the Act is as follows:

"*Art. 1.* Any person sentenced to a penalty of whatever nature involving deprivation of liberty who has acquired industrious habits and whose conduct has been irreproachable may be released, should the Executive so decide, on condition that such person has served three months of a prison term not exceeding six months, or has served one-quarter, but in no case less than three months, of a prison term exceeding six months.

Art. 2. It shall be a further requirement for the grant of conditional release that a person of established good reputation shall undertake to act as adviser to the released prisoner during the period of conditional release, to provide him with or obtain for him adequate means of employment, to watch his behaviour and to report to the Procurador Fiscal having jurisdiction in the place where the released prisoner resides any offence or misconduct on the part of the released prisoner and any change of residence by the released prisoner that has not been duly authorized.

Sole paragraph. — The requirement prescribed by this article may be dispensed with in the case of prisoners who may for valid reasons be unable to find a person ready to assume the specified obligations.

Art. 3. The conditional release may be revoked by the Executive in the case of habitual and notorious bad conduct on the part of the person conditionally released or for failure to comply with the terms under which conditional release was granted or with the requirements laid down in the regulations.

Sole Paragraph. — Such revocation shall be automatic in cases where the person conditionally released has committed a further offence.

Art. 4. If there has been no revocation as aforesaid before the expiration of the sentence, the conditional release shall become unconditional. If revocation has taken place for any reason other than the commission of a further offence, the period of conditional release shall count as part of the sentence. If revocation has occurred as the result of the commission of an offence, the remainder of the sentence, without benefit of the period of conditional release, shall be served in addition to the sentence arising from the further offence.

Art. 5. This Act shall in no way affect the constitutional prerogatives of the President of the Republic in the matter of pardon.

Art. 6. Documents connected with the administration of conditional release shall be exempt from all taxes, fees and charges.

Art. 7. The Secretariat of State for Justice shall ensure that the provisions of this Act and of the regulations made thereunder by the Executive are properly complied with."

2. Act No. 4865, of 28 February 1958, on assistance to the children of prisoners, reads as follows:

"*Sole article.* — Article 1 of Act No. 4107, of 15 April 1955, shall be amended to read as follows:

"*Art. 1.* Where a person is serving a sentence of imprisonment and has children without means of subsistence, the State shall pay a monthly sum of RD $5.00 for each child up to a limit of ten children.

"Such assistance shall continue until one month after the date on which such person is released, conditionally released or pardoned."

[1] Information kindly furnished by H.E. Mrs. Minerva Bernardino Cappa, Alternate Representative of the Dominican Republic to the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

ETHIOPIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS [1]

A. PENAL CODE

The Penal Code of the Empire of Ethiopia,[2] which came into force on 5 May 1958, marks a significant achievement in a field of legislation that challengingly calls for the adoption of highly humane and liberal laws consonant with the principles of human rights contained in the Universal Declaration of Human Rights. The revised Constitution of Ethiopia,[3] itself inspired by such principles of human rights, provided the necessary impulse for the enactment of a comprehensive Penal Code, which has incorporated not only juridical concepts accepted by enlightened humanity but also liberal measures directed towards the welfare and rehabilitation of the individual accused of crime. Some of the most important provisions relating to human rights are contained in the following extracts: [4]

"Art. 7. — *Application as to Measures*

"Upon the coming into force of this code, security measures and those relating to the treatment and education of offenders prescribed in this Code shall be applicable when passing sentence even where the earlier legislation provided the imposition of a penalty."

"*Infants and Juvenile Delinquents*

"Art. 52. — *Infancy: Exoneration from Criminal Provisions*

"The provisions of this Code shall not apply to infants not having attained the age of nine years. Such infants are not deemed to be responsible for their acts under the law.

"Where an offence is committed by an infant, appropriate steps may be taken by the family, school or guardianship authority.

"Art. 53. — *Special provisions applicable to young persons*

"(1) Where an offence is committed by a young person between the ages of nine and fifteen, the penalties and measures to be imposed by the court shall be those provided in book II, chapter IV of this code (Art. 161-173).

"Young persons shall not be subject to the ordinary penalties applicable to adults nor shall they be kept in custody with adult offenders.

"(2) No order may be made under Art. 162-173 of this code unless the offender is convicted."

"*Measures applicable to Irresponsible Persons and Offenders with a limited Responsibility*"

"Art. 133. — *Principle*

"After having decided (Art. 51) whether the offender was irresponsible (Art. 48) or whether he is of a limited responsibility (Art. 49), the Court shall apply the following provisions having regard to the circumstances and requirements of the case.

"Art. 134. — *Confinement*

"(1) If the offender, by reason of his condition, is a threat to public safety or order, or if he proves to be dangerous to the persons living with him, the Court shall order his confinement in a suitable institution.

"(2) If he is in need of treatment he shall either be treated in the institution in which he is confined or be transferred to an appropriate institution in accordance with Article 135. Proper provision may be made for his safe custody.

"Art. 135. — *Treatment*

"(1) Where an offender is suffering from a mental disease or deficiency, deaf-and-dumbness, epilepsy, chronic alcoholism, intoxication due to the abuse of narcotics or any other pathological deficiency and requires to be treated or placed in a hospital or asylum the court shall order his treatment in a suitable institution or department of an institution.

"(2) Where the court is satisfied that the offender is not dangerous and can be treated as an out-patient, it shall order accordingly.

"The court shall then order that the offender be kept under proper supervision and control either by the medical expert in charge of the case or by some other competent authority. An order made under this article may be revoked, and the court may require such reports as it considers necessary."

B. LAWS RELATING TO SOCIAL AND ECONOMIC QUESTIONS

1. Concern for the amelioration of the living conditions of people abiding particularly in localities by

[1] Note kindly furnished by the Imperial Ethiopian Ministry of Foreign Affairs.

[2] Published in a separate volume appearing as *Extraordinary Issue No. 1* of 1957 of the *Negarit Gazeta*.

[3] See *Yearbook on Human Rights for 1955*, pp. 63-5.

[4] The present *Yearbook* reproduces only those extracts chosen by the Ministry which have not appeared in the *Yearbook on Human Rights for 1957*, pp. 58–66.

their nature not conducive to social progress has necessitated the establishment of the Ministry of Community Development; order No. 15 of 1957 appearing in *Negarit Gazeta* No. 5, of 29 January 1957, establishes the Ministry of National Community Development. The functions of the Minister of National Community Development are mainly the following:

"5. . . . to foster the participation of people in any part of our Empire, particularly for those living in special areas, in social endeavours and to reform customs detrimental thereto, through settlement in agricultural and other pursuits of livelihood; in order to accomplish this goal, it is the Minister's duty to provide the necessary organization, in accordance with laws of our empire, for the establishment of village communities and markets, for assistance to and improvement of the local administration, security and the health of the population; and, in pursuance of our instructions, he has the authority to examine, investigate and follow the activities of all social and economic development organizations already established or to be established hereafter for the development and improvement of living conditions of our people, and to make them render their services to their prescribed goals.

". . .

"8. The Minister, in accordance with the laws of our empire, shall:

"(*e*) Investigate the activities of private organizations and undertakings which affect our people's fundamental culture and customs, life and livelihood, spiritual and moral achievements, and issue the necessary orders accordingly;

". . .

"(*h*) Provide accordingly for the establishment of markets and the availability of the needed commodities in special areas where settlement in township communities exists;

"(*i*) Investigate the execution of activities undertaken in pursuance of our policy that any one of our people may be a landowner and have a livelihood;

"(*j*) Provide for the drilling and the necessary safeguarding of wells, and for making water available to the people in special areas where the shortage of water supply is acute;

"(*k*) Provide teams of mobile teaching staff, clinical services and police squards to follow nomadic clans in special areas where he deems it necessary;

"(*l*) submit every six months in writing a report on the accomplishment of projects started in the preceding six months, those planned for the subsequent six months, the budget and the general situation of the Ministry's activities."

2. Order No. 16 of 1957 establishes the Board of National Community Development, which is made responsible for the co-ordination of the activities of the various Ministries.

3. Order No. 20 of 1958, appearing in *Negarit Gazeta* of 31 March 1958, establishes the Ministry of Pensions. The Minister of Pensions is to:

(*a*) Ascertain in accordance with the laws the position of those government servants, such as members of the armed force, Zabagna forces and civilian employees, whom he considers entitled to indeterminate pensions or temporary grants; and prepare lists of them;

(*b*) Prepare and submit draft laws to provide indeterminate pension or temporary grants to Ethiopians working for various private enterprises or private persons.

THE CHAMBER OF DEPUTIES ELECTORAL LAW: PROCLAMATION No. 152 OF 1956

given on 27 August 1956 [1]

Whereas articles 93 to 98 inclusive of our revised Constitution of 1955 [2] require that an electoral law shall establish the various provisions and requirements for the election throughout our empire, of deputies, members of our Chamber of Deputies, and

Now, therefore, in conformity with the provisions of article 88 of our revised Constitution, we approve the electoral law as adopted by our Parliament, and we accordingly proclaim as follows:

1. This proclamation may be cited as the Chamber of Deputies Electoral Law, and shall be effective from the date of its publication in the *Negarit Gazeta*.

2. Starting with 9 January 1957, and every four years thereafter on 9 January, general elections shall be held throughout the empire for the election of deputies to the Chamber of Deputies on the basis provided for in article 93 of the revised Constitution.

. . .

6. Every person, an Ethiopian national by birth, shall be entitled to vote at the general elections, provided that he shall satisfy the following requirements: (*a*) for at least one year immediately preceding each election, he shall have resided in the electoral district in which he votes; (*b*) shall be at least twenty-one years of age; (*c*) shall have completed registration in accordance with the requirements of the present law, and (*d*) shall not be disqualified for any of the reasons set out in article 7 hereinafter.

[1] Published in Amharic and English in *Negarit Gazeta* of 27 August 1956.

[2] See *Yearbook on Human Rights for 1955*, p. 64.

7. Shall be disqualified to vote in any general election in the Empire, any person who: (*a*) is insane, or (*b*) is serving a sentence of imprisonment; or (*c*), has lost his civil rights, pursuant to the provisions of the Ethiopian Penal Code.

Part I

PROVISIONS CONCERNING THE FIRST GENERAL ELECTION TO BE HELD; STARTING 9 JANUARY 1957

. . .

18. To be a candidate for election to the Chamber of Deputies, a person must, in accordance with the provisions of article 96 of the revised Constitution, be by birth an Ethiopian subject, must have reached the age of twenty-five years and must be a bona fide resident of an electoral Awraja, and owner in such Awraja of immovable property of a value of not less than one thousand Ethiopian dollars, or of movable property of a value of not less than two thousand Ethiopian dollars, and is not disqualified under the provisions or article 19 hereinafter.

19. Shall be disqualified as a candidate for election to the Chamber of Deputies, any person who:

(*a*) Has failed or fails or is unable to register or to complete registration under the provisions of Articles 11 to 16 inclusive; or

(*b*) Notwithstanding completion of registration, is found, by the Awraja Electoral Board to which he has applied for candidature, at the time of his application or at any time thereafter, to be insane; or

(*c*) Has registered in more than one electoral Awraja; or

(*d*) Has applied for candidature in more than one electoral Awraja; or

(*e*) Is serving a sentence of imprisonment; or

(*f*) Has been convicted of an offence under the provisions of article 46 of the present electoral law; or

(*g*) Has been deprived of his civil rights pursuant to the provisions of the Penal Code; or

(*h*) Has been convicted abroad of an offence which is recognized by the Ethiopian Penal Code as carrying as penalty therefor a minimum term of imprisonment of six months or more, or a minimum fine of one thousand or more Ethiopian dollars; or

(*i*) Is not an undischarged bankrupt, or is one whose property, in whole or in part, is subject to court order for payments to creditors.

No one shall apply for, present petitions for, or be a candidate in, more than one electoral Awraja.

. . .

Part II

PROVISIONS FOR SUBSEQUENT ELECTIONS TO THE CHAMBER OF DEPUTIES

40. Except as hereinafter modified in articles 41 to 44 inclusive, the procedures set out in part I of this law respecting the first general election to be held starting 9 January 1957, shall be adopted and followed in the subsequent quadrennial general elections.[1]

Part III

PENALTIES

46. Whoever, in connextion with any electoral procedure,

. . .

(10) Commits any breach of his oath of secrecy; or

(11) By violence or threat of violence, or by threat of discharge, degradation, or of change in the status, rank, position or compensation of another person, or by any deceitful means compels or induces any person to register or to apply to become or continue to be a candidate, or to sign a petition for candidature, or to vote, or to refrain from doing any of the foregoing; or

(12) Causes any injury to any person on account of his having acted or having refrained from acting in any of the ways indicated in sub-paragraph (11) above; or

(13) Abets, or attempts to commit, any of the acts above mentioned; or

(14) Not being a policeman or soldier or guard assigned to electoral proceedings, has in his possession, during the period of elections and the hours in which polling stations are open, and within the vicinity of any polling station, any firearm, sword, knife, stick, dagger or other dangerous weapon;

shall be guilty of an electoral offence and shall be punished with imprisonment for a term which may extend to one year, or with a fine which may extend to $2,000, or both such fine and imprisonment.

[1] Articles 41-44 do not affect the provisions of part I quoted above.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1958[1]

A SURVEY OF FEDERAL AND LAND LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS

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INTRODUCTION

The year 1958 covered by this survey again saw the promulgation in the Federal Republic of Germany of a number of important statutes and judicial decisions designed to ensure the further realization of human rights and to secure and consolidate the liberties of the citizen as against the State. Of particular interest is the interpretation given by the Federal Constitutional Court, in its judgement of 15 January 1958 (*BVerfGE* 7/198), of the scope of the fundamental rights guaranteed under the constitution — an interpretation with which the Federal Court of Justice concurred in its judgement of 20 May 1958, (*DÖV* 58/701). Whereas the fundamental rights had hitherto been regarded as purely defensive rights of the citizen vis-à-vis the State, which accordingly could not affect the legal relations of citizens with each other, the Constitutional Court took the view that in addition to their defensive function the fundamental rights embody an objective system of values which, by virtue of their basic constitutional sanction, are valid for all branches of the law. In the sphere of civil law, the court held, the fundamental rights became effective indirectly through the provisions of the Civil Code, especially the general clauses; and a judge who failed

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[1] Report prepared by Dr. Klaus J. Unverzagt, Government Councillor, and kindly forwarded by the Office of the Permanent Observer of the Federal Republic of Germany to the United Nations. Translation by the United Nations Secretariat.

ABBREVIATIONS

BGBl	*Bundesgesetzblatt* (Official Gazette of the Federal Republic)
GVBl	*Gesetz- und Verordnungsblätter bzw. Amtsblätter der Länder* (journals of legislative provisions and regulations and official bulletins of the *Länder*) (B = Bremen, Bay = Bavaria, Bln = Berlin, BW = Baden-Württemberg, H = Hamburg, Hess = Hesse, N = Lower Saxony, NW = North Rhine Westphalia, RP = Rhineland Palatinate, S = the Saar, SchH = Schleswig-Holstein)
GG	*Grundgesetz* (Basic Law)
GHBZ	*Entscheidungen des Bundesgerichtshofes in Zivilsachen* (Decisions of the Federal Court of Justice in civil actions)
BGHSt	*Entscheidungen des Bundesgerichtshofes in Strafsachen* (Decisions of the Federal Court of Justice in criminal cases)
BVerfGE	*Entscheidungen des Bundesverfassungsgerichtes* (Decisions of the Federal Constitutional Court)
BVerwGE	*Entscheidungen des Bundesverwaltungsgerichtes* (Decisions of the Federal Administrative Court)
ESVGH	*Verwaltungsrechtsprechung in Deutschland* (ed. G. Ziegler) (Decisions concerning administrative law in Germany)
DÖV	*Die öffentliche Verwaltung* (Public Administration)
DVBl	*Deutsches Verwaltungsblatt* (German Journal of Administration)
NJW	*Neue Juristische Wochenschrift*

In quotations, the figure before the stroke (/) indicates the year or the number of the volume; that after the stroke indicates the page. In quotations from the *Bundesgesetzblatt*, the figure I refers to part I and II to part II. Unless otherwise stated, references — including those to Land journals — are to the 1958 series.

to recognize the implications of the fundamental rights for the civil law could offend against those rights.

Another ruling of the Federal Constitutional Court (10 July 1958, *NJW* 58/1388) tending in the same direction of securing constitutional fundamental freedoms, deals with the conditions in which a fundamental right may constitutionally be restricted. Under article 19 of the Basic Law, basic rights may be restricted to some extent in cases permitted by the Basic Law, provided that the pertinent statute is of general application and specifies the basic right in question, indicating the article of the Basic Law in which it appears. In reviewing a legislative decree, however, the Constitutional Court made it clear that it is not enough for these conditions to be fulfilled if the extent to which the basic right is to be restricted in the particular case is left entirely to the discretion of the administrative authorities, since this lack of precision is inconsistent with the principles of the rule of law.

Reference should also be made to the fact that on 12 August 1958 (*BGBl* II/334) the Federal Government announced that it had renewed for an additional term of three years the declaration respecting the powers of the European Commission of Human Rights provided for in article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Side by side with the above-described endeavours to strengthen the rights and liberties of the citizen, the State is also faced with the task — one not always easy to reconcile with those endeavours — of giving effect to the social welfare principles set forth in article 20 of the Basic Law, principles which cannot be realized without some degree of State direction and without measures of State intervention alien to the ideas of liberalism.

1. Protection of Human Dignity

In a case decided by the Land High Court at Stuttgart on 21 October 1958 (*NJW* 58/2120), a patient had demanded the surrender by his physician of some X-ray photographs. After establishing the fact that the physician had become the owner of the photographs under the civil law, no special agreement having been made to the contrary, the court ruled that his refusal to surrender them did not constitute a violation of the general rights of the individual or of human dignity, particularly since the photographs had been taken with the consent of the patient, who must have been aware that the physician would keep them, in accordance with the usual practice. In any event, only a trained physician would be able to derive any usable information from the photographs.

On the other hand, the Land High Court at Munich held (7 August 1958, *NJW* 59/388) that an actor's general rights as an individual had been infringed where another actor's voice had later been substituted for his own in a part played by him in a sound film.

In a decision of fundamental importance (20 May 1958, *DÖV* 58/701), the federal court, dealing with the question of the lawfulness of secret tape-recordings, ruled that a person who recorded a conversation by this means without the permission of the other party was in principle guilty of violating the general rights of the individual guaranteed by articles 1 and 2 of the Basic Law. This ceased to hold good only in exceptional cases (self-defence, overriding interests, and so forth). The court further held that in view of the importance of protecting the personal realm of the individual, a merely private interest in procuring evidence was, as a rule, insufficient in itself to justify the secret tape-recording of a conversation. The question whether words spoken in a conversation were intended only for the other party, or for a specific group of persons or the public in general, was a matter within the general sphere of personal rights protected by law.

The Land High Court at Düsseldorf ruled (31 October 1958, *NJW* 59/629) that the general personal rights of the individual included the exclusive right to see into the privacy of his home. Accordingly, it rested with the home-owner alone to decide whether any other person could look into his home or take a photograph of it, even if such person had a legal interest in doing so.

In an interesting decision (19 December 1958, *NJW* 59/643), the Land High Court at Stuttgart had occasion to deal with the relation of press rights to the general rights of the individual. The court held that the press, at any rate in Land Württemberg-Baden, might encroach on the personal rights of individuals only to the extent necessitated by its task of reporting and commenting critically on matters of public interest; in no case might it do so merely for the entertainment of its readers. Whether the press had the right to publish the names of persons involved in unsavoury incidents could be decided only in each individual case after weighing the interests of all parties. Where police use of firearms resulted in serious consequences, the name of the officer concerned might be disclosed only if there was strong reason to suspect that he had overstepped his duty and if the superior authority ignored its duty of investigating the case. If the public prosecutor opened an inquiry into the case, therefore, names might be published only by way of exception. On the question of the individual's rights with respect to photographs of himself, the court held that the statutory definition of freely publishable photographs of topical interest covered only photographs of persons in public life. To be classed as a person in public life, the individual concerned must be personally prominent and publicly active. Pictures of other persons might be freely published only where such persons aroused public interest as the result of some striking event and where the publication of a report—in particular, an illustrated report — on the event in question was appropriate. The publication of such a report was appropriate only where the arguments for publication outweighed the objections of the person concerned. Such objections

could not in general be sustained if that person's participation in the event had been of a meritorious or a neutral character. Where the participation had been of a blameworthy character, it had to be borne in mind that by the sole fact of committing a serious offence an individual did the gravest possible injury to his reputation. Nevertheless, the principle that photographs must not be published for purposes of entertainment still applied, even where criminal proceedings were pending.

2. Protection against Discriminatory Treatment

(a) *Equal Treatment in General*

To safeguard the principle of equality (Basic Law article 3(3)) is the public-law duty of the executive authorities, even where these authorities exercise quasi-judicial functions of public administration through the forms of the civil law. However, the Higher Administrative Court at Münster further ruled (14 May 1958, *ESVGH* 11/305) that claims based on this principle could not be enforced through administrative proceedings, but only in the civil courts, by action for damages. The Federal Court of Justice took the same view, ruling explicitly (10 December 1958, *BGHZ* 29/76) that the constitutional principle of equality was binding on the public authorities even where these authorities discharged their duties through the forms of private law.

In a case in which a wholesale merchant had complained of a breach of the principle of equality because he had allegedly been passed over on the placing of a contract, the Federal Administrative Court held (6 June 1958, *BVerwGE* 7/89) that the principle of equality conferred not only defensive rights but also, in certain circumstances, positive claims. However, a claim for the equal treatment of all wholesale merchants in a particular trade in connexion with the placing of a substantial public contract could not be sustained; equal treatment had to be extended only to equal alternatives, and in view of the differences resulting from such factors as volume of capital, efficiency and reliability, all that could be required was the conscientious exercise of discretion.

Under the Milk and Fats Act, sterilized milk, but not condensed milk, is subject to an equalization tax. The Federal Administrative Court decided (17 January 1958, *BVerwGE* 6/129) that this could not be regarded as an infringement of the principle of equality, since the two kinds of milk were ordinarily used for different purposes. Moreover, the principle of equality could not be invoked to restrict the broad range of discretion conferred upon the legislator by the constitution. The principle of equality was infringed only where this discretion was exceeded or abused. The decisive factor in this connexion was whether the statutory provision in question was reasonable. The Federal Constitutional Court (3 December 1958, *BVerfGE* 9/3) regarded the provision in the Income Tax Act under which the value of a person's occupancy of a house owned by himself, but not the use-value of other assets, is counted towards his taxable income, as a legitimate exercise of the legislator's discretion. The levying of tax on a universal need such as housing was in line with the concept of just taxation. The fact that occupancies in trailers and houseboats were not covered by the Act was immaterial; this was a legitimate exercise of legislative discretion.

The Federal Administrative Court ruled (3 June 1958, *NJW* 58/1601) that the different rates of compensation per month of internment or imprisonment provided under the Prisoners of War Compensation Act and the Act for the Indemnification of Victims of National Socialist Persecution did not constitute a breach of the principle of equality, since the grounds for the two types of compensation were not the same, and the cases were therefore different. The same court held (21 November 1958, *BVerwGE* 7/325) that it was not an infringement of the principle of equality to call up only a certain number of the men in a given age-group passed as fit for service, provided that in selecting the men to be called up the competent enlistment authorities were guided by objective criteria.

The Federal Constitutional Court held (24 June 1958, *BVerfGE* 8/51) that even where a statute was drafted so as to avoid discrimination, and in abstract and general terms, it offended against the principle of equality if its application led in practice to manifest inequalities, and these inequalities of practical effect were attributable to the statute itself. The decisive criterion was not a statute's external form, but its substantive legal content. The court was dealing here with a statutory provision under which contributions to political parties carried tax privileges. This favoured the bourgeois parties at the expense of the Social Democratic Party, by force of sociological circumstance if not by actual operation of the law. In another decision (11 June 1958, *BVerfGE* 8/28), the Federal Constitutional Court dealt with the powers of the court in determining an inequality in the law. A salary act, the purpose and content of which were plainly inconsistent with the principle of equality and which discriminated against civil servants in a particular category could not, the court held, be corrected by supplementary interpretation awarding these civil servants the same salaries as those received by officials in other comparable categories. The judge could not interpret the unambiguously worded terms of a statute in such a way as to give them an opposite meaning; and the only possibility open to the Constitutional Court was either to declare the provision conferring the benefit void or to rule that failure to give due treatment to particular categories of persons was unconstitutional.

The Bavarian Constitutional Court ruled (24 October 1958, *DÖV* 59/182) that the immunity provisions of the Bavarian Constitution did not infringe the principle of equality. Although, in general, even constitutional law might be void if it offended against

higher canons, and although individual constitutional rules could differ in relative importance, so that the lower rule would be judged against the background of the higher, there were effective reasons, even in present-day conditions, for the immunity provisions (despite some reservations connected with their application in practice), and there was consequently no breach of the principle of equality. Under the drug advertising regulations it is unlawful to insert advertisements for drugs in house organs, although advertising in daily newspapers and brochures is allowed. The Supreme Land Court of Bavaria ruled (27 November 1958, *DÖV* 59/146) that this was not inconsistent with the principle of equality, since there were reasonable and objective grounds to justify the distinction: advertising matter was obvious to the reader of a newspaper or publicity brochure, whereas it might not be immediately obvious to the reader of a house organ. Under the Shop Hours Act, no business transactions with customers may be carried on after closing hours (normally, that is to say, between 6.30 p.m. and 7 a.m. on Monday to Friday and before 7 a.m. and after 2 p.m. on Saturday) in the permanent sales room of a non-itinerant business. The Land High Court at Hamm ruled (29 July 1958, *NJW* 58/1695) that the legislator had not offended against the principle of equality by enacting a statute under which itinerant trade was not subject to such stringent restrictions during shop closing hours as non-itinerant business; the principle of equality barred the legislator only from treating identical situations differently, not from giving essentially dissimilar situations appropriately different treatment. The main difference between the two situations in question, the Court held, was the cost of display space for itinerant traders.

The Federal Constitutional Court held (16 December 1958, *BVerfGE* 9/20) that it was not an infringement of the principle of equality to treat the income and property of the partner in a quasi-marital union in the same way as the income and property of a spouse, in verifying the need of claimants for unemployment relief.

(b) *Equal Treatment of the Sexes*

Under the Marriage Act, the legal age of marriage is twenty-one for men and sixteen for women. The Act permits this age requirement to be waived in both cases; a man, however, must be at least eighteen years old and no longer under parental authority or guardianship. The Land High Court at Düsseldorf held (8 March 1958, *NJW* 58/714) that this was not a breach of the principle of equality, although the legislator's grounds had nothing to do with the natural biological differences between the sexes; the statutory rule was justified by the fact that in daily life spouses must engage in all sorts of legal transactions which require the husband to be of full age. Some difficult problems of interpretation arose because the Federal legislator had not made direct statutory provisions concerning the date of expiry of laws conflicting with the principle of equality in relations between men and women (under article 117 of the Basic Law all laws which conflicted with the equal rights of men and women ceased to have effect on 1 April 1953). The Federal Court of Justice ruled (5 February 1958, *NJW* 58/709) that whereas the statutory agency of the legitimate children had formerly vested solely in the father, it now vested in both parents. In legal proceedings respecting legitimacy, therefore, a divorced mother represented her child until the guardianship court directed otherwise.

Under a Bavarian statute women civil servants receive no sickness benefits in respect of their husbands, whereas male civil servants do receive sickness benefits in respect of their wives. The Bavarian Constitutional Court held (4 December 1958, *ESVGH* 11/396), that this was a breach of the legislator's discretion, since there was no obvious reason for differential treatment, and benefits would not be payable under the statute in question even if the husband was unable to defray the costs of the illness himself. In a decision dated 30 June 1958 (*NJW* 58/1848), the Schleswig Land Social Court expressed some doubt whether the provisions of the Reich Insurance Regulations and the Employees' Insurance Act under which the husband of an insured woman receives no pension on her decease unless she had been the main support of the family were consistent with the principle of equality. The court's doubts were based on the fact that no such restrictive condition applied in the opposite case. The question was accordingly referred to the Federal Constitutional Court. In another case in which the same question was reviewed, the Federal Social Court, citing the general principles of civil law, ruled (16 December 1958, *NJW* 59/741) that even if the provisions in question were unconstitutional and therefore void, the surviving husband of a woman who died as the result of injury was not entitled to a widower's pension unless he had previously had a claim on his wife for maintenance, or had been supported by her. The Federal Social Court ruled (21 October 1958, *NJW* 59/740) on a provision of the Reich Insurance Regulations under which local wage rates, on which the accident compensation rate is based, have to be separately determined for men and women. The court held that this provision did not infringe article 3 of the Basic Law, provided that the differential wages in question were actually paid, and not merely assumed, and were paid fairly and without violating the rule against discrimination. Under the Federal Welfare Act also, a widower, as opposed to a widow, is not entitled to welfare allowances unless he was previously supported financially by his spouse and unless he is in need.

The Income Tax Act of 26 July 1957, promulgated pursuant to the Federal Constitutional Court's decision of 17 January 1957 disallowing the established practice of assessing spouses jointly, required husbands and wives to be assessed separately for the assessment period 1949-1957 on their respective in-

comes, in schedule I (which otherwise applies only to unmarried persons). The Federal Finance Court held (8 August 1958, *NJW* 58/1943, and 19 September 1958, *NJW* 59/71) that this did not infringe the principle of equality, since the Act had placed husbands and wives on the same footing, for taxation purposes, as unmarried persons. Moreover, the Act had given them the option of being assessed, if they so requested, under schedule II (married persons). Thanks to the progressive rates of taxation, the system of separate assessment had brought the individual certain advantages. True, the Act had resulted in some disadvantage to married taxpayers who were the sole source of family income. However, the Constitutional Court's ruling had placed the legislator in a difficult situation; it had been impossible to give equal consideration to all the different factors involved, such as the principle of equality, equitable taxation and the protection of the family. In a subsequent decision (19 September 1958, *NJW* 59/71) the court took the same view.

3. Protection of the Individual

(a) *Arbitrary Deprivation of Liberty*

On 25 August 1958 (*BGBl* I/647) the Government promulgated a legislative decree regulating conditions of military detention with respect to quarters, treatment, occupation, provision of tobacco, beverages etc. and punishment for disciplinary offences. The legislative decree of 25 August 1958 (*BGBl* I/645) concerning the enforcement of moral discipline by military superiors deals with measures of moral discipline imposed on members of the armed forces by judges under the Juvenile Courts Act. It sets forth the restrictions which may be imposed on the leisure-time activities of soldiers, together with other possible restrictions on their personal liberty. By Act of 4 July 1958 (*BGBl* II/203), the Federal Republic of Germany ratified the Supplementary Convention of 7 September 1956 on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.[1] The Berlin Act (*BlnGVBl* 58/521) concerning the institutional care of narcotics addicts and persons of unsound mind lays down that any order for the compulsory commitment of such persons must be approved by a judge. Similar provisions were promulgated in Schleswig-Holstein (*SchHGVBl* 58/271) by Act of 26 August 1958.

Under article 104 of the Basic Law, only a judge is entitled to order deprivation of liberty, in whatsoever form and on whatsoever grounds. The Supreme Land Court of Bavaria ruled (8 July 1958, *DÖV* 58/747) that in issuing a compulsory commitment order under the Act for the Control of Communicable Diseases, the judge must specify the type of institution to which the suspected disease-carrier was to be committed; but he must leave it to the administrative authorities to make their choice among several such institutions. The Land High Court at Frankfurt held (27 February 1958, *NJW* 58/874), that under the Hesse Act concerning Deprivation of Liberty persons holding parental authority and guardians or curators appointed in accordance with the provisions of the Civil Code did not require a judicial order to commit a child or ward to a closed institution, their authority to do so flowing from their general rights with respect to the child's upbringing.

Under section 6 of the Road Traffic Regulations, a jaywalker who has offended against the traffic rules may be compelled to undergo instruction on the subject. The Federal Administrative Court held (22 May 1958, *DÖV* 58/632) that this provision was not inconsistent with article 2 (2) of the Basic Law, in which the freedom of the individual is declared to be inviolable, since this constitutional rule refers only to physical inviolability, which is not affected by compulsory instruction.

(b) *Physical Integrity*

On 10 June 1958, Land Lower Saxony promulgated an Act concerning the use of direct coercion by officers of justice (*NGVBl* 58/135). This Act permits the use of physical force and of such means as may be appropriate, weapons included, if the desired purpose cannot be achieved in any other way. The Bundestag adopted an Act of 21 December 1958 amending and supplementing the Food Act (*BGBl* I/950). This lays down strict rules for the purity and non-adulteration of food products. It prohibits the manufacture or sale of food products to which artificial substances have been added or the treatment of animals with such substances or with radiation before or after slaughtering for purposes of meat preservation. Where appropriate, approval may be granted for the use of specific methods of treatment or additives. The Act lays down the same conditions for imported foodstuffs.

The Land High Court at Celle held (26 February 1958, *NJW* 58/1407) that the Vaccination Act, which provides for compulsory vaccination against smallpox, is lawful and not inconsistent with the Basic Law. In a decision dated 9 December 1958 (*NJW* 59/811), the Federal Court of Justice ruled on the duty of physicians to inform their patients as to the possibility of injurious effects resulting from an operation or therapeutic treatment; this is significant because according to German legal thinking any operation is essentially a physical injury, justified only by the consent of the person concerned. The court held that the physician had no such duty to inform the patient where the occurrence of injurious effects was a matter of extreme rarity and where it could be assumed that mention of them would not materially influence the patient's decision whether or not to agree to the treatment in question. In another decision (5 December 1958, *NJW* 59/811) the same Court ruling on the validity of a minor's consent to the invasion of his physical integrity, took the view that the consent of

[1] See *Yearbook on Human Rights for 1956*, pp. 289-91.

a person who is not fully *capax juris* is legally valid if he has reached a sufficient stage of mental and moral maturity to be able to understand the significance, scope and nature of the operation or treatment. In any event, the fact that the right of care for the child's person vested in the parents did not impair the validity of such consent where, for some special reason, the consent of the parents could not be obtained.

The Federal Disciplinary Court had occasion to deal (8 March 1958, *DVBl.* 58/761) with the question whether the right to physical integrity prevails even as against a military order, where the latter involves some action dangerous to the person. In the case under review, a soldier had been ordered to lay cable, for training purposes, in an area containing unexploded bombs. The court ruled that an order entailing danger to life and limb so great as to be disproportionate to its military purpose was unlawful and not binding on the subordinate. The Federal Court of Justice, dealing with the disciplinary powers of a teacher at a vocational school, ruled (1 July 1958, *BGHst* 12/62) that the teacher was not entitled to inflict corporal punishment on his pupils (fourteen to seventeen years of age). In principle, of course, the disciplinary rights of the parents could be transferred to the teacher. But for that to be possible, the teacher had to be concerned not only with the child's purely scholastic education, but also with his general upbringing, and the punishment must not be administered as a means of tuition. In no circumstances might corporal punishment be administered as a mere adjunct to school disciplinary methods.

In a case in which a person's health had been endangered by persistent disturbance of his rest after 10 p.m. at night, the Baden-Württemberg Administrative Court ruled (14 January 1958, *ESVGH* 10/993) that health was a property right entitled to the protection of the law. Any act seriously endangering an individual's health was also a danger to the public, and justified police intervention.

(c) *Private Life, Family, Honour, Reputation*

Article 6 of the Basic Law lays down that illegitimate children shall be provided by legislation with the same opportunities for their physical and spiritual development and their position in society as are enjoyed by legitimate children. The Federal Constitutional Court held (23 October 1958, *BVerfGE* 8/210) that this was a duty binding on the legislator, and that to fail to fulfil this duty within a reasonable time would be a breach of the constitution. In addition, it expressed the view that this article was a statement of moral values binding on the courts and the administrative authorities, and was to be observed by them in exercising their discretionary powers. Under articles 640 *et seq.* of the Code of Civil Procedure, judicial proceedings may be held, in certain specified cases, to determine a person's family status. The Court held that, on the basis of the principle referred to above and on historical grounds, article 644 of the Code of Civil Procedure, which bars proceedings of this kind where their object is to establish the paternity of an illegitimate child, was to be interpreted (in accordance with the jurisprudence of the Federal Court of Justice) as prohibiting such proceedings only where their sole object was to determine paternity for purposes of maintenance.

Under German law, collective slander of a group of persons is an offence only where the individuals comprising the group are readily identifiable. Departing from former decisions in cases of collective slander, in which extremely stringent requirements had been laid down with respect to the identifiability of the members of the group in question, the Federal Court of Justice ruled (28 February 1958, *BGHSt* 11/207) that the persons formerly persecuted by the National Socialists as Jews who were now living in Germany constituted a group of individuals susceptible of collective slander.

In another decision (29 May 1958, *BGHZ* 27/338), the Federal Court of Justice ruled that the public prosecutor must be particularly cautious in drafting Press releases relating to preliminary judicial inquiries which were still pending. What was important was not so much the actual wording of the release as the impression it might make on uncritical members of the public. To protect the reputation of the individual concerned, any expression tending to make the subject-matter of the inquiry appear more incriminating than it actually was must be avoided. Under German civil law, except in two cases which are regulated by statute (Civil Code article 847), no damages are awarded for injuries to intangible property rights. In a fundamental decision (14 February 1958, *BGHZ* 26/349), the Federal Court of Justice took the view that since freedom of the individual was recognized in articles 1 and 2 of the Basic Law as one of the moral foundations of the legal order, it was justifiable, in application by analogy of article 847 of the Civil Code, to award fair monetary compensation to a person for an injury, not covered by property law, which he had suffered because of the unauthorized publication of his photograph. The inviolability of human dignity and the right to the free development of the personality had to be recognized in private legal relationships as in others.

(d) *Freedom of Religion*

Under the Military Service Act, professional ministers of religion are exempt from military service. The Federal Administrative Court held (23 May 1958, *DÖV* 58/660) that, while the Jehovah's Witnesses constituted a religious communion within the meaning of the Act, the plaintiff's evangelical work was not a full-time clerical activity within the meaning of the Act, which normally carries with it exemption from military service. Jehovah's Witnesses were not, like clergymen in the major denominations, required to undergo long, thorough training and pass qualifying examinations; moreover, clergymen in the traditional religions practised their profession on a permanent

basis, whereas evangelical activities might be given up at any time. With respect to the provisions relating to conscientious objection, the same court ruled (3 October 1958, *DÖV* 59/261) that the right to refuse military service on conscientious grounds flowed directly from the Act, and that accordingly the decision of the military service board had only declaratory significance. Conscientious objection must be a serious moral decision, of such compelling inner force for the person concerned that to go against it would destroy or damage his moral personality. Merely intellectual or other rational considerations or ideas did not entitle a person to refuse military service. On the other hand, it was not an essential concomitant of a serious decision to refuse military service on compelling grounds of conscience that the person concerned should be prepared to defend his decision or to suffer for it.

4. Due Process

(a) *Before Civil and Administrative Courts*

The Second Act to amend the Social Courts Act, promulgated on 25 June 1958, (*BGBl* 1/409), introduced some changes in the procedure for this branch of justice. In particular, it abolished the legal remedy of appeal on facts and law (Berufung) in certain specified cases, so that the procedure in these cases now consists solely of the substantive hearing, with the legal remedy of appeal on law (Revision). The Act also contains clauses which, by providing for preliminary decisions on inadmissible or obviously unjustified appeals, will help to expedite the procedure and prevent abuses of justice. By Act of 18 December 1958 (*BGBl* II/576), the Bundestag ratified The Hague Convention relating to Civil Procedure of 1 March 1954, which lays down rules relating to the service of documents, requests for judicial assistance and the like. An Implementation Act was promulgated on 18 December 1958 (*BGBl* I/939) to give effect to the convention. In Baden-Württemberg, new provisions relating to administrative justice were introduced by Act of 12 May 1958 (*BWGVBl* 58/131). Also in Baden-Württemberg, the complaint offices (Einspruchsstellen) which had hitherto been competent as courts of first instance in tax matters were replaced under an Act of 30 April 1958 (*BWGVBL* 58/170) by genuine courts. In the Saar, an Act of 17 July 1958 (*SGVBl* 58/735) established a constitutional court and prescribed its structure and rules of procedure. In Berlin an Act of 2 October 1958 (*BlnGVBl* 58/951) dealt with the formal procedure to be followed before the administrative authorities. Judicial independence was placed on firm foundations in Berlin by the Land Judges Act of 19 June 1958 (*BlnGVBl* 58/551).

Article 19 of the Basic Law provides that recourse to the courts is open to any person if his rights are violated by public authority. The Military Service Act bars any Berufung against decisions of the administrative courts in matters connected with the Act, and permits Revision only in explicitly specified cases, or where there have been substantial procedural errors. Similarly, complaints against the refusal of the court to entertain a Revision are barred. The Federal Administrative Court held (23 May 1958, *DÖV* 58/660) that this did not infringe the Basic Law, since the constitutional legislator had left the formulation of judicial procedure to the regular legislator. It did not automatically follow from the principle of the rule of law that a complete chain of procedure must be instituted for all branches of justice. The Federal Constitutional Court came to the same conclusion in confirming as valid (10 June 1958, *DÖV* 58/944) a clause in the Act concerning the Federal Administrative Court which makes this Court the sole and final tribunal for various types of case. It did not even follow from the principle of the rule of law that the competent tribunal for every case must be a court; it followed only that any person whose rights were infringed must be able to have recourse to a court. In any event, where the administrative proceedings took place before an authority which could be relied on to keep to the law (a ministry or supreme federal authority), the final determination of a case by a court was sufficient. The Act did not make the Federal Administrative Court an extraordinary court, since it had not been established as a departure from a statutory provision and for specific cases, but enjoyed general jurisdiction. A statutory provision did not constitute an abuse of discretion unless there were no clear and objective reasons for it. The same view was taken by the Hesse High Court of State (7 November 1958, *DÖV* 58/946).

The courts had frequent occasion to discuss the question of the full implications of the right of legal hearing. The Federal Constitutional Court ruled (23 January 1958, *BVerfGE* 7/239) that courts might base their decision only on pleadings and documents on which the opposing party had been able to comment. The court must either set a time-limit for the communication of such comments or must defer its decision until a suitable time had passed after the submission of the pleadings. The court similarly held (17 October 1958, *NJW* 59/29) that evidence might not be used as the basis for a decision unless the parties had an opportunity to comment on it. Where a party in an action, having failed to comply with the time-limit for a complaint or appeal, then applies for reinstatement of his right to appeal, the court is not bound under the Code of Civil Procedure to give the opposing party a hearing on this application. Nevertheless, the Federal Constitutional Court held a hearing to be necessary (28 October 1958, *NJW* 58/3011). While the court's decision to approve such an application was of a purely procedural and interlocutory nature, its effect was none the less to deprive the opposing party of the benefits deriving from the finality of the judgement. The Federal Administrative Court ruled (7 February 1958, *ESVGH* 10/771) that it was not only where a party was given no opportunity at all to state his views that the right of legal

hearing was infringed, but also where a party was not given sufficient opportunity to acquaint himself with the material facts and evidence and state his views on them. In the field of civil law, the Federal Court of Justice took the same view (28 April 1958, *BGHZ* 27/163). When a party changed his lawyer, for example, the new lawyer had to be given adequate opportunity to study the documents in the case.

On the very controversial question whether the party concerned has a right to a hearing in actual administrative proceedings before the administrative authorities, the Higher Administrative Court at Münster held (18 June 1958, *ESVGH* 11/419) that such a right existed at least where the issue involved any forfeiture or limitation of rights or the determination of conflicting views. The Federal Administrative Court ruled (26 September 1958, *BVerwGE* 7/230) that the right of legal hearing did not necessarily imply that the parties must be able to state their case in oral proceedings. The right to a hearing was, however, infringed where there was any breach of the relevant rules of procedure relating to the form in which the parties were to be given the opportunity to state their views on the written proceedings.

On the question of the proper constitution of the court, the Federal Court of Justice held (12 November 1958, *BGHZ* 28/338) that where the vice-president of a court, as chairman of one of its divisions, had kept fully in touch with all the cases within the division's jurisdiction, had assigned them to the several members of the division and had convened hearings, but owing to pressure of administrative work had taken the chair in person at only one in five of the division's sittings, the division had been improperly constituted. The Federal Labour Court took the view (31 January 1958, *NJW* 58/924) that a Land Labour Court was not regularly constituted if during continuing proceedings one of the assisting judges left the courtroom, even if only for a short time. If an assisting judge was temporarily absent during the proceedings, he could take no part in arriving at the decision. Where such conduct was found to have occurred, there were peremptory grounds for an appeal on law (Revision) without any necessity for determining whether the decision had been due to the breach of procedure. The Federal Administrative Court took an equally strict view, ruling (9 July 1958 *DÖV* 59/396) that a court had been irregularly constituted where a scientific assistant employed by the court had taken part in the deliberations immediately preceding its decision. The Bavarian Constitutional Court held (19 April 1958 *ESVGH* 11/1) that, in view of the aftermath of the war and the exceptionally heavy burden of work which it had placed on the social courts, it could not be considered arbitrary on the part of the Bavarian legislator to have appointed temporary judges, for a term of two years, to work off the backlog of cases. The Federal Court of Justice decided (30 May 1958, *NJW* 58/1398) that where two hearings on the facts had already been held, no appeal on law could lie on the ground that the court of first instance had been irregularly constituted. There had been nothing to prevent the court of second instance from deciding the case on its merits. An appeal on the ground of a defect in law at first instance could lie only if the decision at second instance had been vitiated by the same defect.

The Higher Administrative Court at Coblenz held (26 March 1958, *NJW* 59/906) that a judge who had inserted biased marginal notes on pleadings could justifiably be rejected on the ground of prejudice.

Under German administrative law, the time for a complaint against an act of the administrative authorities in no circumstances begins to run unless and until the person concerned is instructed concerning the legal remedies open to him. Where an authority, in instructing a person concerning his legal remedies, had named a court which lacked jurisdiction, the Federal Administrative Court held (20 June 1958, *ESVGH* 11/237) that the time for the complaint had not begun to run. The Higher Administrative Court at Hamburg ruled (31 January 1958, *DÖV* 58/306) that where a citizen had been incorrectly instructed concerning his legal remedies, his right of complaint was not forfeited through the mere lapse of some considerable period of time; in addition to his failure to act for a fair period of time, his conduct must have been such that the authorites had with some justification gained the impression that he no longer intended to press his claim, and had proceeded with their arrangements accordingly, so that they could no longer be expected to fulfil the claim at some later date.

(b) *Before Criminal Courts*

Under German law, certain breaches of law and order of a non-criminal nature are punishable by fines imposed by the administrative authorities. The relevant statutory provisions were challenged on the ground that although the penalties in question are no different in degree of severity from criminal penalties, they are not imposed by the judicial authority. The Federal Constitutional Court held (14 October 1958, *DÖV* 59/67) that that argument was unfounded, since the law thereby protected the citizen from the imposition of criminal penalties for trifles. The system of administrative fines did not constitute criminal procedure, as was further demonstrated by the fact that the public prosecutor took no part in such proceedings; that the prosecution was not mandatory, but discretionary; and that a sentence of imprisonment could not be imposed in lieu of a fine. Furthermore, an appeal could in every case be made to the ordinary court. A provision of the Criminal Code (article 90a) makes it a punishable offence for a person to establish or promote the ends of any association directed against the constitutional order or the principles of international understanding. If, however, the association in question is a political party in federal territory, the offender cannot under this provision be prosecuted until the Federal Constitutional Court

has ruled the party unconstitutional. The Federal Court of Justice held (30 January 1958, *BGHSt* 11/233) that this was a purely procedural provision which in no way offended against the principle of *nulla poena sine lege* (article 103 (2) of the Basic Law). While the criminality of the act was evident *a priori*, the offender could not be prosecuted until its unconstitutionality had been conclusively established. The Federal Constitutional Court merely established an existing anti-constitutionality. The offence rendering the person concerned liable to a penalty was his anti-constitutional activity.

The Bavarian Constitutional Court ruled (20 February 1958, *ESVGH* 10/652) that the prohibition of double jeopardy laid down in the Bavarian Constitution (article 104) was not merely of procedural significance as a bar to proceedings, but created a subjective constitutional right not to be punished more than once for the same act. This principle also applied to proceedings against officials before disciplinary courts. The Federal Administrative Court held (22 May 1958, *DÖV* 58/632) that the liability of a jaywalker to be ordered by the administrative authorities to attend traffic instruction in addition to undergoing a penalty did not conflict with article 103 (3) of the Basic Law (prohibition of double jeopardy), because traffic instruction was not a penalty, but a precautionary, measure. Under the Convention on the Settlement of Matters arising out of the War and the Occupation between the Federal Republic and the three Western Allies (*BGBl* II/1955/405), the Federal Republic recognized all decisions of the three Western Allies in criminal proceedings against Germans and thus renounced, in accordance with the rule against double jeopardy, any right of its own to impose penalties for the offences in question. The Federal Court of Justice ruled (9 September 1958, *BGHSt* 12/36) that a person who had been convicted of a war crime by an occupation court, whose conviction had become fully operative, and who had escaped from detention before the transitional Convention came into force could be tried before a German court for the same offence. The Land High Court at Brunswick held (27 March 1958) that an order for punishment (Strafbefehl) in keeping with the facts and the law barred the public prosecutor's office thereafter from instituting ordinary criminal proceedings merely because it had changed its opinion on whether the public interest was involved.

The Federal Court of Justice had several times to deal with the question of the regular constitution of the court. It ruled (14 January 1958, *NJW* 58/557) that if a juror was unable to be present during part of a jury trial, the corresponding alternate juror might take his place for the actual period of such inability only, but not for the entire hearing. It was similarly established in another judgement (15 April 1958, *NJW* 58/838) that the President of the Land Court was required at the beginning of each year to arrange for service on the assize court in such a manner that the assignment of the judge in individual cases was not left to the discretion of the president of the assize court or of the criminal court. The Federal Court of Justice (11 November 1958, *BGHSt* 12/104) ruled that where an auxiliary criminal court was constituted temporarily in the course of the official year to relieve the regular criminal court, it might be presided over by a Landgerichtsrat instead of a Landgerichtsdirektor, since the measure was only a temporary one, and since the statutory regulations prescribing that the president of the court must be a Landgerichtsdirektor would be a dead letter if a Direktor, while formally appointed, made a habit of allowing someone else to act for him — a practice which would in any case be inadmissible. Under the German Judicature Act lay assessors (Schöffen) and jurors are selected from panels compiled by the municipal administration. In one municipality the several political parties had proposed lists of names which had been approved by the whole municipal council and transmitted to the court. The Federal Court of Justice held (2 December 1958, *BGHSt* 12/197) that this procedure was in order, since the law prescribed no particular form for the compilation of panels of jurors and the political parties were an essential element in the political life of the State. In the same judgement, the Federal Court of Justice added that the administrative official appointed by the Land government to preside over the electoral board might appoint a deputy to serve on his behalf, although the law was silent on the subject. The same applied to the other members of the electoral board. Although it was a strict statutory requirement that the judicial members of the assize court must be appointed before the beginning of the official year, the Court continued, the president of the Land court had the right and the duty to make a change in the course of the year if one of the appointments made at the beginning of the year was illegal, as otherwise the assize court would be prevented from sitting.

The Federal Constitutional Court held (13 February 1958, *BVerfGE* 7/275) that where a defendant lodged an appeal on law (Revision) and the public prosecutor filed a counter-statement containing new facts or evidence of material importance for the determination of points of procedure raised by the appeal, the right of legal hearing required that the counter-statement should be brought to the notice of the defendant before the court ruled on the appeal. In criminal proceedings, similarly, where a complainant (Beschwerdeführer) had expressly reserved further argument in support of his complaint, the court must allow a suitable time to pass before giving its ruling, unless the complainant had been set a time-limit for the submission of such further argument (Federal Constitutional Court, 22 July 1958, *NJW* 58/1436).

The right to a legal hearing also exists in disciplinary proceedings for misconduct in court. The Land High Court at Bremen ruled (13 November 1958, *NJW* 59/61) that it was a concomitant of that right that the person concerned should not be penalized unexpected-

ly, without having been warned in advance that the judge considered his behaviour to constitute misconduct and that he was liable to a penalty.

The Federal Court of Justice held (10 July 1958, *BGHSt* 12/18) that where the court, or even one of the judges, possessed the necessary technical knowledge to appraise the facts of a case, it might decline to hear corresponding evidence. However, while it was not necessary for such technical knowledge to be acquired in open court and in the presence of the parties, the principle of the right of legal hearing required that it should be made clear to the parties that the court intended to decide the pertinent questions from its own technical knowledge, and would give them the opportunity to state their views on the subject.

It is an axiom of German criminal law that no one may be convicted unless the offence charged has been proved against him in specific detail. The Federal Court of Justice ruled (4 December 1958, *NJW* 59/896) that an alternative conviction (wahldentige Verurteilung) could be pronounced only where the uncertainty as to which of two possible acts the defendant had committed was due solely to the fact that the possibility of his having committed the other could not be excluded. Consequently, an alternative conviction was inadmissible if the judge, while mentally excluding one possibility, was not convinced that the other could be proved. A person who commits a criminal offence while in a condition of irresponsibility brought on through his own fault is punishable under German law, not for the offence, but for having reduced himself to such a condition. The Land High Court at Oldenburg ruled (20 December 1958, *NJW* 59/832) that, where there was a possibility that a person in a condition of irresponsibility had committed several criminal offences, an alternative statement of charges might be presented against him only on the same conditions as against an offender who was responsible for his actions.

In principle, a defendant is not obliged under German law to make any statement. If the presiding judge nevertheless attempts, by using abnormally harsh language, to force him to make a statement, the defendant may justifiably gain the impression that he cannot expect a fair trial, and may on that account challenge the judge on the ground of prejudice (Federal Court of Justice, 9 January 1958, *NJW* 59/55).

The Federal Constitutional Court, considering the question whether a court appointing counsel for the defence under the obligatory defence procedure is bound to comply with the defendant's expressed desire for a particular advocate, ruled (16 December 1958, *NJW* 59/571) that assigned counsel might be chosen only from among the advocates authorized to practise in the court's jurisdiction, and that the designation of counsel other than the one desired by the defendant infringed no basic right.

While under German criminal law a person who has committed an offence while in a condition of irresponsibility or diminished responsibility is not liable to a criminal penalty, he may, nevertheless, in the interest of public security, be committed to an institution for treatment and cure. The Federal Court of Justice ruled (29 April 1958, *NJW* 58/1050) that where the committal of a defendant to an institution under security proceedings had been rescinded on appeal, and, the security proceedings having been followed by criminal proceedings, he had been found guilty of committing a serious or less serious offence (Verbrechen or Vergehen) while in a condition of diminished responsibility, no penalty might be imposed upon him, because of the rule against *reformatio in peius*. However, there was nothing to prevent the trial judge from committing him to an institution, despite the fact that in such cases the law provided for committal only as a measure accompanying the penalty.

5. Protection of Nationality, of Freedom of Movement and of the Right of Asylum

(a) *Nationality*

In a fundamental judgement (13 February 1958, *ESVGH* 10/801), the Federal Administrative Court held that the decision to grant German nationality was a contestable administrative act; thus rejecting the view taken in some quarters that it is an act of state not subject to the jurisdiction of the courts. The Court added in explanation that while the limits of official discretion were certainly very wide, they were subject to review by the administrative courts.

Article 116 (2) of the Basic Law provides that German citizens who were deprived of their citizenship for racial, political or religious reasons are considered as not having been deprived of their citizenship if they have established their domicile in Germany after 8 May 1945. The Federal Constitutional Court ruled (10 July 1958, *BVerfGE* 8/81) that this provision applied also to victims of persecution who had not established their domicile in Germany until after the entry into force of the Basic Law. Since the provision was restitutive in character it should not be given a limitative interpretation. The Federal Court of Justice (11 June 1958, *BGHZ* 27/375) endorsed this opinion. It added that where a German woman deprived of her nationality had married an alien before her return to Germany (by which act she would similarly, under article 17 of the Reich and State Nationality Act, have forfeited German nationality had she possessed it at the time), such marriage raised no bar to her recovery of German nationality. That was the only interpretation consonant with the principle of restitution laid down in article 116 of the Basic Law. Under article 116 (1) of the Basic Law, a person who has been accepted as of German ethnic stock in the territory of the German Reich as it existed on 31 December 1957 is a German even if he does not possess German nationality within the meaning of the Na-

tionality Act. The Higher Administrative Court at Münster held (25 April 1958, *DÖV* 58/954) that the renunciation of German nationality acquired by collective naturalization in the Third Reich did not entail loss of German legal status within the meaning of article 116 (1) of the Basic Law, thereby ensuring that the person concerned was not left unprotected. There being no explicit provisions on the matter, the court ruled independently that, while a person could be released from that legal status, his release would not be legally operative unless he had been furnished with a certificate of release by the competent administrative authority. The same court also held (5 September 1958, *DÖV* 58/955) that German nationality acquired by collective naturalization before 26 February 1955 (the date of entry into force of the first Settlement of Nationality Questions Act, which contains explicit provisions to govern such cases for the future) could be renounced only by making a declaration to that effect before an authority. It was not sufficient for the person concerned to show his lack of interest in German nationality merely by his actions — e.g., by non-German activity as a member of the Polish Anders Army or the Polish Resettlement Corps.

The German Naturalization Act requires an applicant for naturalization to show, *inter alia*, that he has adequate means of support. The Federal Administrative Court held (27 February 1958, *BVerwGE* 6/207) that this condition applied equally to stateless aliens, despite the privileged status accorded them by the Act concerning the Legal Status of Stateless Aliens of 25 April 1951, because it was a binding statutory requirement and not a matter for discretion.

The Land High Court of Bavaria took the view (4 November 1958, *DÖV* 59/32) that, in court proceedings relating to arrest pending deportation, the nationality of the person concerned must be investigated even though the administrative authority had already been required to go into it in issuing the deportation order. The Court also ruled that an expellee who had left Germany again before the entry into force of the Basic Law was not a German without German nationality within the meaning of article 116 (1) of the Basic Law. A person who, after being accepted in Germany as an expellee, again left the country did not recover his forfeited legal status by returning.

(b) *Freedom of Movement; the Law relating to Passports*

On 20 March 1958 the Federal Administrative Court gave an interpretation of the Act concerning the Legal Status of Stateless Aliens of 25 April 1951, ruling (*BVerwGE* 6/273) that a person covered by the Act was entitled to the legal status provided for even if he had returned to the Federal Republic from a foreign country, having emigrated to that country before the Act came into force. It was not required that he should sever all connexions with the country to which he had emigrated; all that was necessary was that the Federal Republic should again become his country of habitual residence.

(c) *The Right of Asylum; Extradition*

The Federal Administrative Court ruled (25 November 1958, *NJW* 59/451) that alien refugees lawfully resident in the Federal Republic had a legal right to recognition of their status as stateless aliens. This right was not forfeited if the refugee had previously been recognized as a stateless alien in another country. It was only through the possession of a national identity document that a refugee enjoyed the benefit of the legal status of a stateless alien, since no country was bound by the decision of any other. The same court further held (30 September 1958, *DÖV* 59/112) that the establishment of residence or domicile by an alien who had entered the country illegally could subsequently be legalized by a measure such as the issue of a residence permit. Except in cases of arrest pending deportation and in the cases referred to in article 33 (2) of the Geneva Convention of 28 July 1951, a deportation order against a stateless alien or alien refugee was summarily enforceable.

6. PROTECTION OF PROPERTY

(a) *General*

Article 14 (3) of the Basic Law provides that in cases of expropriation the affected party shall in all circumstances have the right of recourse to the ordinary courts. The Federal Constitutional Court ruled (28 October 1958, *BVerfGE* 8/240) that this provision was not infringed by an expropriation law under which the first step in the proceedings was an administrative decision, since this decision was not binding on the ordinary courts and did not set up a final bar to ordinary judicial proceedings. Nor was it an infringement of the Basic Law that the initiation of such proceedings was made subject to a specified time-limit; that did not unfairly restrict the right of appeal. The Federal Administrative Court, in a decision of fundamental importance, had ruled (20 June 1956, *BVerwGE* 4/6), that in cases of damage arising from requisitioning by the occupying Powers the aggrieved party was entitled to compensation in accordance with the principle of special sacrifice. In a decision of 28 May 1958 (*BVerwGE* 8/4), this doctrine was abandoned and the basis of a sacrifice claim in such cases denied. The post-war period had been too brief to give rise to any customary law on the matter, and before the Second World War doctrine and practice had been entirely in the opposite sense. A further reason why a sacrifice claim could not be recognized was the absence of the essential requirement for such a claim: that the action complained of should have been taken by the claimant's own State. Accordingly, the regulation of such cases could properly be left to the legislator.

Reviewing the Milk and Fats Act, the Federal

Administrative Court made a number of general comments (17 January 1958, *BVerwGE* 6/129) on the question of what features characterize an act of expropriation. Under this Act, sterilized milk, but not fresh or condensed milk, is subject to an equalization tax. The court ruled that this was not an infringement of property rights. The equalization tax could be regarded as expropriatory only if it was applied with particular intensity, so that it reduced the profitability of the product in question to the point of loss, or if it constituted a special sacrifice, in which case it would be a breach of the principle of equality.

(b) *Real Property*

Under a clause in the Building Land Acquisition Act, a person who has erected a building on another's land — which occurred more particularly in the emergency conditions of the war — may be awarded the land by the authorities, on payment of appropriate compensation to the owner. The Federal Court of Justice held (10 March 1958, *BGHZ* 27/35), that this clause was compatible with the constitutional guarantee of property rights, since it served the general welfare by conserving dwellings which the application of the relevant civil law would require to be destroyed — for the builder would have to return the land to its owner free of buildings. In addition, the Act served to clarify certain legal complications which had arisen as a result of the fact that requisitions of land under the Reichsleistungsgesetz (Reich Special Powers Act) had in many cases lapsed or been cancelled. The question whether building land replotting necessitated by urban expansion is to be regarded as expropriatory has long been a matter of dispute. The Federal Court of Justice held (3 March 1958, *BGHZ* 27/15) that the compensation of a land-owner in such cases in cash instead of land undoubtedly constituted expropriation for all practical purposes, where the land-owner had insisted on being compensated in land.

Under the Hesse Reconstruction Act, the authorities may in certain circumstances require damaged house property to be rebuilt as dwellings. The Federal Administrative Court (30 October 1958, *DVBl* 59/100) regarded this as a legitimate and non-compensable form of control over the use of property. Not all non-compensable restrictions on the use of property could be considered legitimate, but only those which served to demarcate the boundaries of property rights as against conflicting values of superior or equal importance. In view of the housing shortage, however, that condition might be said to be fulfilled. It was conceivable, of course, that the obligation to rebuild might entail uneconomic burdens, and thereby become expropriatory. To enable it to decide on that point, the authority concerned should have at its disposal, at the time of issuing its order, a rough estimate of the costs involved. The Bavarian Constitutional Court ruled (5 March 1958, *DÖV* 58/822) that a statutory provision prohibiting advertising displays in natural surroundings, except at the place of business, was not an infringement of property rights. The idea of expropriation implied, above all, a violation of the principle of equality; and even where such a violation existed, it had to be established, before a measure could be called expropriatory, that it restricted the use of the property in question to such an extent that the owner's enjoyment was reduced to a mere form. There was no question of that in the case under review, since all that the owner was prevented from doing was renting wall surfaces.

The courts are still having to deal frequently with the question of the proper standards and base date to be applied in calculating compensation for expropriation. The Federal Court of Justice ruled (10 February 1958, *DÖV* 58/315) that a statutory provision under which the value of land free of buildings was to be assessed on the basis of the land's ordinary value on 1 January 1935 was at variance with the compensation provisions of article 14 (3) of the Basic Law. So far as it applied to the assessment of compensation for expropriation, the provision could not be justified by reference to the public interest in the enforcement of price ceilings, since in expropriation proceedings the price authorities acted in a merely advisory capacity, and could make no binding decisions. In another decision (24 February 1958, *NJW* 58/749) the Federal Court of Justice ruled that where, during a period of fluctuating prices, compensation for expropriation had been assessed incorrectly, the base date to be applied was the date of the last non-appellate court hearing. The same court held (25 September 1958, *NJW* 59/148) that where proceedings relating to the expropriation of land extended over a long period, the first consideration to be taken into account, as a general rule, in assessing the amount of compensation, was the nature of the land (e.g., waste land, agricultural land, building land) on the date on which any possibility of future change had been ruled out once and for all by the local development plan. This did not affect the question of the base date to be applied in assessing the value of the land. The Federal Court of Justice ruled (10 February 1958, *ESVGH* 10/573) that in determining the value of a bombed site, the judge could legitimately apply a rateable value assessed as though the site had been rebuilt.

(c) *Other Property Rights*

The Federal Court of Justice ruled (20 January 1958, *BGHZ* 26/248) that a liability to compensation under the Expropriation Act could arise even in connexion with a lease concluded for an indefinite term — i.e., subject to notice at any time — since in practice such a lease would not be terminated if the personal relations between the parties remained undisturbed and the amount of the rent was reasonable. For the purposes of the expropriation laws, the term "property" covered any acquired valuable right or in-

terest, assessed on the basis of economic principles. In another decision (10 November 1958, *BGHZ* 28/310), the Federal Court of Justice held that where a motor vehicle placed at the disposal of a municipality by an individual in pursuance of a public requisitioning ordinance was exposed to particular danger and suffered damage, the municipality was required to grant fair compensation in accordance with the principles of the expropriation laws. If the vehicle was damaged, the owner acquired a claim for special sacrifice in excess of what was normal (wear and tear, labour time, etc.). The Federal Court of Justice ruled (24 April 1958, *ESVGH* 10/836), that in permitting the owner of a site abutting on a public thoroughfare to use the latter, during building operations, for the storage of building materials and machinery, a building authority had incurred a liability for compensation. The owner of a nearby business who had suffered damage as a result was entitled to compensation, the measure being in effect expropriatory.

(d) *Property held Abroad and Measures taken by Foreign Powers*

By Act of 9 June 1958 the Bundestag ratified the treaty of 15 June 1957 between the Federal Republic of Germany and the Republic of Austria concerning the settlement of certain matters in the sphere of property rights. Under this treaty, individuals of German nationality recover their sequestered assets, rights and interests, with certain exceptions, up to a maximum amount of 260,000 schillings. The treaty also regulates relations between German debtors and Austrian creditors. The treaty came into force on 16 July 1958, in accordance with a notice of promulgation dated 30 June 1958.

7. Political Activities and Freedom of Association

(a) *Free Expression of Opinion; the Right of Petition*

On 25 October 1958 (*HGVBl* 58/152) Land Hesse promulgated an Act amending the Freedom and Rights of the Press Act. The amendment Act provides for a right of reply, defines the cases in which an issue of a newspaper may be confiscated, and prescribes compensation for wrongful confiscation.

In its decisions concerning legislation in some German Länder to provide for referendums on the atomic arming of the Bundeswehr, the Federal Constitutional Court made a number of fundamental observations on freedom of opinion and the right of petition. Neither of these fundamental rights, it held (23 June 1958, *BVerfGE* 8/42), entitled the citizen to expect the State or any public agency to give him the opportunity of expressing his opinion in the form of a reply to an official inquiry and of thereby bringing it to the notice of Parliament. The Court further expressed the view (30 July 1958, *DVBl* 58/610) that the fundamental right of freedom of speech implied freedom to form public opinion. Public opinion and the shaping of the political will of the people could not, however, be identified with the process of formation of the will of the State, which consisted in the expression, in official form, of the opinion or will of an organ of the State.

The Federal Constitutional Court held (15 January 1958, *BVerfGE* 7/198) that the fundamental right of free expression of opinion embraced, not only the expression of opinion, but also the swaying of minds through the expression of opinion. The legal limitations specified in the relevant constitutional clause included the rules of civil law. These, however, must be interpreted in the light of the special importance to a democratic State of the fundamental right of free expression of opinion. Thus, an expression of opinion which included a call for a boycott was not necessarily contrary to public policy; it might in some circumstances be justified by fundamental right of freedom of opinion. The same court ruled (15 January 1958, *BVerfGE* 7/230) that the fundamental rights of free expression of opinion and inviolability of the home did not entitle the occupant of a rented apartment to manifest his political opinions from his apartment in a manner which disturbed the social tranquillity of the apartment building. The Federal Administrative Court held (20 June 1958, *BVerwGE* 7/125) that the wearing of colours by members of student associations did not in general constitute an expression of opinion within the meaning of article 5 of the Basic Law (which deals with freedom of opinion). To be sure, not only freedom of opinion, but also freedom to manifest opinion in any form was a constitutionally guaranteed right. However, the wearing of colours was generally speaking merely a student custom, and did not constitute an expression of opinion.

The Higher Administrative Court at Münster held (18 November 1958, *DÖV* 59/388) that to place obstacles in the way of the publication and dissemination of works of art was to limit the freedom of art guaranteed by article 5 (3) of the Basic Law. However, since artistic expression and the expression of opinion could not be separated, the publication of a text which was a work of art was subject to the restrictions set forth in the Act concerning the Dissemination of Literature Harmful to Youth, which were sanctioned by article 5 (2) of the Basic Law.

The Bavarian Constitutional Court held (28 November 1958, *ESVGH* 11/404) that a decision taken on a petition did not constitute an administrative act, since it was not the determination of an individual case. The authority to which the petition was made could delegate to a subordinate agency the authority to deal with, and decide on, the petition, provided that such agency was competent to do so. Although the right of petition included the right to obtain a decision on the petition, the petitioner could not choose his own jurisdiction.

(b) *Freedom of Assembly and Association*

In accordance with a notice dated 2 May 1958 (*BGBl* II/113), International Labour Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize came into force for the Federal Republic on 20 March 1958.

Following the dissolution of the Communist Party by the Federal Constitutional Court on 17 September 1957, members of the dissolved party were nominated in many areas by associations of electors as candidates in local elections. The Federal Administrative Court (16 May 1958) had to consider the question whether such an association was to be considered as constituting an unlawful substitute organization of the dissolved Communist Party. A substitute organization, it held, need not be a party in the true sense. An electoral association could, however, be held to be a substitute organization if all or most of the candidates it nominated who had any chances of success were members of the German Communist Party.

In a fundamental decision (31 October 1958, *NJW* 59/356), the Federal Labour Court ruled that where an arbitration agreement existed between parties to a wage contract, it was unlawful to initiate measures preparatory to a labour conflict before the conclusion of the arbitration proceedings. A strike occurring as a result of such measures was illegal, and rendered the union liable for compensation. That did not affect the freedom of association guaranteed by article 9 (3) of the Basic Law or the right to strike. The Court explicitly recognized that socially justifiable strike action taken by a union was legitimate and that the individual employee who took part in a strike was thus acting lawfully. However, the right to strike could undoubtedly be limited by contract, and such a contract was binding on the parties.

8. The Suffrage and the Right of Self-determination

Modifications and revisions of the Land election laws were adopted in Lower Saxony on 12 July 1958 (*NGVBl* 58/159), in the Rhineland-Palatinate on 26 November 1958 (*RPGVBl* 58/201) and in Berlin on 28 March 1958 (*BlnGVBl* 58/305). On 16 October 1958 the Berlin legislature also adopted an Act (*BlnGVBl* 58/1021) concerning the verification of elections to the House of Representatives and to district assemblies. The work of verification is assigned to a permanent body composed of the President of the Berlin Higher Administrative Court, two judges of the same Court and two representatives.

The Federal Constitutional Court gave a ruling (24 June 1958, *BVerfGE* 8/51) on the function of political parties in the State and their treatment by the legislator. The holding of elections, it held, was a matter of public duty, and one in which the parties were constitutionally assigned a vital role. Consequently, the State might legitimately make provision to ensure that funds were available, not only for the elections themselves, but also for the political parties contesting them. That did not mean that the legislator was obliged to even out differences in the competitive chances of the parties deriving from their varying social compositions; but the legislator must not, without compelling reasons, take any measure which accentuate existing *de facto* inequalities in chances of electoral success. Any statutory provision which, by granting tax privileges for contributions to political parties, made it easier for some citizens than for others, according to their incomes, to influence the formation of the political will of the people, was inconsistent with the principle of formal equality which governed the exercise of political rights in a free democracy. Reviewing the Hamburg and Bremen legislation providing for referendums in these Länder on the atomic arming of the Bundeswehr, the Federal Constitutional Court commented (30 July 1958, *DVBl* 58/610) that the Acts in question gave the people undue power to intervene in deciding the will of the State. The formation of public opinion and the preliminary moulding of the will of the people were processes which went on insensibly in social and political life, through all constitutional channels and with the participation of all the vital forces of the population, according to their real weight and influence. On the other hand, the realization of the will of the people as an organ of State, in whatsoever form and to whatsoever effect it might occur, could take place, in a free democratic State based on the rule of law, only according to the rules and within the limits laid down in the constitution. For the people of one of the Länder to give instructions to members of their Land government in the Bundesrat, even if in legally non-binding form, was an impossibility under the Federal law. The Bavarian Constitutional Court ruled (13 February 1958, *ESVGH* 10/644) that one of the principles governing local elections was that they should be held at specified suitable intervals. This followed from the fact that State power belonged to the people. The intervals between local elections need not coincide with those between parliamentary elections; however, the legislator must ensure the people's right to decide from time to time whether their representatives still retained their confidence. At the same time, the elected body must enjoy sufficient stability to be able to perform its tasks. The local election laws of Württemberg-Baden provide that in elections to the Kreistag no municipality may elect more than 40 per cent of the members. The Federal Administrative Court held (17 January 1958, *GVBl* 58/616) that while this rule did imply some distortion of voting power, and to that extent affected the principle of equal suffrage, it was nevertheless admissible according to the jurisprudence of the Federal Constitutional Court (23 January 1957, *BVerfGE* 6/84, 90, 91). In the given situation some such system was absolutely essential if the equilibrium of the State was to be preserved; moreover, it was in keeping with the legal conscience of the community. Any other system would jeopardize the equalizing function of the Landkreis, by making

it possible for one municipality to acquire dominant voting power. The Higher Administrative Court at Münster ruled (17 December 1958, *DÖV* 59/457) that the right to challenge a local election was retained even by a person who had been implicated in irregularities during the election. The Court further held that there could be no free election without secrecy of the ballot. While a voter might in some circumstances disregard the secrecy of the vote before or after the ballot, he might in no circumstances do so while the ballot was in progress; if he did, he would be exerting psychological pressure on all other voters, since if they insisted on secrecy they would be suspected of wishing to vote differently from him. In determining the effects of a breach of the electoral laws the administrative court could on no account ask voters how they had voted. On the other hand, an offence against the secrecy of the ballot could not be taken as ground for annulling the election unless general experience and the circumstances of the case suggested that it had possibly, and indeed probably, affected the outcome.

9. Protection of the Right to the Free Choice and Exercise of a Profession or Occupation

Under the pharmacy licensing laws of most of the Länder the conditions for the grant of a licence are that the proposed new pharmacy must be commercially viable and that it must cause no prejudice to neighbouring pharmacists. In a decision of basic importance for all aspects of the right to the free choice and exercise of a profession, the Federal Constitutional Court laid down a number of general principles for the interpretation of this fundamental right (11 June 1958, *BVerfGE* 7/377). Article 12 of the Basic Law, the court held, guaranteed the freedom of the individual to exercise a trade or profession even where the activity involved did not correspond to the legal or traditional conception of a trade or profession. This provision of the Basic Law applied equally to professions practised on a self-employed basis and to those practised on a salary-earning basis. Where each of these forms of practice had its own social importance, the choice between them was a choice of profession. The legislator had power to make regulations affecting either the choice or the exercise of a profession; but the limitations to which he was subject in each case were of different degree. The more it was directed to the exercise of a profession, the broader were the limits of the regulatory power; the more it affected the choice of a profession, the narrower were those limits. However, measures to regulate the exercise of a profession which also indirectly affected the choice of a profession were permissible. The fundamental right of freedom to choose his profession protected the individual, whereas the purpose of the regulatory power was to protect the interests of the community. In the light of this conflict of interests, there was a certain scheme of gradations to be observed: a more stringent measure should be taken only if the less stringent one could not be relied on to be effective. Thus, limitations might be imposed on the right to exercise a profession if the legislator had reasonable grounds to believe that they were necessary and would not create an undue burden. The right to free choice of a trade or profession, on the other hand, might be restricted for the public good only where such action was absolutely essential to safeguard particularly important community interests; and in all cases the measure selected must be that entailing the least possible interference. In prescribing conditions for admission to a profession — and the court considered conditions of this kind to be a form of encroachment on the right to free choice of professions — the legislator was required to bear in mind, in the case of subjective conditions, the fact that the requirements laid down must bear a reasonable relation to the end pursued — the orderly practice of the profession in question. As for objective conditions of admission, these were permissible only on very narrowly defined terms: generally speaking, they could be imposed only where they were needed for the prevention of demonstrable or highly probable dangers to community interests of overriding importance. On the basis of these considerations, the court ruled that so far as concerned the right to open a pharmacy the constitutional principles were satisfied only where no objective conditions were imposed. The same court held (17 December 1958, *BVerfGE* 9/63) that the principles established in its decision relating to pharmacies were not applicable without qualification to the post-war period of economic controls. At that time, public control of consumer goods, which had been essential to ensure that the population was fed, would have been impossible except through a system of supply restrictions. Accordingly, no exception could be taken to the fact that flour-mills had been allowed only specified quotas of grain for milling, the intention having clearly been to do away with this situation gradually, while avoiding any disorganization.

The Land High Court at Stuttgart ruled (16 October 1958, *NJW* 59/246) that a contractual agreement between a parish, as the authority responsible for a cemetery, and an undertaker, under which the latter enjoyed the exclusive right to drive vehicles into the cemetery, was inconsistent with article 12 of the Basic Law, and therefore void. Under the Code of Civil Procedure, a person who is not a lawyer must have special authorization to be able to act as agent for others in legal matters (Rechtsbeistand). The same applies to any person not a lawyer who wishes to appear before a court (Prozessagent). The Federal Administrative Court held (4 December 1958, *BVerwGE* 7/344) that it was contrary to article 12 of the Basic Law to make the grant of authorization to practise as a Rechtsbeistand conditional upon the existence of a need for additional practitioners. So far as it concerned the function of Prozessagent, however, the Court held that this condition was constitutional,

since in the pharmacies licensing case the Federal Constitutional Court had ruled that it was lawful to regulate admission to a profession or occupation provided that the requirements laid down bore a reasonable relation to the end in view. The relevant provision of the Code of Civil Procedure met that condition, the end in view being the orderly administration of justice. The monopoly position of the legal profession was justified in view of the necessity of proper training and professional discipline. The same court ruled (10 February 1958, *ESVGH* 10/1014) that the requirements of safety and efficiency laid down in article 9 of the Passenger Transport Act as conditions for the grant of authorization to operate a taxi-cab enterprise were constitutional. The residence qualification laid down in article 30 of the Passenger Transport Act was also constitutional, the Federal Administrative Court held (11 January 1958, *BVerwGE* 6/108), being a subjective condition which could be fulfilled immediately by any applicant for admission. The fact that an applicant might have practical or economic difficulties in establishing residence did not affect the case, since there were objective reasons for giving preference to residents. The Administrative Court at Kassel ruled (1 October 1958, *GVBl* 59/183) that article 9 (2) of the Passenger Transport Act under which authorization to operate a taxi enterprise may be granted only if traffic needs are not adequately served by existing transport services, was not inconsistent with article 12 of the Basic Law, being a valid means for ensuring safety and convenience of traffic, which might be threatened by taxis. However, the Administrative Court at Bremen felt some doubts about this provision (2 December 1958, *DVBl* 59/180), and therefore referred the matter to the Federal Constitutional Court.

Under the Milk and Fats Act the sale of milk is subject to special official authorization, one of the conditions for the grant of which is that the person concerned can be counted on to offer for sale a specified minimum quantity of milk. The Federal Constitutional Court ruled (17 December 1958, *BVerfGE* 9/39) that this condition was incompatible with the right to free choice of occupation. While health was certainly a right entitled to the protection of the law, the dangers which might ensue from the unrestricted sale of milk were not so certain or so serious as to justify encroachment on the right of free choice, since they could be averted by appropriate supervision.

The Federal Administrative Court ruled (24 October 1958, *BVerwGE* 7/287) that a student could not be refused matriculation because he admitted to taking part in student duelling. Such a restriction would be an invasion of the right to free choice of occupation; it would be admissible only in the overriding public interest, and, as a subjective condition of admission, would have to bear a reasonable relation to the end in view. Since student duelling was not an offence and was not contrary to public policy, there was no valid reason for the condition. To be sure, the functions of a university were not merely scholastic, but extended to the broad field of character and personality development; however, that did not justify a policy involving the infringement of a fundamental right, since the attitude condemned by the university on the part of members of student fraternities was a matter of general outlook, and did not infringe on the university's research and teaching functions. Under article 42 (1) of the Penal Code, a person committing an offence through the misuse of his profession or occupation may be prohibited, for the protection of the public, from practising that profession or occupation for five years. The Federal Court of Justice held (8 July 1958, *NJW* 58/1404) that where a businessman had committed offences within the meaning of this provision in only one branch of his business, he might nevertheless be prohibited from carrying on the business as a whole, if that was in the public interest.

With a view to the protection of quality and of cultivation in general, the cultivation and sale of hops are strictly regulated. Under article 11 (2) of the Hops Act, the preparation of hops before sorting may be carried out only under official supervision. A Bavarian regulation provided that this work must in all cases be done in municipal plants. The Federal Administrative Court held (21 January 1958, *DVBl* 58/510) that this was an infringement of article 12 of the Basic Law, since it restricted the right of free choice of occupation of other interested parties.

Under the Drugs Order of 22 October 1901, the drugs listed in the order may be sold only by pharmacists. In a case involving a druggist, the Federal Administrative Court ruled (17 July 1958, *DÖV* 58/789) that this regulation was admissible, since, under the principles laid down in the pharmacies licensing case, the legislator had very broad discretion to place restrictions on the exercise of a profession, and could make regulations wherever there were reasonable grounds for doing so. Even though many drugs were now produced industrially, it was reasonable and justifiable to make the sale of drugs within the meaning of the Order the exclusive responsibility of a carefully trained and responsible profession. In a decision of 21 February 1958 (*DÖV* 59/158) the Higher Administrative Court at Münster upheld the constitutionality of the rule that persons serving as candidate lawyers must make this their chief occupation, since the conditions of the legal profession made it essential, generally speaking, that the candidate should devote his entire working capacity to his task. The Federal Administrative Court ruled (17 January 1958, *BVerwGE* 6/119) that the Price Marking Order of 16 November 1940 was not inconsistent with article 12 of the Basic Law, since it did not affect the right of free choice of occupations, but represented a permissible application of the regulatory power to their practice. The Compulsory Information Order makes it obligatory for individual businessmen to

provide information on their business circumstances, in particular on prices, stocks, output and capacity. The Federal Administrative Court held (19 December 1958, *BVerwGE* 8/78) that this was not an infringement of article 12 of the Basic Law, since in a modern State the necessary measures of economic policy would be impossible unless the provision of the requisite information was made compulsory.

10. Protection of Rights in Labour Legislation

Under the Protection of Working Mothers Act, an expectant mother may not be dismissed from her employment, except in special circumstances, when permission to dismiss her must be obtained from the authorities. The Federal Administrative Court held (29 October 1958, *BVerwGE* 7/294) that where such permission was denied an administrative appeal might be lodged. Whether special circumstances existed in the given case was a question entirely within the discretion of the administrative court. However, the fact that there were important grounds for dismissal within the meaning of the relevant civil law did not necessarily imply the existence of special circumstances of the kind required: the case had to exhibit some wholly exceptional elements in the light of which the interests of the expectant mother (which the law regards as paramount) yielded to those of the employer. The Federal Social Court held (17 July 1958, *NJW* 58/846) that a motorist who, as a result of a violation of the traffic laws, met with an accident on his way to work, was entitled to social security benefits if there had been no other motive for his actions but that of reaching his place of work.

11. Protection of the Right to Social Security and Welfare

In fulfilment of the constitutional mandate, legislation was enacted in a wide variety of fields to promote the development of a social welfare State. Mention may be made here of the Hardship Cases Order promulgated on 3 January 1958 pursuant to part four of the Act for the General Settlement of the Consequences of the War (*BGBl* I/9), under which maintenance, education and home equipment grants and rehabilitation loans are made available to specified categories of persons who suffered loss as a result of the war. A number of changes and improvements were made in the equalization of burdens laws for the benefit of expellees and persons who suffered material loss as a result of the war (see, for example, *DGBl* I/208, 217, 514, 526, 565, 574). In the field of labour legislation, the fourth order pursuant to the Unemployment Insurance and Unemployment Agencies Act, promulgated on 18 April 1958 (*BGBl* I/304), makes persons habitually crossing the frontier subject under certain conditions to the compulsory payment of unemployment insurance contributions. The fifth order pursuant to the same Act, of 22 May 1958 (*BGBl* I/377), places foreign nationals and stateless persons on the same footing as German citizens with regard to unemployment insurance, or considerably improves their status in this regard. The First Act for the adjustment of statutory pensions following the change in the general assessment base for 1958, promulgated on 21 December 1958 (*BGBl* I/956) provided for a general increase in pension rates in line with the general rise in incomes. Pension increases designed to adjust the living standards of pensioners to those of the economically active population are provided for as a matter of course in the various social insurance pensions acts, but are in each case made subject to the enactment of special legislation. Under the Federal Act of 25 June 1958 for the Reparation of National Socialist Injustice in the Matter of Compensation for War Victims (*BGBl* I/412), persons living in the Federal Republic who would have qualified for such compensation under the Federal Welfare Act but were unable, as a result of national socialist persecution, to meet the required conditions, are entitled to claim compensation. An Act of 25 June 1958 (*BGBl* I/414) made similar provision for war victims living abroad. An Act ratifying the agreement of 10 March 1956 between the Federal Republic of Germany and the Federal People's Republic of Yugoslavia concerning the settlement of certain social insurance claims was adopted on 25 June 1958 (*BGBl* II/168). This agreement provides for a lump-sum settlement between the two States, after which all old age, disability, life, accident and occupational disease insurance claims of citizens of either contracting party against insurers of the other are cancelled and replaced by claims against the corresponding insurers of their own country. The Act came into force on 29 November 1958 by Notice of the Federal Government (*BGBl* II/753). By Act of 24 December 1958, the Bundestag ratified the Second Protocol to the General Agreement on Social Security between the Federal Republic of Germany and France and the Fifth Protocol concerning the inclusion of Land Berlin in the General Agreement (*BGBl* II/755).

The Higher Administrative Court at Münster ruled (1 July 1958, *NJW* 58/2036) that an applicant for public assistance who refused to seek appropriate help from the Employment Office with a view to finding paid employment was not in need of relief and therefore had no claim to public assistance. The Bavarian Administrative Court held (11 March 1958, *ESVGH* 10/751) that refusal to accept employment offered in accordance with the public welfare laws did not justify the complete cessation of maintenance allowances by the authorities. Even in such a case, the person in need of relief must be granted the assistance necessary to meet his essential needs.

The Federal Social Court ruled (11 September 1958, *NJW* 58/1846) that where a person receiving an accident pension had begun to accustom or adapt himself to his injury, although his medical condition remained unchanged, there had been a change in circumstances justifying reassessment of his pension.

The Higher Administrative Court at Münster held (20 June 1958, *DÖV* 59/317) that a person voluntarily returning to a territory from which he has been expelled thereby forfeited his status as an expellee. The Court ruled on this question, which is not dealt with in the legislation covering German refugees, by analogy with the international Convention relating to the Status of Refugees of 28 July 1951 which explicitly provides that voluntary return extinguishes the claim to protection.

The Prisoners of War Compensation Act provides economic benefits for former prisoners of war and assimilated categories of persons. The higher courts have frequently had occasion to define the categories of persons concerned. Thus, the Federal Administrative Court ruled (5 March 1958, *DVBl* 58/586) that German civilians who had been prevented from leaving and put to work by the occupying Power in the parts of East Prussia under Soviet administration were not as a rule entitled to compensation under the Act. The reason for which the occupying Power had kept back the persons concerned had been to ensure a minimum degree of order in the territory, and not to remove them from the war effort. Since they had been kept back not because of any participation in the war effort but because of the destruction and paralysis of public life caused by the war, they had no claim under the Act. The Federal Administration Court (5 March 1958, *BVerwGE* 6/232) similarly denied any claim under the Act to persons who had suffered automatic arrest, since the reason for their detention had not been to ensure the security of the Allied Forces but to promote the democratic reconstruction of Germany and to carry out a process of political screening. However, the court upheld (5 March 1958, *DVBl* 585) the claims of prisoners of war who had been detained by the Allies in Germany alone. The Administrative Court at Bebenhausen ruled (24 January 1958, *NJW* 58/841) that the term of detention of a prisoner of war had not ended with his forced recruitment into the French Foreign Legion, so that he was also entitled to compensation for the time served in the Legion.

Under the Political Prisoners Assistance Act, compensation is granted to persons imprisoned in the Soviet occupation zone for political reasons and on grounds incompatible with the standards of democracy and liberty. The Higher Administrative Court at Münster held (1 July 1958, *DÖV* 59/76) that a person convicted on criminal charges was not entitled to such compensation even if the degree of severity of his sentence was disapproved in the Federal Republic as being incompatible with the principles of the rule of law.

12. The Right to Education

By order dated 19 December 1958 (*NWGVBl* 58/383), all school fees were abolished in North Rhine-Westphalia with effect from 1 April 1959. In the Rhineland-Palatinate, the Public Secondary Schools Act promulgated on 25 November 1958 (*RPGVBl* 58/197) deals with school building, operating and maintenance costs. The Act provides for a general system of state and municipal secondary schools, every school having a parents' council with advisory rights. In the same Land, the Private Schools Act of 21 December 1957, (*RPGVBl* 58/15) which came into force on 1 January 1958, requires "substitute schools" fulfilling the same function as public schools to be approved by the State. All other private schools classified as supplementary schools require no approval, it being necessary merely to give notice of their establishment. Private schools may also be eligible in certain circumstances for State subsidies. The School Administration Act of 3 June 1958 (*NWGVBl* 58/241) lays down provisiones concerning types of schools, the bodies responsible for them, their administration and direction, and similar matters. In Bavaria, an Act of 14 June 1958 (*BayGVBl* 58/134) laid down regulations concerning the training of primary school teachers. In Bremen, an Act of 25 July 1958 (*BGVBl* 58/75) abolished school fees for all public schools. Orders and amendments modifying previous school legislation were promulgated in a number of other Länder. By official notice of the Federal Government (*BGBl* II/336), the Cultural Agreement between the Federal Republic and Turkey came into force on 9 June 1958. This agreement provides for cultural and student exchanges and the encouragement of studies, and seeks to promote the mutual recognition of national academic degrees.

The Federal Administrative Court ruled (5 December 1958, *BVerwGE* 7/378) that the Military Service Act did not infringe the constitutionally guaranteed rights of parents. Every fundamental right had inherent limitations. The fact that the federal legislator, acting within the sphere of his jurisdiction, had exercised his authority to regulate military service and had thereby affected parental rights implied no violation of the constitution. A clause in the Act concerning the dissemination of literature harmful to youth makes it an offence to disseminate propaganda for nudism among the young. A further clause grants parents personal exemption from liability for breaches of the Act committed in respect of their own children. The Federal Constitutional Court pointed out (10 March 1958, *BVerfGE* 7/320) that, under article 6(2) of the Basic Law, the care and upbringing of children were the natural right of the parents and a duty primarily incumbent upon them. Although the State watched over the performance of this duty, the legislator could not restrict parental rights arbitrarily. The legislator could enact general measures limiting the rights of parents only when individual measures were inadequate. So far as concerned the nudist movement, however, it could not be held that to disseminate propaganda for this cause in general constituted an

abuse of parental rights, or that literature of the kind in question would in general corrupt the young. It was therefore wrong merely to grant a personal extemption from liability, instead of providing that activities of this type were in general not punishable when they were carried on by the parents.

The (Higher Administrative Court at Münster ruled (22 September 1958, *DVBl* 59/72) that the decision of a school council (Klassen konferenz) on whether or not a pupil should be promoted was not a matter of discretion but an exercise of judgement subject to judicial review, in the course of which the courts were at liberty to go fully into the indeterminate legal issues involved although there would to be sure remain a certain area of judgement not susceptible of review. Where a council had decided not to promote a pupil, the courts were entitled to investigate whether the prescribed procedure had been followed and whether any essential principle of substantive law, such as the principle of equality, had been infringed. The specifically pedagogical evaluation, however, could be reviewed only from the standpoint of whether it was based on false factual premises or extraneous considerations. The Administrative Court at Bebenhausen, dealing with the same question, ruled (19 July 1958, *ESVGH* 11/147) that the process of marking a candidate's examination papers was predominantly an extra-legal one. In investigating examination marks, therefore, a relatively large area of discretion had to be left to the specifically pedagogical judgement of the examination board. The Hesse Administrative Court held (14 October 1958, *DVBl* 59/144) that an interim order authorizing a non-promoted pupil to attend the next higher class could be made where there was good reason to believe that the decision not to promote him had been based on mistaken and extraneous considerations. In such cases the interest of the pupil outweighed the public interest in orderly school administration.

Article 56 of the Hesse Constitution provides that parents and those *in loco parentis* have a right to participate in the planning of their children's education. Detailed regulations are left to subsequent legislation, but no such legislation has yet been enacted. The competent Ministry issued curricula for schools in Hesse without consulting parents. The Hesse High Court of State ruled (18 February 1958, *DÖV* 58/462) that the right of participation was a subjective right at public law ranking as a fundamental right. It applied not only to education at individual schools but also to co-operation in the formulation of general policy at the central administrative level. The very minimum it implied was that parents and those *in loco parentis* should be granted a hearing.

The Higher Administrative Court at Münster held (24 April 1958, *DÖV* 59/228) that the question whether a child would be unable, because of mental deficiency, to follow, of to follow with adequate success, the ordinary curriculum at a State elementary school, and must therefore attend a special school, was entirely open to judicial review. The court also specifically upheld the validity of article 6 of the Reich Compulsory School Attendance Act, which makes attendance at a remedial school obligatory for children who cannot follow the regular curriculum because of mental or physical deficiency; this procedure, it held, was best calculated to promote the development of such children while ensuring that nothing was done to hamper the education of others.

The Federal Administrative Court confirmed this view (29 December 1958, *DÖV* 59/230), ruling that the statutory provision in question was consistent with the Basic Law. The State's right to control the scholastic education of children had equal standing with the rights of parents. The fundamental right of parents to choose the education of their children did not hold good where a child hampered his fellow pupils. This principle applied in the case of both optional and compulsory schools. The same court held (24 March 1958, *DVBl* 58/512) that those subject to compulsory school attendance had no claim to the establishment of special schools, since that was a matter for the State's organizational prerogative, which was directed only towards meeting the needs of the community.

13. Protection of Industrial Rights and Copyright

The legal protection of inventions, designs and trade marks provided under the Act of 18 March 1904 was extended by the Government (*BGBl* 1/56) to a number of exhibitions and trade fairs. The Convention of 18 May 1954 between the Federal Republic and Brazil concerning the restoration of industrial property rights and copyright affected by the Second World War came into force on 23 May 1958 (Federal Government Notice of 23 June 1958, *BGBl* II/201).

The Land High Court at Munich ruled (13 March 1958, *NJW* 58/1000) that anyone who infringed a patent or design, whether deliberately or not, was liable to the aggrieved person for the latter's costs in hiring a patent attorney to defend his rights, even if a suit was not filed because, for example, the infringer promised to desist.

Under article 19 of the Literary Copyright Act, reproduction without permission is lawful where, *inter alia*, separate passages or small parts of a work, lecture or speech are quoted, after their publication, in an independent literary work. The Federal Court of Justice held (17 October 1958, *NJW* 59/336) that the question whether a quotation exceeded these limits could not be decided on a purely quantitative basis, by mere comparison of the size of the borrowed material with the size of the work from which it was taken. One consideration which might have to be taken into account, apart from the significance from the standpoint of copyright law of the borrowed material in relation to the work as a whole, was

FEDERATION OF MALAYA

THE PUBLIC ORDER (PRESERVATION) ORDINANCE, 1958

No. 46 of 1958, of 5 December 1958 [1]

Part I

PRELIMINARY

. . .

2. In this ordinance, except in so far as the context otherwise requires or it is otherwise expressly provided —

. . .

"Document" includes any substance on which is recorded any matter, whether by letters, figures, marks, pictorial or other representation, or by more than one of these means;

. . .

"Minister" means the minister charged with responsibility for internal security;

. . .

"Proclaimed area" means an area in respect of which a proclamation made or renewed under section 3 is for the time being in force;

"Subversive document" means any document which contains —

(*a*) Any matter which is seditious within the meaning of the Sedition Ordinance, 1948; or

(*b*) Any matter likely to be prejudicial to the maintenance or restoration of public order; or

(*c*) Any matter counselling or likely to lead to disobedience to the law of the Federation or to any lawful order therein; or

(*d*) Any matter inciting or likely to lead to unlawful violence or the promotion of feeling of ill-will or hostility between different races or classes of the population in the Federation; or

(*e*) Any matter likely to bring into hatred or contempt or to excite disaffection against any public servant in the execution of his duties or any class of public servants or against any armed force lawfully in the Federation or any member of such force in the execution of his duties.

Part II

PROCLAMATION OF DANGER TO PUBLIC ORDER

3. (1) If, in the opinion of the Minister, public order in any area in the Federation is seriously disturbed or is seriously threatened the Minister may, if he considers it to be necessary for the purpose of maintaining or restoring public order in such area so to do, proclaim the existence in such area of a state of danger to public order.

(2) Every proclamation made under sub-section (1) shall apply only to such area as is therein specified and shall remain in force until it is revoked by the Minister, or ceases to have effect in accordance with the provisions of sub-section (3).

(3) Every proclamation made under sub-section (1) shall, but without prejudice to anything previously done by virtue thereof, cease to have effect upon the expiration of one month from the date upon which it was made:

Provided that a proclamation in force may be renewed by declaration of the Minister from time to time for such period, not exceeding one month at a time, as may be specified in the declaration.

. . .

(5) A copy of every proclamation made under sub-section (1) and of every declaration of renewal made under sub-section (3) shall be published in the *Gazette* and laid before Parliament as soon as possible after it has been made and if resolutions are passed by both Houses of Parliament annulling such proclamation or declaration, it shall cease to have effect, notwithstanding the provisions of sub-sections (2) and (3), but without prejudice to anything previously done by virtue thereof.

. . .

Part III

POWERS FOR MAINTENANCE OF PUBLIC ORDER

4. In any proclaimed area —

(*a*) The chief police officer or the officer in charge of a police district may by order or by giving directions or in any other manner he thinks fit regulate, restrict, control or prohibit the use of any road, street, path or waterway or any public place or close any road, street, path, waterway or public place to the public or any class of the public or to any vehicle or vessel or class of vehicle or vessel;

(*b*) If it appears to the senior police officer present in any part of such area that, in order to restore or maintain public order in such place, it is necessary to regulate, restrict, control or prohibit the use of any road, street, path or waterway or any public place and that the situation is too urgent to

[1] Text published in *Federal Ordinances and State Enactments passed during the Tear 1958*, printed at the Government Press, Kuala Lumpur. See also the extracts from the Constitution of the Federation of Malaya which appear in *Tearbook on Human Rights for 1957*, pp. 67-76.

communicate with an officer having authority under paragraph (*a*), such officer may exercise the powers conferred by that paragraph on the chief police officer or the officer in charge of a police district:

Provided that the powers conferred by paragraph (*b*) shall not be exercised by a police officer below the rank of sergeant; and provided that no order under paragraph (*b*) shall be valid after the expiration of a period of twenty-four hours from the time when it was made unless made or confirmed by the chief police officer or the officer in charge of the police district having authority under paragraph (*a*).

5. (1) In any proclaimed area —

(*a*) the officer in charge of a police district may by order prohibit absolutely or subject to such conditions as he may think fit any procession, meeting or assembly of five or more persons in any public place in such area or in any specified place or building, whether public or private, in such area;

(*b*) any procession, meeting or assembly of five or more persons in any place whatsoever may, whether or not any order shall have been made prohibiting such procession, meeting or assembly under paragraph (*a*), be ordered to disperse by any police officer of or above the rank of sergeant and it shall thereupon be the duty of the members of such procession, meeting or assembly to disperse accordingly.

. . .

6. (1) A police officer may, for the purpose of giving effect to an order or direction made under section 4, or whenever he considers it necessary so to do for the preservation of law and order or for the prevention or detection of crime, erect or place barriers in or across any road, street, path, waterway, or public place in a proclaimed area in such manner as he may think fit.

. . .

7. (1) In any proclaimed area, the Minister, a chief police officer or the officer in charge of a police district may by order require every person within the area or any part thereof to 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 Minister or by a police officer of or above the rank of sub-inspector or by any public officer authorized in writing by the Minister, a chief police officer or the officer in charge of a police district to issue such permits.

. . .

8. (1) In any proclaimed area a chief police officer or an officer in charge of a police district may by order exclude all persons or any class of persons from any area in the police district or police districts under his charge, or from any place or building therein and may require any person who is in such area or place or building to comply with such directions for regulating his movement and conduct as the chief police officer or the officer in charge of a police district may direct.

(2) Any police officer may search any person entering, or seeking to enter, or being in, such area, place or building, in respect of which an order under sub-section (1) of this section is for the time being in force and may detain any such person for the purpose of searching him:

Provided that no woman shall be searched under this sub-section except by a woman.

. . .

9. (1) The Minister may by order in writing authorize the telecommunication authority in any area within a proclaimed area specified in the order to withdraw either totally or partially the use of all or any telecommunication facilities or telecommunication plant from any person or class of persons or from the public at large except such persons or class of persons as may be specified in the order and thereupon the telecommunication authority shall withdraw such use, the provision of any agreement or of any written law to the contrary notwithstanding.

. . .

10. (1) Any police officer may in a proclaimed area seize and take possession of any article or material capable of being, and which in his opinion is likely to be, used for offensive purposes.

. . .

11. (1) A chief police officer and any police officer authorized by a chief police officer in that behalf in writing may require any movable or immovable property situate within any proclaimed area or any space or accommodation in any land, building, vessel, vehicle or aircraft within such area to be placed at his disposal and may give such directions as appear to him to be necessary or expedient in connexion with such requirement.

(2) The Commissioner of Police and any police officer authorized by the Commissioner in that behalf in writing may, during any period in which a proclamation under section 3 is in force in respect of any area in the Federation require any vessel, vehicle or aircraft in any place in the Federation to be placed at his disposal and may give such directions as appear to him to be necessary or expedient in connexion with such requirement.

. . .

(4) No requisition shall be made under this section in respect of any vessel of more than one hundred tons gross tonnage, any rolling stock of the Malayan Railway or any aircraft without the prior approval of the Minister.

12. (1) Where, in the exercise of the powers conferred by section 11 of this ordinance, possession is taken of any property or of any space or accomodation in any land, building, vessel, vehicle or aircraft, compensation in respect of such possession shall be assessed in accordance with the written law for the time being in force relating to commpensation in respect of the requisitioning of property in an emergency.

(2) No compensation shall be payable to any person in respect of any damage or injury to his person or property caused by or consequent upon any act authorized by this ordinance unless provision for such compensation is made by this ordinance.

. . .

13. (1) Where it appears to a chief police officer that any person —

(*a*) Has been recently concerned in acts involving or likely to cause or provoke a breach of the peace in a proclaimed area or likely to be prejudicial to the success of measures taken to maintain or restore public order in a proclaimed area or in the preparation or instigation of such acts or that by reason of his associations, with any persons or organizations concerned in any such acts or by reason of his words or conduct that he is likely to be concerned in such acts; and

(*b*) That by reason thereof it is necessary to exercise temporary control over such person, a chief police officer may by order exercise in respect of such person any one or more of the following powers — namely:

(i) Exclude such person from the proclaimed area or any part thereof;

(ii) Require such person to reside in such place or area whether in the proclaimed area or not as may be specified in the order, and not to leave such area without such permission, and subject to such conditions as may be so specified;

(iii) Require such person to remain within doors during such hours as may be specified in the order;

(iv) Require such person to notify to the police at such place or places and in such manner as may be specified in the order his place of residence and any change thereof and to report to the police at such times and dates and in such manner as may be so specified;

(v) Require such person to enter into a bond for such amount with such sureties as may be specified for his good behaviour or for due compliance with the terms and conditions of any order made under this sub-section.

(2) Any order made under this section may be cancelled or varied by the Minister or by the chief police officer.

(3) Subject to the provisions of sub-section 2, any order made under this section shall remain in force for such period as may be specified therein, but every such order, unless previously cancelled, shall cease to have effect when the area in respect of which the order was made ceases to be a proclaimed area.

14. (1) Any person in respect of whom an order under section 13 has been made may appeal to the Minister, who shall decide such appeal and make such order thereon as to him shall seem appropriate.

(2) The decision of the Minister on an appeal under this section shall be final.

15. (1) In any proclaimed area any police officer may, without warrant and with or without assistance —

(*a*) Stop and search any person or vehicle found in any public road or place; and

(*b*) If such police officer is of or above the rank of sergeant —

(i) stop and search any person or vehicle, whether in a public place or not;

(ii) enter and search any premises;

(iii) board and search any vessel, vehicle or aircraft not being, or having the status of, a naval, military or airforce vessel, vehicle or aircraft

with a view to ascertaining whether such person, vehicle, vessel or aircraft is carrying, or such premises contain, any offensive weapon or subversive document or any article or material or accumulation thereof capable of being used for causing injury to the person or to property, or if he has reasonable grounds for believing that any evidence of the commission of an offence is likely to be found on such person or premises or in any such vessel, vehicle or aircraft and may seize any such weapon, document, article or material if he has reasonable grounds for believing that it is intended or likely to be so used and any such evidence so found and any vessel, vehicle or aircraft in which such weapon, document, article, material or evidence is found:

Provided always that any police officer may exercise the powers conferred by paragraph (*b*) of this sub-section on a police officer of or above the rank of sergeant if he has reasonable grounds for believing that by reason of the delay which would be caused by referring the matter to an officer of or above the rank of sergeant any evidence liable to seizure under the provisions of that paragraph is likely to be removed from the person, premises, vessel, vehicle or aircraft whereon such evidence is believed to be.

(2) No woman shall be searched under this section except by a woman.

. . .

17. (1) A police officer may without warrant arrest any person suspected of the commission of an offence against this ordinance or of the commission in a proclaimed area of any of the offences referred to in section 28 of this ordinance.

(2) A police officer may in a proclaimed area without warrant arrest any person in respect of whom he has reason to believe that he is a person to whom the provisions of sub-section 1 of section 13 apply and any person so arrested may be detained for a period not exceeding twenty-four hours, pending a decision as to whether an order under that sub-section should be made.

(3) A police officer may in a proclaimed area arrest

any person ordered to be excluded from such area under section 13 and may detain such person for a period not exceeding twenty-four hours for the purpose of removing him from such area.

(4) Any person detained under the powers conferred by this ordinance 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 the chief police officer.

. . .

Part IV

OFFENCES RELATING TO PUBLIC ORDER

. . .

27. If any person contravenes or fails to comply with any provision of this ordinance or any order or direction made or given or requirement imposed under the provisions of sections 4, 5, 6, 7, 8, or 13 of this ordinance, or abets such contravention or failure, he shall be guilty of an offence against this ordinance and, subject to any special provisions contained in this ordinance, shall be liable to imprisonment for a term of six months or to a fine of five hundred dollars or to both such imprisonment and fine.

28. Any person who in a proclaimed area commits, attempts to commit or in any place in the Federation abets the commission in a proclaimed area of any of the offences for the time being specified in the third schedule to this ordinance shall be liable on conviction for such offence, attempt or abetment to imprisonment for a term which may extend to twice the longest term provided for such offence, attempt or abetment, as the case may be, or to such fine as is provided therefor or to both such imprisonment and fine.

29. Any person who in any place in a proclaimed area uses any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding three years.

30. If any person shall in any place in the Federation during any period in which a proclamation under section 3 is in force in respect of any area in the Federation do any act or utter any words or print, publish, sell, offer for sale, distribute or reproduce for distribution or import, or have in his possession any document containing any matter which —

(*a*) Is likely to be prejudicial to the maintenance or restoration of public order in the proclaimed area or in any other part of the Federation; or

(*b*) Counsels or is likely to lead to disobedience to the law of the Federation or to any lawful order made thereunder or to the obstruction of public officers in the execution of their duty to restore or maintain public order; or

(*c*) Incites or is likely to cause unlawful violence or to promote feelings of ill-will or hostility between different races or classes of the population of the Federation; or

(*d*) Is likely to bring into hatred or contempt or to excite disaffection against any public servant in the execution of his duty or against any class of public servants or against any armed force lawfully in the Federation or any member of such force in the execution of his duty,

he shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding three years.

31. Except as provided by section 28 nothing in this Part shall affect any other law relating to criminal offences provided that no person shall be punished twice for the same offence.

. . .

THIRD SCHEDULE

(Section 28)

Penal Code . . . sections 143, 144, 145, 147, 148, 151, 152, 153, 157, 158, 160, 379, 380, 381 and 382.

FINLAND

NOTE[1]

I. LEGISLATION

1. In Act No. 107, of 7 March 1958, on mental deficiency (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK* — Official Gazette of Finland — No. 107/1958), a mentally defective person means a person who, because of the undeveloped state of his intellectual activity, is or will be in need of continual treatment, special instruction, care or guidance.

The welfare of mentally defective persons aimed at in this Act includes examination, treatment, instruction and supervision.

The supreme command and supervision of this welfare work is vested in the Ministry of Social Affairs. The local administration in municipal and rural communes belongs to their social boards, which keep a list or a card-index of the mentally defective persons living in their districts and ensure that those who are in need of care will get it.

Treatment is given in special welfare centres established for the purpose by the state or communes or private persons, which operate in accordance with educational and medical principles. Treatment can also be given in other establishments or by private families under the supervision of the proper welfare centre.

Each welfare centre is to have a governing board, a director and a responsible physician approved by the Ministry of Social Affairs and other necessary personnel.

For the foundation of a communal or private welfare centre, permission must be granted by the Ministry of Social Affairs, and it may not start functioning until approved by the same ministry.

For a mentally defective person who is not taken to a welfare centre or other establishment mentioned above, the appropriate social board may appoint a custodian when it is deemed necessary from the point of view of his care and education. The custodian is to follow carefully the life and the need for welfare measures of his protégé and help him by advice, directions and practical measures, give support to his parents and see to it that they fulfil their duties towards the person under his custody. If the directions of the custodian are not followed, he is to notify the social board of the fact, so that the necessary measures may be taken.

Any authority who gets information concerning a mentally defective person shall notify the proper social board. The parents or the guardian of a mentally defective person have the same obligation.

Whether treatment in a welfare centre or some other establishment is to be given or not, and whether the treatment is to be finished, is up to the decision of the director of the welfare centre, who shall obtain the opinion of its responsible physician. In general, a mentally defective person shall be taken to a welfare centre or another establishment before he has reached the age of sixteen years.

If a mentally defective person is considered to be dangerous to himself or his environment or if he is a vagrant or has shown criminal inclinations or if there are other weighty reasons for his being considered in need of examination or treatment in an establishment, he may, on the proposal of the proper social board, be taken to an establishment mentioned above without his consent or that of his parents or guardian for examination or treatment. The decision of the social board concerning treatment shall in this case be submitted without delay to the Ministry of Social Affairs.

When taken to an establishment mentioned above, the mentally defective person is to be well and carefully treated, and no other force is to be used than that indispensable for giving him treatment and for maintaining the safety of his environment.

Communal and private welfare centres founded according to the provisions of this Act are given a state subsidy.

2. The Criminal Code of Finland has not adopted the concept of moral turpitude as such. There is, however, an equivalent criterion for the classification of crimes, depending on whether or not the deprivation of civil rights is prescribed by the Criminal Code as an accessory penalty to the sentence imposed for a crime. Those crimes for which this accessory penalty is prescribed are deemed to indicate a particular dishonesty or a lack of sense of honour or to disclose a depraved mind in the offender. As the most typical examples of those crimes may be mentioned high treason, treason, perjury, murder, kidnapping, larceny, burglary, robbery, blackmail, arson, obtaining property by false pretences, forgery and counterfeiting or altering money.

According to article 14 of chapter 2 of the Criminal Code, the sentence of deprivation of civil rights may

[1] Note kindly prepared by Mr. Voitto Saario, Judge of the Court of Appeal, Helsinki, government-appointed correspondent of the *Yearbook on Human Rights*.

be passed for a lifetime, or for a certain period of time from one to fifteen years counting from the date when the convict is released from the prison. During that time the convicted person is deprived of the rights and advantages for which a good reputation is necessary.

This accessory penalty has been criticized on the ground that it makes it difficult for the convicted person to return to an ordinary life when released from the prison and that in some cases it is an unreasonably severe consequence of his crime.

The purpose of the amendment made to article 14 of chapter 2 by Act No. 149 of 11 April 1958 (*AsK* No. 149/1958) is to make the Criminal Code more flexible in this respect. It gives the courts the power to decide, after taking into consideration the circumstances connected with the offence in question or other special reasons appearing in the case, that the offender shall not be deprived of his civil rights although this accessory penalty is imposed by the Criminal Code for the crime of which he has been proved guilty.

3. For the purposes of Act No. 187, of 25 April 1958, on aliens (*AsK* No. 187/1958), an alien is any person who is not a Finnish citizen. An alien is permitted to enter Finland and leave it only through places which have been determined for that purpose by the Ministry of Interior. If not otherwise provided, an alien when arriving in the country must have a valid passport issued by the proper authority of his own country.

An alien who is not a citizen of any State or who cannot obtain a passport from the authorities of his native country shall have, when arriving in Finland, a travel certificate as provided by conventions or agreements or some other certificate of identification which according to the directions given by the Ministry of Foreign Affairs can be accepted.

The citizens of other Nordic countries (Denmark, Iceland, Norway and Sweden) are entitled to arrive in Finland without a passport.

If an alien immediately after his arrival in the country applies for asylum because of political reasons, the Ministry of Interior, after obtaining the opinion of the Ministry of Foreign Affairs, may grant him permission to stay. The justified fear of the person in question of being persecuted in his own country because of his race, religion or nationality or of his belonging to a certain social or political group, and the fact that he has not been granted asylum in any other country, shall be deemed acceptable reasons for granting asylum.

An alien who intends to stay in the country longer than is signified by his visa, or, if a visa is not required, by the agreement between the appropriate States, has to apply for permission to stay, which the Foreign Bureau of the Ministry of Interior may grant him for the first time at most for one year and then, when renewing the permission, at most for five years at a time.

An alien who wants to come to Finland for earnings has to apply for permission to work. This permission is granted by the appropriate Finnish Consulate or, if the alien already is in Finland, by the Foreign Bureau of the Ministry of Interior.

If an alien by his conduct has shown that his sojourn in Finland is undesirable, the Foreign Bureau of the Ministry of Interior may order him to leave the country and designate the period, at most five years, during which he is not entitled to return. If the security of the State or any other important reason so requires, the Ministry of Interior may order that an alien shall be deported. In this case, the alien is not allowed to return without the permission of the Ministry.

An alien who is permitted to stay in Finland is in general entitled to live and travel freely everywhere in the country. When there are special reasons, the Foreign Bureau of the Ministry of Interior may restrict the right of an alien to choose his place of living or to travel.

An alien who is living in the country and who is not a citizen of any State or who cannot obtain a passport from the authorities of his own country may be granted an alien passport or a special travel certificate by the Foreign Bureau of the Ministry of Interior.

4. Act No. 299, of 28 June 1958, on safety in working conditions (*AsK* No. 299/1958),[1] which replaces the Act of 28 March 1930 on the same subject, takes into account the latest development as regards the ways for protecting the health of workers. It is applied in all cases where an employee, on the basis of an agreement between him and an employer, and in return for remuneration, works under the direction and supervision of the employer.

As a general principle, the employer, taking into account the nature of the work, the working conditions, and the age, sex, skill and other qualities of the employee, shall take all measures necessary for protecting the employee from accidents and from any harm to his health. On the other hand, the employee is carefully to observe the directions given to him for this purpose and to use the equipment meant for his protection, as well as to observe necessary caution at his work. The employer and the employee are to co-operate with each other in order to maintain and improve the safety in the working place.

If a type of work is considered to cause particular danger to health, the Government may order the employer to arrange at his own cost a medical examination of the employees within a certain time

[1] Translations of the Act into English and French have appeared as International Labour Office: *Legislative Series* 1958 — Fin. 1.

of their being accepted into employment and may require the examination to be renewed at stated intervals or when the appropriate factory inspector so determines. The employees are obliged to submit to the medical examination.

If it is discovered through the medical examination that an employee because of his particular sensitiveness, structural weakness or other personal reason has an evident tendency to be harmed in his health by such work, he shall no longer be employed in it.

5. According to the definition contained in Act No. 438, of 31 October 1958, on civil defence (*AsK* No. 438/1958), the purpose of civil defence is to secure the population and property from destruction caused by war or other circumstances comparable to it as well as to limit the damage and to alleviate other consequences of such events.

The general principle of this Act is that already in peacetime certain measures must be taken to promote the readiness of civil defence, so that it can be set into operation when needed.

To that end the country is divided into protection objectives and a surveillance area. The Government may declare as protection objectives certain densely inhabited areas as well as industry, traffic and other centres comparable to them. The rest of the country forms a surveillance area.

The State takes care of the general planning and organization of civil defence as well of the instruction and information work, of the training of the managing and other specialized personnel for civil defence and of other measures which have a significance for the whole country.

The municipal and rural communes are to take measures which are necessary for the protection of their population.

Corporations, business establishments and private persons are under an obligation to take care of the protection of their employees while in the working place, and of their own property.

Training in civil defence duties is to be given in peacetime on a voluntary basis.

The supreme command and supervision of civil defence are vested in the Ministry of Interior. In each province this task belongs to the provincial government.

II. INTERNATIONAL AGREEMENTS

1. Act No. 130, of 3 January 1958, brings into force certain provisions of the International Health Rules No. 2, signed at Geneva on 25 May 1951 and in Mexico on 26 May 1955, and amended at Geneva on 23 May 1956 (*AsK* No. 130/1958).

2. Act No. 442, of 7 November 1958, brings into force the Convention on the Political Rights of Women opened for signature on 31 March 1953.[1] When acceding to this convention, the Finnish Government made a reservation concerning the application of article 3 of the convention due to the provision of article 2 of the Act No. 112 of 23 April 1926 on the competence of women to occupy public offices, according to which it may be provided by presidential decree that to certain public offices, which because of their functions can be properly discharged only by a man or a woman, only men or women respectively shall be appointed (*AsK* No. 442/1958).

[1] See *Yearbook on Human Rights for 1952*, pp. 375-6.

FRANCE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1958 [1]

The year 1958 was marked in France by the drafting of a new Constitution. The excerpts given below will give some idea of the progress made in the field of human rights.

The outstanding legislative achievement was the publication of a new Code of Penal Procedure to replace the former Code of Criminal Examination. This important instrument and the reform of the prison system which some of the provisions of the Code are designed to regulate will be discussed at length.

Provisions particularly affecting Algeria are dealt with in a separate section.

The attainment by the principal overseas territories of administrative and political autonomy within the framework of the Community, a step closely bound up with the drafting of the new Constitution, represents a decisive stage in the development of relations between metropolitan France and its former colonies. The statutes of Togoland and the Cameroons on the eve of the termination of international trusteeship also demonstrate the fundamental liberalism of French policy.

I. LEGISLATION AND JUDICIAL DECISIONS

A. Civil and Individual Rights

1. *The new Constitution*, promulgated on 4 October 1958 following the referendum conducted on 28 September 1958,[2] solemnly maintains the concern of French institutions for human rights and fundamental individual freedoms.

2. As hostilities in Algeria dragged on, public opinion began to fear that police methods inimical to respect for human rights would be introduced and become established. Protests made on various occasions and the Government's concern for an effective curb on such practices are responsible for the ordinance of 20 August 1958 [3] defining the jurisdiction of a committee for the *protection of individual rights and freedoms*, under the chairmanship of the President of the Criminal Chamber of the Court of Cassation. Under its terms of reference this committee, which took its work most seriously, was "to take note of any violations of human and civic rights, individual freedoms and defence safeguards anywhere in French territory, and to report on them to the President of the Council".

3. *The reform of the Code of Penal Procedure*, an important factor in the general reform of the judicial system now in progress, was one of the outstanding events of 1958, although it was not planned to bring it into force until some time in 1959. It is based on two legislative instruments: the Act of 21 December 1957 [4] containing articles 1 to 230 of the new Code, and the order of 23 December 1958 [5] amending some of those articles and adding articles 231 to 801 of the Code.

The concern throughout the new Code is to increase the judge's role and participation in all stages of the preliminary examination and his control of police activity. For example, the right of the police to keep persons suspected of having committed a crime or offence under surveillance is limited to a twenty-four-hour period; the procureur de la République, before whom the arrested person must be brought, must authorize any extension for a further twenty-four-hour period (art. 63). In the event of a formal inquiry being opened, any person arrested pursuant to a warrant to compel attendance must be brought before a judge and interrogated; prior to that he may not be held more than twenty-four hours (arts. 125 and 126). Any person held under an arrest warrant must likewise be interrogated within forty-eight hours after being taken into custody (art. 133). Remand in custody may not exceed two months (art. 138), unless it is prolonged by an order issued by the examining judge containing a statement of the reasons therefor.

Articles 56, 57, 96 and 97 enact precise rules regarding house searches following a crime, with a view to protecting the rights of the defence and the privacy of the individual.

The new Code of Penal Procedure also establishes new rules concerning the *conditions governing the enforcement of penalties deprivative of liberty*. These rules are the outcome of several years' experience and much experiment, and give judicial sanction to a radical change in approach to the concept of punish-

[1] Note prepared by Mr. E. Dufour, *Maître des Requêtes au Conseil d'Etat*, Paris, government-appointed correspondent of the *Yearbook of Human Rights*. Translation by the United Nations Secretariat.

[2] Constitution, *Journal officiel*, October 1958, p. 9151. See below, p. 76.

[3] Ordinance 58-739, *Journal officiel*, August 1958, p. 7826.

[4] Act 57-1426, *Journal officiel*, January 1958, p. 258.

[5] Ordinance 58-1296, *Journal officiel*, December 1958, p. 11711.

ment. Punishment is considered less important than the prisoner's rehabilitation and his readjustment to life in society. Article 728 of the Code provides that the new prison system "shall be set up with a view to promoting the reform of prisoners and preparing for their rehabilitation". This concern governs not only the internal administration of the prisons but also all the supplementary measures described briefly below. Hence on this point, after several years of experimentation (practically since 1945), the Code puts into effect "most of the modern principles on enforcement of penalties recommended by the specialized organs, including the United Nations Economic and Social Council".

With respect to enforcement of penalties in *closed prisons*, this concern was first reflected in emphasis on differentiation between institutions and on the establishment of specialized institutions — houses of correction for short-term prisoners and central prisons and similar institutions for long-term prisoners.

In houses of correction the prisoners occupy individual cells night and day, and the various categories of prisoners are separated.

In central prisons the prisoners are isolated at night and work together during the day.

The central administration assigns the convict to an institution selected with a view to enhancing his chances of rehabilitation. Article 718 of the Code provides: "In the assignment of prisoners to penal institutions, consideration shall be given to the category of the prisoner's sentence, his age, state of health and personality", and an article numbered D.77 further explains: "The purpose of classifying long-term prisoners is to determine the appropriate penal institution for each prisoner on the basis of his age, record, category of sentence, state of physical and mental health, abilities and prospects for rehabilitation, and his personality generally."[1]

The system of enforcement of penalties may also be subject to changes or adjustments on an individual basis. Some institutions even apply systematically a *progressive grade system*, in which treatment ranges from complete isolation to semi-freedom according as the prisoner improves.

Again as a consequence of systematic experiments, the Code of Penal Procedure today favours institutions suitable for enforcement of penalties *in freedom*. Noteworthy are the suspended sentence combined with probation, and conditional release.

The suspended sentence combined with probation is similar to, although not identical with, the Anglo-American system of probation. It is applicable only to first offenders against the ordinary law, and in practice to those who have committed relatively harmless correctional offences. It consists in suspension of the enforcement of the principal penalty of imprisonment, subject to observation and assistance measures, either general in nature or specifically aimed at the individual and compulsory, such as the observance of regulations governing residence, obligations with respect to working or to making good the damage caused, prohibitions of various kinds, etc.

However, the suspended sentence combined with probation does not do away with accessory and supplementary penalties or with disqualifications resulting from the principal penalty. Thus, it retains a punitive character.

Conditional release, established long ago by an Act of 14 August 1885, consists in remission of part of the penalty deprivative of liberty, on pain of re-incarceration in the event of failure to observe the conditions imposed or of misconduct. But in the new Code it becomes much more clearly a self-contained measure for social rehabilitation, independent of the penalty imposed. While it may be granted even to prisoners sentenced to hard labour or rigorous imprisonment after a trial period, it is accorded only if the person concerned gives his consent and accepts the control and supervision measures involved. Aside from other obligations, prisoners so released must maintain regular contact with persons appointed by the after-care committee to keep a watchful eye so far as is possible on the ordinary living conditions of the released prisoner and see that, when necessary, measures are taken to assist him. In fact, regular residence and work would appear to be the indispensable prerequisite for the steadying and readjustment of the released prisoner.

Conditional release, conceived as a means of bringing about social rehabilitation and individual reform, fully warrants the efforts now being made by after-care institutions, and in particular by the "discharged prisoners' aid committee". This body follows the movements of released prisoners in the early days after discharge, and tries through "voluntary workers" and otherwise to secure work and lodging for them, to help them to readjust to family life, and to provide them with clothing and the necessities of life when they are first released. The object of this institution is to lessen so far as possible the enormous difficulties of readjustment encountered by a man who has perhaps been in prison for years.

But the measure which is basic to the success of the general reform of the prison system is the appointment of a judicial officer — the "penalty enforcement judge" — for each penal institution. Here again, it is a question of codifying and giving official sanction to practices which hitherto have gone on experimentally and "off the record". This judge is officially responsible for observing the enforcement of the penalty. Article 722 provides that he "shall decide the principal conditions of prison treatment for each prisoner, by arranging, *inter alia*, for extra-mural duties [labour outside the institution], semi-freedom or leave permits; he may institute action with a

[1] Article D. 77 is one of those which implement article 718 and is to be found in the part of the Code consisting of decrees.

view to conditional release; in institutions where treatment is progressive in accordance with the degree of reform and the prisoner's prospects for rehabilitation, he shall decide as to the prisoner's admittance to the various grades in the system."

In closed institutions the part played by this judge is vital. Through him a human element is introduced into the relations between the prisoner and the prison administration, and the possibility of favouritism is replaced by the assurance of fair treatment and an educational policy.

The penalty enforcement judge plays an equally important role with regard to conditionally released prisoners, persons who have been given a suspended sentence combined with probation, and persons on probation. He is the chairman of the after-care committee (art. 731), supervises the enforcement of the conditions imposed on release, authorizes travel and changes of residence, puts forward amendments to the regulations imposed on the released prisoner, proposes revocation of conditional release or suspended sentence in appropriate cases, and so forth (arts. 732, 733, 741 to 743).

4. *Child welfare:* An ordinance of 23 December 1958,[1] which is to go into force on 1 October 1959, radically alters articles 375 to 382 of the Civil Code with regard to *the protection of children and young people in danger*. The new provisions replace the articles concerning "paternal correction" previously in force.

A specialist judge, called the "children's judge", is granted wide powers concerning the placement, education and social assistance of "minors under twenty-one years of age whose health, safety, morals or education is threatened". Designed for young people deemed to be "in moral danger", these provisions stipulate that at the request of families or third parties the judge shall take protective measures so as to prevent the likelihood of delinquency. Here again, the new text was preceded by several years of very extensive experimentation.

5. *Acquisition of French nationality:* An Act dated 11 February 1958[2] extends to persons who attained their legal majority (twenty-one years) before the French Nationality Code came into effect in 1945 the benefit of the provisions of article 55 of the Code — i.e., the *de jure* acquisition of nationality by simple declaration by persons already possessing it *de facto*; namely, those who as children were adopted, brought up or taken in by French people or by people residing in France. Applicants must, however, be resident in France at the time of their declaration.

6. *Freedom of expression:* The ordinance of 23 December 1958,[3] which amended certain provisions of the Penal Code, concerns, *inter alia*, articles 226 and 227 relating to publicity and to public commentaries on the decisions of civil and penal courts and on the discussions and examination methods in the courts.

The new text of article 227 aroused some concern in press circles, where it was feared that the effect might be to prohibit any judicial reporting and thus to be seriously prejudicial to the freedom of the press. As a matter of fact, the unofficial interpretations that have been given to the new provisions limit their scope to penalties for improper or tendentious commentaries which, on the basis of often incomplete information, anticipate the judgement and are calculated to upset the course of the examination or to influence the discussions. This interpretation will probably be confirmed by judicial decisions.

Moreover, article 226 is designed to strengthen the protection which must be given to the administration of justice in the face of excessive or tendentious criticism; it is designed to safeguard the prestige and authority of the judiciary.

7. *Copyright:* A decree of 19 April 1958[4] provided for the application of the Act of 11 March 1957 concerning literary and artistic property[5] in overseas departments.

8. *Judicial decisions:* One or two decisions of the Conseil d'Etat referred to the *declaration of loss of French nationality* by French nationals by birth, in circumstances specified in articles 96 and 97 of the Nationality Code. It was held that the penalty could be applied only if the rules safeguarding the rights of defence of the parties concerned were respected. The decree establishing loss of nationality could not be issued unless the person concerned was informed of the charges against him and was allowed to submit explanations "concerning the activities that caused the Government to issue the contested decree".[6]

B. Social Rights

1. An Act of 19 February 1958[7] introduced certain amendments concerning the duration of the period of *notice of dismissal* in cases where the contract of employment was terminated. As a corollary to the principle of reciprocal freedom to break off the contract of employment, the duration of the period of notice of dismissal was governed by the customs of the locality and occupation or, in default of such customs, by collective agreement or rules of employment. Formerly this period was identical whether the employer or the employee terminated the contract. The new law provides that, when the contract is terminated by the employer, in other words, in the event of dismissal, one month's notice is compulsory, unless the collective agreements provide for a longer period. The obligation of one month's

[1] Ordinance 58-1301, *Journal officiel*, December 1958, p. 11770.

[2] Act 58-129, *Journal officiel*, February 1958, p. 1572.

[3] Ordinance 58-1298, *Journal officiel*, December 1958, p. 11761. See below, p. 77.

[4] Decree 58-446, *Journal officiel*, April 1958, p. 4025.

[5] See *Yearbook on Human Rights for 1957*, pp. 82-90.

[6] Conseil d'Etat, Epoux Speter case, 7 March 1958, *Recueil des décisions du Conseil d'Etat* 1958, p. 152, Sirey.

[7] Act 58-158, *Journal officiel*, February 1958, p. 1858.

notice changes the reciprocal character which has hitherto been a feature of the notice of dismissal and thus constitutes a further unilateral limitation of the employer's right to terminate the contract.

2. In the note for 1957 we reported the progress made in legislation concerning *the settlement of collective labour disputes.*[1] A decree of 18 July 1958[2] establishes administrative regulations regarding conciliation and mediation. It establishes the membership, jurisdiction and terms of reference of the conciliation commissions in non-agricultural and agricultural occupations. The decree also sets forth the mediation procedure established by the Act of 26 July 1957.

3. Reference should also be made to a decree of 11 January 1958[3] concerning the establishment of *minimum wages in the overseas departments* (Guadeloupe, Guiana and Martinique), raising the wage levels; a decree of 7 February 1958[4] concerning improvement of the *family allowances system* in force in these departments and in Reunion, and a decree of 18 June 1958[5] concerning revalorization of the lowest wage levels in the department of Reunion.

The Act of 19 February 1958, mentioned above, applies in these departments.

4. One of the shortcomings of the general *social security* organization, under which several separate systems relating to specific occupations were permitted to subsist, was that a worker who had to change his occupation might in some circumstances lose the benefit of the contributions he had made for old-age insurance. A decree of 27 September 1958[6] contains a provision which will put an end to this situation. It declares "null and void any article in the statutes or regulations of a retirement fund for wage-earners in one or more occupations which entails the loss of retirement benefits by an employee on account of change of occupation". This public policy provision requires the managing bodies of retirement funds to take steps to protect the rights of their members in the event of change of occupation and for the establishment of reciprocal rules of co-ordination between the various retirement systems; it even has some retroactive effect. Regulations will be issued in application of this decree.

C. Provisions particularly affecting Algeria

1. Early in 1958 Parliament approved an Act of 5 February 1958[7] on the *institutions of Algeria*, which recognized the "personality" of Algeria and at the same time set up broadly decentralized institutions suited to a system of distinct communities existing side by side. The events of mid-1958 prevented this Act from being put into effect. Nevertheless, it may be useful to recall its general terms. There were to be autonomous territories, each with a territorial assembly and a government responsible to it (art. 3) with authority to decide all matters within departmental jurisdiction — in other words, all matters not placed by law under the jurisdiction of the central organs of the Republic (arts. 9 to 12). Territorial councils of the communities, in which the indigenous inhabitants and the people of European origin or of French civil status were to be represented on an equal basis, were called on to play an essential part in the economic and social development of the country. Arrangements were made for the establishment of institutions of the federal type by agreement among the territories. The decrees of 14 April 1958[8] established the autonomous territories of Algeria, laid down statutes and rules of procedure for the territorial councils of the communities and regulations for the formation of provisional territorial assemblies.

2. As for *economic development*, the decree of 23 January 1958[9] established provisional agricultural chambers in twelve additional departments of Algeria on the initiative of the Governor-General.

An important decree was enacted on 31 January 1958[10] which provided for capital equipment grants, various tax exemptions and participation in financing, to promote the establishment of industrial enterprises in Algeria and to create employment opportunities there. Provision was made for bodies called "Algerian development companies", to take shares in enterprises making industrial investments in Algeria.

3. Various laws have been enacted for the reform of the *public administration* of Algeria. They provide for (1) easier access by the French Moslems of Algeria to state employment — 10 per cent of the posts in the highest A and B categories are set aside for them — and to posts in the Algerian public service and in the local communities of Algeria — 70 to 90 per cent of the posts are set aside for them (two ordinances of 29 October 1958[11]); (2) participation by officials from metropolitan France in the administration of Algeria (ordinance of 29 October 1958[12] providing for the assignment or compulsory transfer to Algeria of certain grades of state officials; ordinance of 5 November 1958[13] authorizing the merger of metropolitan and Algerian civil service personnel in the interest of the public administration in Algeria).

4. The requirements of *public safety* led the Govern-

[1] See *Tearbook on Human Rights for 1957*, p. 81.

[2] Decree 58-615, *Journal officiel*, July 1958, p. 6801.

[3] Decree 58-22, *Journal officiel*, January 1958, p. 589.

[4] Decree 58-113, *Journal officiel*, February 1958, p. 1455.

[5] Decree 58-536, *Journal officiel*, June 1958, p. 5720.

[6] Decree 58-962, *Journal officiel*, October 1958, p. 9469.

[7] Act. 58-95, *Journal officiel*, February 1958, p. 1379.

[8] Decrees 58-384, 385 and 386, *Journal officiel*, April 1958, pp. 3568, 3569.

[9] Decree 58-55, *Journal officiel*, January 1958, p. 951.

[10] Decree 58-83, *Journal officiel*, February 1958, p. 1172.

[11] Ordinances 58-1016 and 1017, *Journal officiel*, October 1958, pp. 9886, 9887.

[12] Ordinance 58-1018, *Journal officiel*, October 1958, p. 9888.

[13] Ordinance 58-1048, *Journal officiel*, November 1958, p. 10047.

ment, under the special authority provisionally granted to it by article 92 of the Constitution of 4 October 1958, to issue an ordinance providing for the apprehension, and in some cases the administrative internment, of persons giving aid to the Algerian rebel forces. However, the ordinance of 7 October 1958 and a decree issued on the same day[1] established a "commission to supervise public safety measures", which must receive reports of all internment or apprehension orders and conducts inquiries and states its views on the measures taken. The commission may receive and consider complaints. It visits supervised residence centres. The commission, which is composed mainly of judges, is designed as a safeguard against errors or excesses in police action, which is inevitably hasty.

5. *A school and fundamental education plan* was instituted in Algeria by an ordinance of 20 August 1958.[2] It provides for the establishment of new teaching posts (1,800), school buildings and social centres. The plan is also concerned with the development of secondary, higher, technical and vocational education.

II. INTERNATIONAL INSTRUMENTS

In 1958 the following agreements were published:

Convention of 27 September 1956 concerning the Issue of Certain Extracts from Civil Status Records to be sent abroad;[3]

European Convention on Social and Medical Assistance and Additional Protocol, signed on 11 December 1953;[4]

Treaty establishing the European Economic Community and Treaty establishing the European Atomic Energy Community;[5]

Protocols on the Privileges and Immunities and on the Statute of the Court of Justice of the European Atomic Energy Community;[6]

International Convention of 20 April 1929 on the Suppression of Counterfeit Currency;[7]

European Interim Agreements on Social Security signed 11 December 1953.[8]

A series of ordinances of 10 December 1958[9] authorized the ratification of the following agreements:

Franco-Cambodian Convention of 9 September 1953 on the Judicial Status of French Nationals in Cambodia, and Protocol of 29 August 1953 transferring Judicial Authority to Cambodia;

Franco-Viet-Namese Convention of 16 August 1955 on Nationality;

Franco-Viet-Namese Convention of 16 September 1954 transferring Jurisdiction and Administration in Judicial, Police and Security Matters; and

Convention of 16 November 1956 between France and Laos on Judicial Co-operation, and Judicial Convention of 22 October 1953 between these two countries.

An ordinance of 10 November 1958[10] likewise authorized the ratification of the Franco-Italian Convention on Judicial Co-operation of 12 January 1955.

Two ordinances of the same date[11] authorized the ratification of the Franco-Moroccan Judicial and Cultural Conventions of 5 and 15 October 1957.

Lastly, a decree of 1 February 1958[12] published the Franco-Tunisian Judicial Convention signed on 9 March 1957.

[1] Ordinance 58-916 and decree 58-918, *Journal officiel*, October 1958, pp. 9214 and 9218.

[2] Ordinance 58-759, *Journal officiel*, August 1958, p. 7918.

[3] Decree 57-1427, *Journal officiel*, January 1959, p. 291.

[4] Decree 58-194, *Journal officiel*, February 1958, p. 2054. See *Yearbook on Human Rights for 1953*, pp. 359-61.

[5] Decree 58-84, *Journal officiel*, February 1958, p. 1188.

[6] Decree 58-374, *Journal officiel*, April 1958, p. 3400.

[7] Decree 58-613, *Journal officiel*, July 1958, p. 6785.

[8] Decree 58-195, *Journal officiel*, February 1958, p. 2058. See *Yearbook on Human Rights for 1953*, pp. 355-8.

[9] Ordinances 58-1189 to 1194, *Journal officiel*, December 1958, pp. 11167 and 11168.

[10] Ordinance 58-1195, *Journal officiel*, December 1958, p. 11168.

[11] Ordinance 58-1196 and 1197, *Journal officiel*, December 1958, pp. 11168 and 11169.

[12] Decree 58-86, *Journal officiel*, February 1958, p. 1266.

CONSTITUTION

ADOPTED BY REFERENDUM ON 28 SEPTEMBER 1958 AND PROMULGATED ON 4 OCTOBER 1958[1]

PREAMBLE

The French people hereby solemnly proclaims its attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946.

By virtue of these principles and that of the free determination of peoples, the Republic hereby offers to the Overseas Territories that express the desire to adhere to them, new institutions based on the common ideal of liberty, equality and fraternity and conceived with a view to their democratic evolution.

[1] Text published in *Journal officiel de la République française*, 90th year, No. 234, of 5 October 1958. Translation received through the courtesy of the Press and Information Division of the French Embassy, New York.

Art. 1. The Republic and the peoples of the Overseas Territories who, by an act of free determination, adopt the present Constitution thereby institute a Community.

The Community shall be based on the equality and the solidarity of the peoples composing it.

Title I

ON SOVEREIGNTY

Art. 2. France is a republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs.

. . .

The motto of the Republic is "Liberty, Equality, Fraternity."

Its principle is government of the people, by the people and for the people.

Art. 3. National sovereignty belongs to the people, which shall exercise this sovereignty through its representatives and by means of referendums.

No section of the people, nor any individual, may attribute to themselves or himself the exercise thereof.

Suffrage may be direct or indirect under the conditions stipulated by the Constitution. It shall always be universal, equal and secret.

All French citizens of both sexes who have reached their majority and who enjoy civil and political rights may vote under the conditions to be determined by law.

Art. 4. Political parties and groups shall be instrumental in the expression of the suffrage. They shall be formed freely and shall carry on their activities freely. They must respect the principles of national sovereignty and democracy.

. . .

Title III

THE GOVERNMENT

. . .

Art. 23. The office of member of the Government shall be incompatible with the exercise of any parliamentary mandate, with the holding of any office at the national level in business, professional or labour organizations, and with any public employment or professional activity.

. . .

Title IV

THE PARLIAMENT

Art. 24. The Parliament shall comprise the National Assembly and the Senate.

The deputies to the National Assembly shall be elected by direct suffrage.

The Senate shall be elected by indirect suffrage. It shall ensure the representation of the territorial units of the Republic. Frenchmen living outside France shall be represented in the Senate.

. . .

Art. 27. All binding instructions [upon members of Parliament] shall be null and void.

. . .

Title VIII

ON JUDICIAL AUTHORITY

Art. 64. The President of the Republic shall be the guarantor of the independence of the judicial authority.

He shall be assisted by the High Council of the Judiciary.

An organic law shall determine the status of magistrates.

Magistrates may not be removed from office.

. . .

Art. 66. No one may be arbitrarily detained.

The judicial authority, guardian of individual liberty, shall ensure respect for this principle under the conditions stipulated by law.

. . .

Title XII

ON THE COMMUNITY

Art. 77. In the Community instituted by the present Constitution, the States shall enjoy autonomy; they shall administer themselves and manage their own affairs democratically and freely.

There shall be only one citizenship in the Community.

All citizens shall be equal before the law, whatever their origin, their race and their religion. They shall have the same duties.

. . .

Title XIV

ON AMENDMENT

Art. 89. . . .

The republican form of government shall not be subject to amendment.

. . .

ORDINANCE No. 58–1298 OF 23 DECEMBER 1958 AMENDING, *INTER ALIA*, CERTAIN ARTICLES OF THE PENAL CODE [1]

Art. 17. Articles 226 and 227 of the Penal Code shall read as follows:

"*Art. 226.* If any person by acts, speech or writing openly attempts to discredit any act or decision of the courts in circumstances tending to detract from the authority or independence of the judiciary, he shall be liable to imprisonment for not less than

[1] Published in the *Journal officiel de la République française*, 90th year, No. 300, of 24 December 1958. Translation by the Secretariat of the United Nations.

one nor more than six months, and to a fine of not less than 50,000 nor more than 2 million francs, or to one of these penalties only.

"Furthermore, the court may order that its decision be posted and published on such terms as it may deem fit at the expense of the convicted person, provided that the costs of such posting and publication shall not exceed the maximum fine laid down above.

"The aforesaid provisions may not in any case be applied to purely technical commentaries, or to any act, speech or writing intended to secure the review of a decision.

"If the offence is committed through the Press, the provisions of article 285 of this Code shall apply.

"*Art. 227.* If, before a case has been finally closed in a court of law, any person publishes commentaries thereon tending to influence unduly the statements of witnesses or the decisions of the examining or trial courts, such person shall be liable to the penalties laid down in article 226.

"The provisions of the final three paragraphs of article 226 shall also apply in this context."

. . .

Art. 42. The following provisions shall be substituted for article 14 of Act No. 49-956, of 16 July 1949 (the Juvenile Publications Act[1]):

"*Art. 14.* The offer, gift or sale to minors under eighteen years of age of any kind of publication which constitutes a danger to youth because of its licentious or pornographic character or because of the treatment given to crime therein shall be prohibited.

"The open display of any such publication in any place whatever, and more particularly inside or outside a shop or kiosk, or the advertisement of any such publication in any manner whatever shall also be prohibited.

"The publications to which these prohibitions apply shall be designated in orders issued by the Minister for Internal Affairs. The committee responsible for the supervision and control of publications for children and adolescents shall be empowered to indicate the publications the prohibition of which it considers necessary.

"The sale or offer of the publications defined in article 1 of this Act coupled with those mentioned in the preceding paragraph of the present article shall be prohibited.

"No publication may contain an allegation that it is not subject to the aforesaid prohibitions or include any statement or entry likely to induce the erroneous belief that permission for the publication has been obtained from the public authorities.

"Any violation of the provisions of the preceding paragraphs of this article shall be punishable by imprisonment for not less than one month nor more than one year, and by a fine of not less than 150,000 nor more than 1.5 million francs. Before proceedings have been initiated, officers of the criminal police may seize publications exhibited in defiance of the provisions of paragraph 2 above; they may also seize, tear down, deface, cover over or destroy any material advertising these publications. The court shall order the confiscation of all articles seized.

"If any person, by changes of title, deceitful presentation, misleading advertisement or any other device, evades or causes the evasion of or attempts to evade or to cause the evasion of the enforcement of the prohibitions ordered in accordance with the first three paragraphs of this article, he shall be liable to imprisonment for not less than two months nor more than two years, and to a fine of not less than 300,000 nor more than 3 million francs. The court may also, subject to the same penalties, order the temporary or permanent cessation of the periodical publication and the total or partial closing down, on a temporary basis, of the publishing establishment. Any person who is sentenced to imprisonment for more than ten days for any of the offences envisaged in this paragraph, shall be deprived of the rights listed in article 42 (1) and (2) of the Penal Code for a period of five years from the date of final judgement.

"If any three publications, whether periodical or not, actually published by the same publisher, have been the object, since the entry into force of Act No. 49-956, of 16 July 1949, and within a twelve-month period, of prohibitions envisaged in the first three paragraphs of this article, that publisher may not offer a similar publication or part of a publication for sale until he has deposited three copies thereof with the Ministry of Justice and three months have passed since the date of receipt of the deposit. Any publisher or managing editor who fails to make the deposit provided for above or to wait for the expiration of the aforesaid three-month period before offering the publication for sale shall be liable to the penalties and shall be deprived of the rights set forth in the preceding paragraph.

"In cases involving any of the offences envisaged in the fifth, seventh and eighth paragraphs of this article, proceedings shall be taken against the managing editor or publisher as principal; in their default, the author, and in his default the printers and distributors shall be prosecuted as principals. If proceedings are not taken against the author as principal, he shall be prosecuted as an accessory. Any person to whom article 60 of the Penal Code applies may be prosecuted as an accessory in all circumstances."

. . .

[1] See *Yearbook on Human Rights for 1949*, pp. 70-72.

ORDINANCE No. 58-998, OF 24 OCTOBER 1958, ENACTING AN ORGANIC LAW CONCERNING THE CONDITIONS OF ELIGIBILITY FOR ELECTION TO PARLIAMENT AND INCOMPATIBILITY OF OFFICES [1]

Section I

CONDITIONS OF ELIGIBILITY

Art. 1. Any citizen who is a qualified elector may be elected to the National Assembly and to the Senate under the conditions and subject only to the reservations set forth in the following articles.

Art. 2. No one may be elected to the National Assembly unless he has completed his twenty-third year.

No one may be elected to the Senate unless he has completed his thirty-fifth year.

Art. 3. No one may be elected to Parliament unless he has fully satisfied the statutory requirements in respect of active military service.

Art. 4. Naturalized aliens shall be eligible for election only on the expiry of a period of ten years from the date of the naturalization decree.

Women who have acquired French nationality by marriage shall be eligible for election only on the expiry of a period of ten years from the date on which such acquisition of French nationality can no longer be disputed.

The law shall prescribe the cases in which the persons referred to in the two preceding paragraphs may apply for a reduction of the period of disqualification by reason of special claims or circumstances.

Art. 5. Convicted persons shall be ineligible for election if their conviction permanently bars their registration on an electoral roll.

Persons whose conviction temporarily bars their registration on an electoral roll shall be ineligible for election for a period twice as long as that during which they may not be registered.

The following persons also shall be ineligible for election:

1. Persons deprived by a court of their right to be elected pursuant to laws authorizing such deprivation;
2. Persons committed to a trustee.

Art. 6. Inspectors-general on special mission (inspecteurs généraux de l'administration en mission extraordinaire), prefects, Overseas France inspectors-general and inspectors on mission in a territory and chief administrators of territories may not be elected in any electoral district within the areas in which they perform their functions or ceased to do so less than three years before the election.

Sub-prefects and general secretaries of prefectures shall be ineligible for election in any of the electoral districts of the department in which they perform their functions or ceased to do so less than one year before the election.

Mayors and deputy mayors in Paris shall be ineligible for election in the electoral districts in which they perform their functions or ceased to do so less than one year before the election.

The following may not be elected in any electoral district within the area in which they perform their functions or ceased to do so less than six months before the election:

(1) Heads of circonscriptions administratives in the Overseas Territories up to and including the grade of chef de poste, and their deputies;

(2) Inspectors-general of the national economy, inspectors-general of civil engineering (ponts et chaussées), inspectors-general of water resources and rural engineering (eaux et génie rural), inspectors-general of agriculture if in charge of a circonscription;

(3) Judges of courts of appeal and of tribunals;

(4) Members of administrative courts;

(5) Officers of the army, navy and air force having a territorial command;

(6) Recteurs d'académie and inspecteurs d'académie;

(7) Regional and departmental inspectors of youth matters and sport, primary school inspectors, technical school inspectors;

(8) Trésoriers-payeurs generaux, receveurs particuliers des finances, and, in the Overseas Territories, directors and representatives of the Comptroller's Office;

(9) Directors of departments of direct and indirect taxation, registration and public lands, customs, and economic survey;

(10) Chief civil engineers, deputy chief civil engineers and civil engineers (ponts et chaussées);

(11) Inspectors-general in charge of circonscriptions, keepers and engineers of the Administration des Eaux et Forêts; directors of agricultural services; chief rural engineers and rural engineers; inspectors-general in charge of circonscriptions and directors of veterinary services; plant protection inspectors; agricultural social welfare inspectors;

(12) Regional directors of social security, divisional labour inspectors, departmental directors and inspectors of labour and manpower;

(13) Directors of regional and local social security bodies responsible to the Audit Office (Cour

[1] Text published in the *Journal officiel* of the French Republic, 90th year, No. 251, 25 October 1958. Translation by the United Nations Secretariat.

des Comptes) and directors of regional loan funds for agriculture;

(14) Departmental directors of health, and departmental directors of population and entr'aide sociale;

(15) Inter-departmental directors of ex-servicemen's organizations and general secretaries of departmental ex-servicemen's offices;

(16) Departmental directors of building and town planning;

(17) Regional and departmental directors of posts, telegraphs and telephones;

(18) Chefs de division of the prefecture, departmental fire-service inspectors;

(19) Departmental and municipal chiefs of police.

. . .

Section II

INCOMPATIBILITY OF OFFICES

Art. 9. No one may hold the offices of deputy and senator concurrently.

Any deputy elected to the Senate or any senator elected deputy shall cease, *ipso facto*, to belong to the first Assembly of which he was a member. However, if the election is disputed, the seat shall be declared vacant only after a decision by the Constitutional Council confirming the election.

In no circumstances may he take part in the work of both Assemblies.

Art. 10. Any person who has been elected an alternate deputy or senator shall cease to have that capacity if he is elected deputy or senator.

Art. 11. A deputy or senator may not at the same time be a member of the Economic and Social Council.

Art. 12. A deputy or senator may not hold a non-elective public office.

Consequently, any person covered by the preceding paragraph who is elected to Parliament shall be removed from his public office and given the status prescribed for the purpose by the regulations governing that office during the eight days following his assumption of his parliamentary functions or, in the case of a disputed election, the decision of the Constitutional Council.

A deputy or senator likewise may not exercise functions conferred by a State member of the Community, a foreign State or an international organization and remunerated from their funds.

The provisions of the first two paragraphs of this article shall not apply:

(1) To professors who, on the date of their election, held chairs to which they were appointed on the recommendation of the faculties in which the vacancy occurred, or professors in charge of research projects;

(2) In the Haut-Rhin, Bas-Rhin and Moselle departments, to ministers of religion and government representatives in the ecclesiastical affairs administration.

Art. 13. Persons entrusted by the Government with a temporary assignment may combine such assignment with their parliamentary office for a period not exceeding six months.

Art. 14. A member of Parliament may not at the same time exercise the functions of chairman or member of the board, or of director-general or deputy director-general, of national enterprises or national public establishments; nor any function exercised permanently as consultant with such enterprises or establishments.

The incompatibility proclaimed in this article shall not apply to members of Parliament appointed in that capacity as members of the board of national enterprises or national public establishments under the statutes establishing such enterprises or establishments.

Art. 15. A member of Parliament may not at the same time exercise the functions of general manager, chairman of the board of directors, managing director, director-general, deputy director-general or manager in:

(1) Companies, enterprises or establishments receiving subsidies in the form of guaranteed interest rates, or enjoying benefits in an equivalent form, granted by the State, a department or a commune, save where such benefits derive from the automatic application of a general law or a general regulation;

(2) Companies whose purpose is exclusively financial and which invite the public to deposit savings and to invest capital;

(3) Companies or enterprises principally engaged in the execution of works, the provision of supplies or services on behalf or under the supervision of the State, of a department or commune or of a public establishment or national enterprise, or companies or enterprises of which more than half the registered capital has been subscribed by companies or enterprises engaged in those activities.

. . .

Art. 17. Notwithstanding the provisions of articles 15 and 16, members of Parliament who are members of a conseil général [council elected by a department] or of a conseil municipal [council elected by a commune] may be appointed by those councils to represent the department or the commune in organizations of regional or local interest, provided that the essential purpose of such organizations is not to make or distribute profits and that the functions performed therein by the persons concerned are not remunerated. Members of Parliament, even those not members of

a conseil général or of a conseil municipal, may also exercise the functions of chairman of the board of directors, managing director or member of the board of directors of semi-public corporations providing regional or local public services.

. . .

Art. 20. A member of Parliament who at the time of his election finds that the holds one of the incompatible offices referred to in this section shall, within the eight days following his assumption of his parliamentary functions or, in the case of a disputed election, the decision of the Constitutional Council, furnish evidence that he has resigned from the office which is incompatible with the said functions or, if he holds a government post, that he has applied to be given the special status prescribed by the regulations applicable to him. If he fails to do so, an order shall be made divesting him of his functions.

. . .

The order of divestiture shall in all cases be made by the Constitutional Council on the application of the assembly concerned or of the Garde des Sceaux, Minister of Justice. It shall not entail inelegibility.

Section III

TEMPORARY PROVISIONS

. . .

Art. 23. This order shall be published in the *Journal officiel* of the French Republic and shall be enforced as an organic law.

In view of its urgency, it shall enter into force forthwith.

ACT No. 58-95, OF 5 FEBRUARY 1958, ON THE INSTITUTIONS OF ALGERIA[1]

Section I

PERSONALITY OF ALGERIA

Article 1

Algeria is an integral part of the French Republic. Its departments are grouped into territories which freely and democratically administer their own affairs.

The Republic recognizes and guarantees the personality of Algeria. It takes account of the diversity in the composition of Algeria by vesting autonomy, as defined by the present Act, in the territories.

The federative institutions of Algeria shall be the outcome of agreement by the territories, in the circumstances prescribed in section III.

In Algeria, all citizens of the Republic share in French sovereignty through their representatives in Parliament. They are likewise represented in the other assemblies provided for in the Constitution.

Article 2

In Algeria the Republic guarantees to all citizens of both sexes, without distinction of race, religion or origin, the equal exercise of all freedoms and of all political, economic and social rights attaching to the status of citizen of France; they are subject to the corresponding obligations.

The Republic takes under its protection the rights and freedoms of the various communities and guarantees those communities against any breach of equity in their mutual relationship of coexistence.

Any political, economic, social or cultural measure involving or resulting in arbitrary discrimination shall be null and void.

The Republic guarantees the freedom and honesty of elections, the establishment of a single body of electors, and the equitable, genuine and compulsory representation of the various communities at all levels.

. . .

Section V

ECONOMIC AND SOCIAL DEVELOPMENT OF ALGERIA

Article 13

The economic and social development of Algeria is ensured by the French Republic.

The Economic Development Fund instituted by decree No. 57-923, of 10 August 1957, shall receive the appropriate subsidies and guarantees from the state budget.

. . .

Section VII

EVOLUTION OF THE INSTITUTIONS OF ALGERIA

Article 16

The French Republic agrees and guarantees that the institutions of Algeria shall be enabled to evolve within the Republic, on a basis of respect for the rights and freedoms of the citizens and of the communities and for the provisions of the Constitution.

. . .

[1] Published in the *Journal officiel de la République française*, 90th year, No. 31, of 6 February 1958. Translation by the United Nations Secretariat.

GHANA

THE DEPORTATION ACT, 1957

No. 14 of 1957, assented to on 25 July 1957[1]

3. (1) No citizen of Ghana shall be liable to deportation under this Act.

(2) For the purposes of this Act, the burden of proof that he is a citizen of Ghana shall lie upon the person who asserts that he is such a citizen.

. . .

[1] Published as *Supplement to Ghana Gazette dated 27th July, 1957.*

THE PREVENTIVE DETENTION ACT, 1958

No. 17 of 1958, assented to on 18 July 1958[1]

2. (1) The Governor-General may order the detention of any person who is a citizen of Ghana if satisfied that the order is necessary to prevent that person acting in a manner prejudicial to —

(*a*) The defence of Ghana;

(*b*) The relations of Ghana with other countries; or

(*c*) The security of the State.

(2) A person detained under this section shall, not later than five days from the beginning of his detention, be informed of the grounds on which he is being detained and shall be afforded an opportunity of making representations in writing to the Governor-General with respect to the order under which he is detained.

3. (1) An order under this Act shall constitute an authority to any police officer to arrest the person against whom the order is made and that person shall, while detained in pursuance of the order, be in lawful custody.

(2) If the Minister responsible for defence has reason to believe that a person against whom an order under this Act has been made and who has not been taken into custody under the order is attempting to evade arrest, the Minister may by a notice in the *Gazette* direct that person to report to a member of the police force at such place and within such period as may be specified in the notice.

(3) If any person in respect of whom a notice has been published in the *Gazette* under the provisions of the last foregoing subsection fails to comply with the notice, he shall, on being arrested, be detained, during the Governor-General's pleasure, for a period not exceeding double the period specified in the order made under this Act.

(4) At any time after an order has been made against any person under this section the Governor-General may in a notice in the *Gazette* direct that the operation of the order be suspended subject to such conditions, if any, as the Governor-General may specify in the direction —

(*a*) Requiring him to notify his movements in such manner, at such times and to such authority or person as may be so specified, and

(*b*) Requiring him to enter into a bond with or without securities for the observance of any conditions imposed on him under the foregoing paragraph,

and if that person fails to comply with a condition attached to a direction given under this subsection he shall, whether or not the direction is revoked in consequence of the failure, be detained under the original order or during the Governor-General's pleasure for a period not exceeding five years.

(5) The Governor-General may include in an order under this Act a provision that it shall cease to have effect on a date specified in the order and may at any time vary or revoke an order made under this Act or a direction given under this section.

4. (1) Subject to the provisions of sub-section 3 of the last foregoing section, no person shall be detained in pursuance of an order under this Act for a period exceeding five years, and where a person has been detained in pursuance of an order under this Act, no further order shall be made under this Act against that person except on the ground of activities in which that person may have been concerned and which have been carried on at times subsequent to the date on which the first-mentioned order was made.

(2) For the purpose of this section, any period during which a person is released in pursuance of a direction of the Governor-General under the last

[1] Published as *Supplement to Ghana Gazette dated 19th July, 1958.*

foregoing section shall count as a period of detention.

5. (1) Subject to the provisions of this section, this Act shall cease to have effect at the expiration of a period of five years beginning with the date on which it is passed.

(2) The period during which this Act is in force may from time to time be extended for a further period of three years by a resolution of the National Assembly.

. . .

THE GHANA NATIONALITY AND CITIZENSHIP ACT, 1957

No. 1 of 1957, assented to on 10 May 1957 [1]

2. (1) In this Act, unless the context otherwise requires —

"Alien" means a person who is not a Commonwealth citizen or a British protected person;

"British protected person" means any person who under any enactment for the time being in force in any country mentioned in sub-section 3 of section 9 of this Act is a British protected person or a protected person of that country;

"Certificate of naturalization" means a certificate of naturalization granted under this Act;

"Child" includes a child born out of wedlock, and the expressions "father", "mother" and "parent" shall be construed accordingly;

"Foreign country" means a country other than Ghana, a country mentioned in sub-section 3 of section 9 of this Act, a mandated territory, a trust territory, a state or territory which is declared by Her Majesty by Order in Council to be a protectorate or protected state for the purposes of the British Nationality Act, 1948, of the United Kingdom Parliament, the new Hebrides and Canton Island;

. . .

"Minor" means a person who has not attained the age of twenty-one years.

(2) Any reference in this Act to Ghana in relation to birth or residence before the commencement of the Ghana Independence Act, 1957, shall be read and construed as including a reference to the Gold Coast.

(3) References in this Act to any country mentioned in sub-section 3 of section 9 of this Act shall include references to the dependencies of that country.

(4) For the purposes of this Act a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(5) A person shall for the purposes of this Act be of full age if he has attained the age of twenty-one years and of full capacity if he is not of unsound mind.

. . .

Part II

NATIONALITY AND CITIZENSHIP OF GHANA

3. (1) A citizen of Ghana may, for any purpose in Ghana, describe his nationality by the use of the expression "citizen of Ghana" or "Ghanaian citizen", or by the use of the expression "national of Ghana" or "Ghanaian national".

(2) For the purposes of this Act, the expressions "national of Ghana" and "Ghanaian national" shall have the same meaning as the expressions "citizen of Ghana" and "Ghanaian citizen" respectively.

Part III

ACQUISITION OF CITIZENSHIP ON COMMENCEMENT OF ACT

4. (1) Subject to the provisions of this section every person born in Ghana, whether before or after the commencement of the Ghana Independence Act, 1957, who immediately before the date of commencement of this Act was a citizen of the United Kingdom and colonies or a British protected person shall be a citizen of Ghana:

Provided that a person shall not be such a citizen by virtue of this section if none of his parents or grandparents was born in Ghana.

(2) A person who becomes a citizen of Ghana by virtue of the provisions of this section shall be deemed for the purposes of section 8 of this Act to be a citizen of Ghana by birth.

5. (1) Every person born outside Ghana who, immediately before the commencement of this Act, was a citizen of the United Kingdom and colonies or a British protected person shall, if at least one of his parents was born in Ghana and was immediately before the date of commencement of this Act or at his death if occurring prior to that date a citizen of the United Kingdom and colonies or a British protected person, be a citizen of Ghana.

(2) A person who becomes a citizen of Ghana by virtue of the provisions of this section shall be deemed for the purposes of sections 8 and 11 of this Act to be a citizen of Ghana by descent.

6. A woman who immediately before the date of commencement of this Act was by virtue of her marriage a citizen of the United Kingdom and colonies or a British protected person (whether by registration or by operation of the law) shall, if the person to

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[1] Published as *Supplement to Ghana Gazette dated 11th May, 1957.* The Act entered into force on 11 May 1957.

whom she has been married becomes or would but for his death have become a citizen of Ghana under the provisions of section 4 or 5 of this Act, on that date herself become such a citizen.

Part IV

CITIZENSHIP BY BIRTH OR DESCENT

7. Subject to the provisions of this section, every person born in Ghana after the commencement of this Act shall be a citizen of Ghana by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth —

(*a*) Neither of his parents is a citizen of Ghana and his father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Her Majesty; or

(*b*) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

8. A person born outside Ghana after the commencement of this Act shall be a citizen of Ghana by descent if at the time of his birth —

(*a*) His father is a citizen of Ghana otherwise than by descent; or

(*b*) His mother is a citizen of Ghana by birth.

Part V

COMMONWEALTH CITIZENSHIP

9. (1) Every person who under this Act is a citizen of Ghana or who under any enactment for the time being in force in any country mentioned in sub-section 3 of this section is a citizen of that country shall, by virtue of that citizenship, have also the status of a Commonwealth citizen.

(2) In any law in force in Ghana other than this Act, references to a British subject shall be read and construed as references to a Commonwealth citizen.

(3) The following are the countries hereinbefore referred to — that is to say, the United Kingdom and colonies, Canada, Australia, New Zealand, the Union of South Africa, Pakistan, Southern Rhodesia and Ceylon.

. . .

Part VI

CITIZENSHIP BY REGISTRATION AND NATURALIZATION

11. (1) Subject to the provisions of sub-section 4 of this section, a citizen of any country mentioned in sub-section 3 of section 9 of this Act, or a British protected person, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may with the approval of the Governor-General be registered as a citizen of Ghana if he satisfies the Minister that he is of good character and has a sufficient knowledge of a language indigenous to and in current use in Ghana and that he is ordinarily resident in Ghana and has been so resident in Ghana, whether before or after the commencement of the Ghana Independence Act, 1957, throughout the period of five years, or such shorter period as the Minister may in the special circumstances of any particular case accept, immediately preceding his application.

(2) Subject to the provisions of sub-section 4 of this section, any person of full age and capacity born outside Ghana one of whose parents was at the time of his birth a citizen of Ghana by descent may with the approval of the Governor-General, on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Ghana.

(3) Subject to the provisions of sub-section 4 of this section, a woman who has been married to a citizen of Ghana may, with the approval of the Governor-General on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Ghana whether or not she is of full age and capacity.

(4) A person shall not be registered as a citizen of Ghana under this section unless and until he has made a declaration in writing of his willingness to renounce any other nationality or citizenship he may possess and has taken an oath of allegiance in the form specified in the first schedule to this Act.

12. (1) The Minister may with the approval of the Governor-General cause the minor child of any citizen of Ghana to be registered as a citizen of Ghana upon application made in the prescribed manner by a parent or guardian of the child.

(2) The Minister, in such special circumstances as he thinks fit, may with the approval of the Governor-General cause any minor to be registered as a citizen of Ghana.

13. A person registered under any of the last two foregoing sections shall be a citizen of Ghana by registration as from the date on which he is registered.

14. The Minister, if application therefor is made to him in the prescribed manner by any alien of full age and capacity who satisfies him that he is qualified under the provisions of the second schedule to this Act for naturalization, may with the approval of the Governor-General grant to him a certificate of naturalization, and the person to whom the certificate is granted shall, on taking an oath of allegiance in the form specified in the first schedule to this Act, and on making a declaration in writing of his willingness to renounce any other nationality and any claim to the protection of any other country, be a citizen of Ghana by naturalization as from the date on which that certificate is granted.

Part VII

RENUNCIATION AND DEPRIVATION OF CITIZENSHIP

15. (1) If any citizen of Ghana of full age and capacity who is also —

(*a*) A citizen of any country mentioned in sub-section 3 of section 9 of this Act; or

(*b*) A national of a foreign country,

makes a declaration in the prescribed manner of renunciation of citizenship of Ghana, the Minister, if he is satisfied that that person is not ordinarily resident in Ghana, shall, and in all other cases, may cause the declaration to be registered; and, upon the registration, that person shall cease to be a citizen of Ghana:

Provided that the Minister may withhold registration of any such declaration if in his opinion it is contrary to public policy.

(2) For the purposes of this section any woman who has been married shall be deemed to be of full age.

16. (1) The Minister may by order deprive any person of his Ghana citizenship if the Minister is satisfied that that person has at any time while a citizen of Ghana and of full age and capacity acquired the nationality or citizenship of a foreign country by any voluntary and formal act other than marriage and that it is not conducive to the public good that he should continue to be a citizen of Ghana.

(2) The Minister may require any such citizen of Ghana as is referred to in the last foregoing section of this Act to renounce his nationality or citizenship of any other country within such period as the Minister may specify and in the event of any such person failing to renounce such nationality or citizenship within the time specified the Minister may by order deprive that person of his citizenship of Ghana.

(3) Upon an order being made under this section in respect of any person, he shall cease to be a citizen of Ghana.

17. (1) A citizen of Ghana who is such by registration or naturalization shall cease to be a citizen of Ghana if he is deprived of that citizenship by an order of the Minister made under this or the next following section.

(2) Subject to the provisions of this section, the Minister may by order deprive any such citizen of his citizenship if he is satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representation or the concealment of any material fact.

(3) Subject to the provisions of this section, the Minister may by order deprive any citizen of Ghana who is such by naturalization of that citizenship if he is satisfied that that citizen —

(*a*) Has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or the Government of Ghana; or

(*b*) Has, during any war in which Ghana was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) Has within five years after becoming naturalized been sentenced in any country to imprisonment for a term of not less than twelve months.

(4) The Minister may by order deprive any citizen by naturalization of his citizenship of Ghana if he is satisfied that that person has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has not registered annually in the prescribed manner at a Ghana consulate or by notice in writing to the Minister his intention to retain his citizenship of Ghana.

(5) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Ghana.

18. When a naturalized person who was a citizen of any country mentioned in sub-section 3 of section 9 of this Act has been deprived of that citizenship on grounds which, in the opinion of the Minister, are substantially similar to any of the grounds specified in sub-sections 2, 3 and 4 of the last foregoing section, then, if that person is a citizen of Ghana, the Minister may by an order made under this section deprive him of that citizenship, if the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Ghana.

19. Any reference in this Act to the status or description of either parent of a person at the time of that person's birth shall, in relation to a person born after the death of that parent, be construed as a reference to the status or description of that parent at the time of the parent's death; and where that death occurred before, and the birth occurs after the commencement of this Act, the status or description which would have been applicable to such parent had he or she died after the commencement of this Act shall be deemed to be the status or description applicable to him or her as the case may be at the time of his or her death.

. . .

Second Schedule

(Section 14)

QUALIFICATIONS FOR NATURALIZATION

1. Subject to the provisions of the next following paragraph, the qualifications for naturalization of an alien who applies therefor are —

(*a*) That he has resided in Ghana throughout the period of twelve months immediately preceding the date of the application; and

(*b*) That during the seven years immediately preceding the said period of twelve months he has resided in Ghana for periods amounting in the aggregate to not less than five years; and

(*c*) That he is of good character; and

(*d*) That he has sufficient knowledge of a language indigenous to and in current use in Ghana; and

(*e*) That he intends in the event of a certificate being granted to him to reside in Ghana.

2. The Minister, if in the special circumstances or any particular case he thinks fit, may with the approval of the Governor-General —

(*a*) Allow a continuous period of twelve months ending not more than six months before the date of application to be reckoned for the purposes of sub-paragraph (*a*) of the last foregoing paragraph as though it had immediately preceded that date;

(*b*) Allow residence in a country other than a foreign country to be reckoned for the purposes of sub-paragraph (*b*) of the last foregoing paragraph as if it had been residence in Ghana;

(*c*) Allow periods of residence earlier than eight years before the date of application to be reckoned in computing the aggregate mentioned in the said sub-paragraph (*b*).

THE INDUSTRIAL RELATIONS ACT, 1958

No. 56 of 1958, assented to on 31 December 1958 [1]

NOTE

Part V, entitled "Unfair Labour Practices", of this Act made it an unfair labour practice for a person, *inter alia*, (i) to refuse "to employ or to continue to employ any person because that person is a member or officer of a trade union", (ii) to discriminate "against any person, as respects the employment or conditions of employment which he offers, because that person is a member or officer of a trade union", or (iii) to seek "by intimidation, by dismissal, by threat of dismissal, or by any kind of threat, by imposition of a penalty, or by giving or offering to give a wage increase or any other favourable alteration of terms of employment, or by any other means, to induce an employee to refrain from becoming or continuing to be a member or officer of a trade union".

If the Unfair Labour Practices Tribunal provided for in the Act were to find that a person had engaged in one of the above-mentioned practices, it was empowered to forbid the continuance or repetition of the practice and, where appropriate, to require the restoration of the employee to his former employment or conditions of employment and the payment to him of compensation for any loss of earnings.

Provision was made for an appeal to the High Court.

The text of the Act and a translation into French have been published by the International Labour Office as *Legislative Series* 1958 — Ghana 1.

[1] Published as *Supplement to Ghana Gazette dated 31st December, 1958.*

GREECE

NOTE[1]

1. Act No. 3818/1958 (*Official Gazette* No. 36-A) extends "to officers and flight-sergeants of the Greek Royal Air Force, and to members of their families, the provisions of Act No. 1137/46 relating to care in the hospital of the Army Insurance Fund".

This Act, which is based on principles of general social policy and equality, extends the right to general medical and hospital care to officers and flight-sergeants of the Greek Royal Air Force and their families, so that now all members of the Greek armed forces enjoy those benefits on a basis of complete equality as regards rights and obligations.

2. Legislative decree No. 3865/58 (*Official Gazette* No. 178-A) amends and supplements "the laws relating to extra-scholastic athletics".

This enactment is intended to provide an adequate solution for the many problems concerning athletic activities for young people, who are thus diverted from harmful pursuits, and to adapt existing legislation on athletics to present-day conditions.

3. The "Supplementary Retirement Fund" grants either a pension or a lump sum payment to aged or disabled workers who are no longer entitled to social insurance benefits because of their advanced age or incapacity for work. If the beneficiary dies, these grants are paid to those members of the deceased's family who were financially dependent on him.

Under the Fund's regulations, men who have attained the age of sixty and women who have attained the age of fifty-five are entitled to old-age pensions, these minimum ages being reduced by five years for men and women working in boiler factories and foundries. In case of disablement, disability pensions are granted to persons whose working capacity has been reduced by at least 66 per cent. In both cases the individual concerned must also have carried on his trade and been insured by the Fund for a minimum period. Persons insured by the Fund and fulfilling the above conditions are entitled to the pension as soon as they cease to be covered by social insurance for any reason whatsoever (voluntary act or dismissal).

4. Legislative decree No. 3867/58 on the "functioning of the Auxiliary Insurance Fund for skilled workers in the building and carpentry industries" (*Official Gazette* No. 177-A) gives official recognition to that fund, which has been in existence since 1940.

It provides for the payment of pensions to about 1,000 workers who are on retirement and provides insurance facilities for a great number of workers in the building and carpentry industry.

5. Legislative decree No. 3868/1958 providing for the "establishment of a family allowances distribution fund for salaried employees" and dealing with certain other matters (*Official Gazette* No. 178-A) introduces in Greece a system of family allowances for salaried employees. This system, which has been adopted under the labour legislation of many countries, is in harmony with the principles set out in all international declarations and recommendations, from the Atlantic Charter of 1941 to the latest resolutions of the International Labour Organisation, and also with the modern concept of social legislation. It meets to the greatest possible extent the needs of the salaried employee not only as an individual but also as the bread-winner of that basic social entity, the family.

6. Legislative decree No. 3869/1958 (*Official Gazette* No. 179-A) ratifies the social insurance agreement between Greece and France, signed at Athens on 19 April 1958.

Under this agreement, Greek nationals employed in France under specifically defined conditions are granted complete social insurance protection, and aged Greek wage-earners residing in France are granted aid similar to that afforded to aged French wage-earners without adequate means of support.

7. Legislative decree No. 3870/1958 (*Official Gazette* No. 179-A) ratifies the social insurance agreement between Greece and Belgium, signed at Athens on 1 April 1958.

Under this agreement, wage-earners of Greek nationality working in Belgium are to be given the same treatment in the matter of social insurance conditions and benefits as Belgian wage-earners, and, reciprocally, wage-earners of Belgian nationality working in Greece are to be treated the same as Greek wage-earners; the safeguarding of insurance rights is guaranteed in whichever of the signatory countries the beneficiaries may happen to be.

8. Legislative decree No. 3871/1958 (*Official Gazette* No. 178-A) brings news-vendors in the district

[1] Information kindly furnished in French by the Permanent Mission of Greece to the United Nations. Translation by the United Nations Secretariat.

capitals under the insurance system of the Social Insurance Institution and contains certain other provisions.

Under this enactment, the social insurance benefits in respect of sickness, disability, old age, and death, which heretofore applied only to the news-vendors and the news-agency employees in the Athens-Piraeus district and suburbs and at Salonica, are extended to news-vendors in the other district capitals of Greece.

9. Legislative decree No. 3893/1958 (*Official Gazette* No. 193-A) contains "certain provisions relating to the sickness insurance scheme for civil servants employed by demes and communes".

Under this enactment, the sickness insurance scheme applicable under Act No. 796/1948 to civil servants and pensioners, and to their families, in the demes and communes of the former Athens governorate is extended to civil servants of other demes and communes.

10. Legislative decree No. 3897/1958 (*Official Gazette* No. 194-A) relates to "the participation of Greece in the European Resettlement Fund for Refugees established by the Council of Europe".

It ratifies the statement made by the Minister of Foreign Affairs at Strasbourg on 16 April 1956 concerning the participation of Greece in the establishment of the European Resettlement Fund for Refugees. The statement is of obvious significance to Greece as one of the countries where the refugee and population problem is most acute.

11. Legislative decree No. 3920/1958 makes provision for "the granting of medical and hospital care to civil service pensioners".

Under this enactment, medical and hospital benefits already enjoyed by civil servants on active duty are extended to retired civil servants.

GUATEMALA

NOTE[1]

The following governmental orders (acuerdos gubernativos) promulgated during 1958 may be mentioned:

1. The governmental order of 11 July 1958 (*El Guatemalteco*, vol. CLIII, No. 86, of 30 July 1958) proclaims the week from 8 to 14 December 1958 as Human Rights Week and 10 December each year as Human Rights Day. A considerandum to the text recalls the great significance and importance of the Universal Declaration of Human Rights as a common standard of achievement for all the world's peoples.

2. The governmental order of 3 May 1958 (*ibid.*, vol. CLIII, No. 22, of 9 May 1958) appoints a committee for the study of urban primary school problems.

3. The governmental order of 19 December 1958 (*ibid.*, vol. CLV, No. 5, of 30 December 1958) establishes the Special Broadcasting and Television Commission, which is directly responsible to the Office of the President of the Republic.

4. The governmental order of 5 May 1958 (*ibid.*, vol. CLIII, No. 22, of 9 May 1958) establishes the National Nutritional Council.

5. The governmental order of 17 October 1958 (*ibid.*, vol. CLIV, No. 50, of 21 October 1958) approves the regulations concerning the provision of free and optional religious instruction in official establishments. The text of the regulations is as follows:

"*Art. 1.* In accordance with the Constitution of the republic, religious and moral instruction shall be authorized in all national educational establishments provided that it is freely and voluntarily requested by the children or by their parents or representatives.

"*Art. 2.* Religious and moral instruction shall be given during ordinary school hours so that the rights of children and young persons to receive complete education may be realized.

"*Art. 3.* The exercise of the right to religious instruction in official establishments being optional, no pupil may be given such instruction unless the written authorization of his parent or representative is on file in the establishment.

"*Art. 4.* The teachers or other persons responsible for giving such instruction shall be designated by the competent religious authorities, who shall issue appropriate credentials, the principals of the establishments concerned being required to keep a register of instructors and of pupils for each of the religions in which instruction is given.

"*Art. 5.* The principals of official establishments and the staff responsible for giving effect to these regulations are prohibited from requiring children to receive any religious or moral instruction other than that authorized by themselves or their parents or representatives.

"*Art. 6.* Religious and moral instruction falls into a special category. Consequently the duly accredited representatives of the various religions shall have sole responsibility for the supervision and planning of such instruction.

"*Art. 7.* No teacher may be required to undertake additional work in connexion with the organization and provision of religious and moral instruction in official establishments but, if they freely and voluntarily express the desire to do so, members of the teaching staff of such establishments shall be permitted to undertake such work provided they possess the authorization to which article 4 of these regulations refers.

"*Art. 8.* This order shall enter into force on the date of its publication in the *Diario Oficial.*"

6. The governmental order of 26 June 1958 (*ibid.*, vol. CLIII, No. 68, of 7 July 1958) approves the regulations for the supervision of foster homes.

[1] Information kindly furnished by Mr. Gilberto Chacón Pazos, Ministry of Foreign Affairs, Guatemala City, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

GUINEA

CONSTITUTION OF THE REPUBLIC OF GUINEA of 12 November 1958 [1]

PREAMBLE

. . .

The State of Guinea fully endorses the United Nations Charter and the Universal Declaration of Human Rights.

It proclaims the equality and solidarity of all its nationals without distinction as to race, sex or religion.

. . .

The principle of the Republic of Guinea is "Government of the people, by the people and for the people".

Title I

SOVEREIGNTY

Art. 1. Guinea is a democratic, secular and social republic.

. . .

Title II

THE NATIONAL COMMUNITIES

. . .

Art. 3. National sovereignty shall be vested in the people, who shall exercise it in all matters through their deputies elected to the National Assembly by universal, equal and direct suffrage, and by secret ballot, or by way of referendum.

. . .

Title V

THE HEAD OF STATE

Art. 20. The President of the republic shall be the Head of State. He shall be the Commander-in-Chief of the Armed Forces. Any eligible citizen not under thirty-five years of age may be elected President of the republic.

Title VI

THE GOVERNMENT

. . .

Art. 22. The President of the republic shall be elected for a term of seven years by universal suffrage, by an absolute majority in the first ballot or by a relative majority in the second ballot. He may be re-elected.

. . .

Art. 27. No member of the Government may be a Deputy or engage in any professional activity in a private capacity.

. . .

Title IX

JUDICIAL AUTHORITY

Art. 35. Justice shall be administered in the name of the people of Guinea. The President of the republic shall guarantee the independence of the Judicial Authority. He shall have the right of pardon.

In the exercise of their judicial functions, judges shall obey the law alone.

Art. 36. Justice shall be administered in public except in the special cases prescribed by law.

The right of defence is recognized to accused persons.

Art. 37. The Judicial Authority, as the guardian of personal freedom, shall ensure respect for the rights of citizens as prescribed by law.

. . .

Title X

FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Art. 39. All citizens and persons under the jurisdiction of the Republic of Guinea, without distinction as to race, sex, or religion, shall be entitled to elect and be elected in the manner prescribed by law.

Art. 40. The citizens of the Republic of Guinea shall enjoy freedom of speech, of the press, of assembly and of association and the right to participate in processions and manifestations, as prescribed by law.

Art. 41. Citizens shall be ensured freedom of belief by the secular character of the schools and of the State.

Art. 42. No one may be detained arbitrarily.

Art. 43. The dwellings of citizens of the Republic of Guinea shall be inviolable. The secrecy of the mails shall be guaranteed by law.

Art. 44. All citizens of the Republic of Guinea shall enjoy the same right to work, to rest, to social welfare and to education.

The exercise of trade union rights and the right to strike shall be recognized to workers.

Art. 45. All acts of racial discrimination and all racial or regionalist propaganda shall be punished by law.

[1] Adopted by Act No. 4/AN/58, of 10 November 1958, and promulgated by ordinance No. 15, of 12 November 1958, published in *Journal officiel de la République de Guinée*, special issue of 12 November 1958. Translation by the United Nations Secretariat.

Art. 46. The Republic of Guinea shall grant the right of asylum to foreign citizens persecuted for having fought to defend a just cause, or for their scientific or cultural activities.

Art. 47. All citizens of the Republic of Guinea shall have a duty to abide by the Constitution and other laws of the Republic, to pay their taxes and honestly to discharge their social obligations.

Art. 48. The defence of the Fatherland shall be the sacred duty of every citizen of the Republic of Guinea.

Title XI

Amendment of the Constitution

. . .

Art. 50. The republican form of the State may not be jeopardized by any constitutional amendment.

. . .

HAITI

NOTE

1. Article 3 of the decree of 6 August 1958 amending articles 57-79 inclusive of the Penal Code (*Le Moniteur*, 113th year, No. 90, of 11 August 1958) provided as follows:

"Article 3. The authors and disseminators of false reports and of rumours likely to disturb the public tranquility shall be punished with rigorous imprisonment (réclusion)."

2. The Act of 25 September 1958 to make more rational provision for conditions of work and to protect employed persons more effectively, having regard to the development of industry, agriculture and commerce (*Le Moniteur*, 113th year, No. 110, of 2 October 1958; *errata: ibid.*, No. 112, of 8 October 1958) governed daily and weekly hours of work, rest periods, weekly rest and public holidays, night work, leave with pay, sick leave and wages. With the exception of certain types of establishment, the normal working hours of persons employed in any industrial or commercial establishment, public or private, were not to exceed eight in the day and 48 in the week. Overtime working, paid for at time and a half, was permitted, but not in dangerous or unhealthy jobs; with the exception of certain types of establishment, overtime working was made subject to a maximum of 20 hours a week. Every worker was to be entitled after one year's service to at least 15 consecutive days' leave with pay, consisting of 13 working days and two Sundays.

The text of the Act and an English translation have been published by the International Labour Office as *Legislative Series* 1958 — Hai. 1.

HONDURAS

NOTE ON THE CONSTITUTION OF 19 DECEMBER 1957

La Gaceta No. 16436, of 19 March 1958, published a corrected version of the Constitution of the Republic of Honduras promulgated by decree No. 21, of 19 December 1957, a translation of extracts from which appeared in *Yearbook on Human Rights for 1957*, pages 127-137. The following are the respects in which the above-mentioned translation is to be amended as a result of the publication of the corrected Spanish text:

(i) Paragraph 3 of article 17 should read: "Persons born on board a Honduran war vessel or military aircraft, and persons born on board merchant vessels when in Honduran territorial waters."

(ii) Article 79 should read as follows: "The State shall appoint lawyers to defend the needy, to look after the persons and interests of minors and other legally incapacitated persons, to provide them with legal aid, and to represent them in court in the defence of their personal freedom and labour rights."

(iii) In article 81 the words "in all cases" are to be omitted.

HUNGARY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS [1]

I. LEGISLATION

Extracts appear below from:

(i) Legislative decree No. 21 of 1958 on Safeguarding the Obligation of Maintenance under the Criminal Law.

(ii) Legislative decree No. 40 of 1958 on Social Insurance Pensions.

(iii) Order No. 1/1958 (III.23) of the Ministry of Health on the Public Health Services.

(iv) Order No. 6/1958 (XI.12) of the Ministry of Health on the Reduction of Hospital Fees for the Treatment of Certain Diseases.

II. INTERNATIONAL AGREEMENTS [2]

Legislative decree No. 18 of 1958, promulgating the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva, on 7 September 1956.

[1] Note kindly furnished by the Permanent Mission of Hungary to the United Nations.

[2] See also p. 312.

LEGISLATIVE DECREE No. 21 OF 1958 ON SAFEGUARDING THE OBLIGATION OF MAINTENANCE UNDER THE CRIMINAL LAW [1]

(EXTRACTS)

INTRODUCTORY NOTE

The overwhelming majority of penal codes are not indifferent to criminal neglect of the obligation of maintenance, and aim also by means of criminal law to compel persons who are obliged to maintain others to discharge this obligation.

This was the aim in former Hungarian law, and some cases of criminal neglect of the obligation of maintenance were punished. New regulations became necessary since criminal responsibility could be established formerly only if neglect resulted in detrimental consequences — namely, in grave distress to the person entitled to maintenance. In many instances this regulation gave rise to a preposterous and inequitable situation, for grave distress could be established if even the most elementary necessities of life were not provided for. But in the great majority of cases grave distress did not supervene, because living conditions had changed in Hungary considerably since the enactment of the earlier law in 1944. And as a consequence of the assistance and support provided by state and social agencies, particularly to youth, the great majority of those in need of maintenance — mostly children — were not in a state of grave distress.

The new regulation of the issue as set forth in legislative decree No. 21 of 1958 represents a change as compared with the former law in so far as it declares criminal neglect of maintenance a punishable offence without any further conditions. The penalty for such neglect is a prison sentence of up to two years, and in instances considered as grave distress, or in cases involving an inebriate or debauched way of life, a prison sentence ranging from six months to three years.

While considerably extending the range of punishability, the decree provides at the same time that the sanctions of criminal law are not to be resorted to wantonly. The law therefore declares the act non-punishable in case of a subsequent discharge of the obligation if there are no detrimental consequences of the neglect.

Sect. 1. (1) Whosoever fails to comply with his obligation of maintenance ensuing from a family relationships shall be guilty of the crime of neglect of maintenance and shall be punished by a prison sentence of up to two years.

(2) The crime of neglect of maintenance shall also be deemed to be committed by a man obliged by a final court decision to maintain a child, who fails to

[1] Introductory note and extracts kindly furnished in English by the Permanent Mission of Hungary to the United Nations.

discharge this obligation, though paternity may not be established.

(3) A person failing to discharge his or her obligation of maintenance through no fault of his or her own may not be held culpable.

Sect. 2. (1) The penalty shall be a prison sentence ranging from six months to three years if the culprit:

(*a*) Subjects the person entitled to maintenance to grave distress by the failure to provide maintenance;

(*b*) Does not discharge the obligation for maintenance because of malingering or of an inebriate or debauched way of life;

(*c*) Is a recidivist.

(2) For the purpose of the application of paragraph 1, a person previously sentenced to prison for the crime of neglect of maintenance shall be considered a recidivist if five years have not elapsed since sentence was served or enforceability of the penalty was terminated.

Sect. 3. (1) The culpability of a person shall terminate if the obligation of maintenance had been discharged before the sentence of first instance has been passed. However, this provision may not be applied if proceedings have been instituted for a crime defined in section 2, sub-section 1, paragraph (*a*).

(2) The court may on one occasion suspend criminal procedure for no more than six months to enable the accused to make good his omission provided that, taking into account all the circumstances of the case, there is a well-founded reason for assuming that he or she will do so.

(3) The court shall continue the criminal proceedings without waiting for the expiration of the fixed term if the accused continues to fail to discharge his or her obligation.

(4) In the case of termination of the criminal procedure on the basis of sub-section 1, the court shall oblige the accused to pay the costs of the case.

Sect. 4. Whosoever fails to discharge his or her obligation to provide care for the mentally deranged, the mentally deficient, the helpless or minors shall be guilty of the crime of neglect of obligation to provide care and be punished with a prison sentence ranging from six months to three years if the life or health of the person in need has been endangered thereby.

LEGISLATIVE DECREE No. 40 OF 1958 ON SOCIAL INSURANCE PENSIONS [1]

(*EXTRACTS*)

INTRODUCTORY NOTE

The pension law enacted in 1958 contributed considerably to improving social welfare services for employees. As is set forth in the preamble to the legislative decree, the Hungarian People's Republic protects and assists the working people in the event of disability and when they grow old, and attends to the needs of the employee's dependents. This legislative decree has led to even greater accomplishments in the field of social welfare. It grants a higher pension to employees with a prolonged service record and raises pensions.

Men at the age of sixty and women at the age of fifty-five who have spent the required time in employment are entitled to full or partial old-age pensions.

The law contains a remarkable clause granting a pension not only to widows but also to a disabled widower, if his wife had supported him in her own household mainly on her own earnings for at least one year before her death, or if the maintenance of the husband had been decided upon by the court and the wife had been receiving an old-age or disability pension.

The law raised the required years of service, but also introduced the system of partial pensions. This provision makes it possible to pay a pension, if the employee has a definite service record but not the required full length of service. Unlike the former provisions, this law gives greater emphasis to a longer period of service and grants a higher pension to those who have a longer period of service.

The new pension law also contains provisions on disability pensions and partial disability pensions, and on accident benefits.

Privisions for orphans, pensions for parents and family allowances for pensioners are arranged for satisfactorily in the law. The law also grants an allowance for the husband or wife at the age of fifty-five.

The law calls for a 25 per cent increase in pensions which were at a low level, including widows' pensions. The widow is entitled to the higher pension even if she is employed.

The new pension law outlined above gives greater guarantee to the right to a tranquil old age, free of care, one of the most important economic and social human rights.

[1] Introductory note and extracts kindly furnished in English by the Permanent Mission of Hungary to the United Nations

Sect. 1. (1) This legislative decree shall apply to those who by reason of employment are insured against sickness under the state insurance scheme; it shall also apply to professional soldiers serving in the armed forces.

(2) The legislative decree does not extend to:

(*a*) Aliens employed on the territory of the Hungarian State by a foreign employer, who are entitled to a pension also for the period spent in Hungary under the law of their own country;

(*b*) Employees of the mission of a foreign State or an international agency enjoying exterritoriality and persons belonging to such a mission or agency and enjoying exterritoriality. On the request of these agencies, the Minister of Labour may extend the legislative decree to cover Hungarian employees of these agencies.

(3) The Council of Ministers is empowered to extend the legislative decree or some of its provisions to persons who otherwise would not be covered by it.

Sect. 7. (1) Persons whose disability is due to industrial accident or occupational disease are eligible to a full disability pension irrespective of the length of service.

(2) An accident suffered within or outside the works, when performing duties connected with employment, shall be considered an industrial accident. Any disease caused by specific hazards connected with the occupation of the employee shall be considered an occupational disease.

Sect. 9. (1) Employees whose capacity for work has been reduced by more than fifteen per cent without disablement due to an industrial accident or disease shall be eligible for accident benefits irrespective of the length of service.

(2) If the reduction in capacity for work does not exceed twenty-five per cent, accident benefits shall be paid for two years at the most.

Sect. 10. (1) A wife whose husband has been on old-age or disability pension or who before his death had sufficient length of service to entitle him to full or partial disability pension, or who died due to industrial accident or occupational disease, shall be entitled to a widow's pension (temporary widow's pension) for one year after her husband's death.

(2) The wife may receive a widow's pension (perpetual widow's pension) beyond one year if at the time of the death of her husband she has reached her fifty-fifth birthday.

(3) A perpetual widow's pension shall be due to the wife irrespective of her age if:

(*a*) At the time of the death of her husband her working capacity had been reduced at least two-thirds (disabled) owing to an impairment of health or to bodily or mental infirmity, or

(*b*) At the time of the death of her husband she is supporting at least two children entitled to an orphan's allowance, or

(*c*) Her husband has died as a consequence of an industrial accident on the job.

(4) A perpetual widow's pension also shall be paid the wife if:

(*a*) She becomes fifty-five years old or becomes disabled (see sub-section 3, paragraph (*a*)) provided that she had reached her fortieth birthday at the time of her husband's death;

(*b*) She has not reached her fortieth birthday at the time of her husband's death but becomes disabled within fifteen years from the death of her husband.

(5) A child entitled to an orphan's allowance who has reached the age of 18, and who receives an orphan's allowance to continue secondary-school studies, may not be taken into consideration under the provisions in sub-section 3, paragraph (*b*).

Sect. 17. (1) A disabled widower shall also be entitled to a widower's pension if:

(*a*) The wife had maintained him in her own household mainly on her own earnings for at least one year before her death, or if the court has decided on maintenance for the husband,

(*b*) The wife had been receiving an old-age or disability pension or had before her death a sufficient length of service to entitle her to a disability pension, or if she died as a consequence of an industrial accident or occupational disease.

(2) The widower's pension shall expire with termination of his inability to work or in the event or remarriage.

Sect. 23. (1) Time spent by the employee in service entailing sickness insurance or as a professional soldier in the armed forces shall be considered as time spent in employment.

(2) The Council of Ministers shall establish by resolution, even contrary to the contents of sub-section 1, the period which may be considered time spent in employment both prior to and after this legislative decree becomes effective.

Sect. 24. Time spent in employment in excess of one-fifth of the minimum of the time required for the pension, but no more than two years, may be taken into consideration only on the basis of the records of the social insurance agencies or of authentic contemporary documentary evidence.

Sect. 25. If there is a continuous break of more than five years in the employee's period of employment, the length of service preceding the break may only be taken into consideration under conditions set forth by decree of the Council of Ministers.

Sect. 26. (1) The amount of the full or partial old-age and disability pension and of accident benefits shall be determined on the basis of the wages paid.

(2) The Council of Ministers shall determine by decree the rules governing the computing of wages.

ORDER No. 1/1958 (III.23) OF THE MINISTRY OF HEALTH ON THE PUBLIC HEALTH SERVICES[1]

(EXTRACTS)

Introductory Note

The aim of this order is to extend the health services to persons who are not employed and therefore are not entitled to sickness insurance. In addition to the persons defined in section 1 of the order, the benefits of the public health services may be extended to persons incapable of earning a livelihood, or whose working capacity has been seriously reduced due to age or state of health if the earnings or income of the individual or the spouse are not sufficient to cover the expenses of medical care. If eligibility for the public health services is granted, it also covers the spouse and minor children and members of the family whom he or she is obliged to maintain. Eligibility for the public health services may also be extended to minor brothers or sisters living in the household of the beneficiary.

The order provides that persons eligible for the public health services shall be entitled to medical treatment, medicines and medicinal baths, medical appliances and hospitalization in case of illness.

Free medical treatment of beneficiaries of the public health services is provided through the state health service.

Sect. 1. (1) The following are to benefit from the public health services:

(*a*) Minors who are state wards, placed either in institutions or with foster-parents;

(*b*) Persons receiving regular social welfare aid and the cohabiting spouses, together with their minor children;

(*c*) Disabled servicemen receiving financial aid and cohabiting spouses, together with their minor children;

(*d*) Persons in homes for disabled servicemen.

(2) The persons mentioned in sub-section 1 shall be entitled to public health services only if they are not entitled to sickness insurance.

Sect. 2. (1) A person not entitled to sickness insurance, who is incapable of earning a living or whose working capacity is considerably reduced due to age or state of health, may be granted the benefits of the public health services if the earnings or income of the spouse are insufficient to cover the cost of medical care. If the petitioner is granted eligibility to the public health services, the benefits shall extend also to the cohabiting spouse, to minor children, and to minor stepchildren and grandchildren who are maintained by the petitioner. The benefits of the public health services may also be extended to minor brothers or sisters of the person entitled to public health services if they live in his or her household.

The benefits of the public health services shall also be extended to pre-school children if the children are placed in an institution (e.g., institution for the education of handicapped children).

Sect. 4. (1) In case of illness the services enumerated below shall be provided free to beneficiaries of the public health services, within the context of this order and subject to the provisions of sub-section 2 and section 5:

(*a*) Medical treatment;

(*b*) Medicines and medicinal baths;

(*c*) Medical appliances;

(*d*) Hospitalization.

(2) Act VII of 1933 and the statutory provisions issued for its implementation shall govern the supply of medical appliances to disabled servicemen receiving financial aid due to defects resulting from combat duty (in the event of war).

Sect. 11. (1) Free medical treatment of beneficiaries of the public health services shall be provided within the scope of the state health service.

(2) The price of medicines, medicinal bath tickets and medical bath tickets and medical appliances prescribed in a medical prescription on the basis of sections 7 to 9 of this order, as well as the expense of repairing medical appliances, shall be reimbursed by the Trades Union Social Insurance Centre.

(3) Hospital fees of persons entitled to free hospitalization under section 5 of this order shall be borne by the State.

[1] Introductory note and extracts kindly furnished in English by the Permanent Mission of Hungary to the United Nations.

ORDER No. 6/1958 (XI.12) OF THE MINISTRY OF HEALTH ON THE REDUCTION OF HOSPITAL FEES FOR THE TREATMENT OF CERTAIN DISEASES[1]

(EXTRACTS)

INTRODUCTORY NOTE

The order makes it possible for hospital fees to be borne by the State in full — even if the patient would otherwise not be entitled to free hospitalization — if the patient is suffering from a contagious disease requiring isolation. The State may bear the major part of the charges in the event of prolonged illness representing a financial burden on the patient and his family, as well as in the case of diseases constituting a hazard to the persons around the patient.

This extension of hospitalization makes it easier to combat the diseases mentioned and to cure those suffering from these diseases.

Sect. 1. (1) The present order shall apply to hospitals under the direct supervision of the Ministry of Health, to hospitals maintained by the local councils and to hospitals of the Hungarian State Railways.

Sect. 3. Hospital fees of people hospitalized for the contagious diseases set forth below, or for suspicion of these diseases, shall be borne by the State:

(*a*) Anthrax, eczema epizootica (foot and mouth disease), Asiatic cholera, diphtheria, dysentery, epidemic encephalitis, yellow fever, recurrent fever, epidemic hepatitis, lepra malleus (glanders), epidemic cerebrospinal meningitis, meningitis serosa, morbilli (measles), paratyphoid fever, pertussis (whooping cough), plague, anterior poliomyelitis, psittacosis (parrot's disease), scarlatina (scarlet fever), tetanus, trachoma, typhus abdominalis (enteric fever), typhus exanthematicus (spotted fever), variola (smallpox) or lyssa (rabies),

(*b*) Hospital fees of bacilli-carriers sent to hospital for bacteriological test for doudenal secretion and for relieving their conditions as carriers (gall-bladder operation, etc.) shall also be borne by the State.

[1] Introductory note and extracts kindly furnished in English by the Permanent Mission of Hungary to the United Nations.

INDIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1957 [1]

I. LEGISLATION

A. Political Rights

1. *The Legislative Councils Act, 1957* [2] (Act No. 37 of 1957)

This Act of the Parliament of India provides for the creation of a legislative council for the State of Andhra Pradesh, and also makes provision for increasing the strength of the legislative councils of the other states having such councils. The Constitution (Seventh Amendment) Act, 1956, amended article 171 of the Constitution so as to increase the maximum strength of the legislative council of a state from one-fourth to one-third of the strength of the legislative assembly of the state. The strength of the legislative council of a state has accordingly been increased by this Act to roughly 30 per cent of the strength of the legislative assembly of the state, except in the case of the States of Uttar Pradesh and Bombay, which have the biggest legislative assemblies, and the State of Punjab, which has the smallest legislative assembly among the states having legislative councils. Certain amendments have been made by this Act in the Representation of the People Act, 1950 [3] (Act No. 43 of 1950), and the Representation of the People Act, 1951 [4] (Act No. 43 of 1951). The most important of these amendments is the substitution of a new schedule for the third schedule to the Representation of the People Act, 1950, showing the revised strength and composition of all the legislative councils.

2. *The Naga Hills - Tuensang Area Act, 1957* [5] (Act No. 42 of 1957)

This Act of the Parliament of India provides for the formation of a new administrative unit in the State of Assam by the name of "the Naga Hills-Tuensang area", comprising the tribal areas which immediately before the commencement of this Act were known as the Naga Hills district, and were being administered by the Government of Assam and the Tuensang Frontier Division of the North-East Frontier Agency, which was being administered by the Governor of Assam as the agent of the President of India. This new unit is to be administered by the Governor of Assam as the agent of the President of India, but will be distinct from the North-East Frontier Administration. The Act has made necessary amendments in paragraph 20 of the sixth schedule to the Constitution. It has also amended the Representation of the People Act, 1950 [6] (Act No. 43 of 1950), to provide for an additional nominated member in the House of the People to represent this new unit, and to reduce the total number of seats in the Legislative Assembly of Assam from 108 to 105 so as to exclude the representation of the Naga Hills district, which has been comprised in this new unit from that assembly.

B. Legal Status of Individuals — Right to Nationality

The Citizenship (Amendment) Act, 1957 [7] (Act No. 65 of 1957)

This Act of the Parliament of India has amended the Citizenship Act, 1955 [8] (Act No. 57 of 1955), so as to include in the first schedule to that Act three new Commonwealth countries: Ghana, the Federation of Malaya, and Singapore. Under clause (*c*) of sub-section 1 of section 2 of the Act of 1955, the central government may, at the request of the government of any country specified in the first schedule to that Act, notify the citizenship or nationality law of that country. After such notification has been issued any person of full age and capacity who is a citizen of that country may, subject to such conditions and restrictions as may be prescribed in this behalf, be registered as a citizen of India under the provisions of clause (*e*) of sub-section 1 of section 5 of the Act of 1955. After the enactment of the Citizenship Act of 1955, Ghana, the Federation of Malaya, and Singapore have become Commonwealth countries. This Act has, therefore, amended the first schedule to the Citizenship Act, 1955, so as to include these three new Commonwealth countries therein in order to enable the Government of India to notify, on a reci-

[1] Note kindly prepared by Mr. S. N. Mukerjee, Secretary, Council of States, New Delhi, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 467-488 of 18 September 1957.

[3] See *Yearbook on Human Rights for 1951*, pp. 153-154.

[4] See *Yearbook on Human Rights for 1951*, pp. 154-157.

[5] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 513-515 of November 1957.

[6] See *Yearbook on Human Rights for 1951*, pp. 153-154.

[7] Published in the *Gazette of India Extraordinary*, part II, section 1, p. 687 of 28 December 1957.

[8] See *Yearbook on Human Rights for 1955*, pp. 118-120.

procal basis, the citizenship or nationality law of these countries as and when it become necessary.

C. Personal Freedom

The Preventive Detention (Continuance) Act, 1957[1] (Act No. 54 of 1957)

This Act of the Parliament of India has extended for a further period of three years the life of the Preventive Detention Act, 1950[2] (Act No. 4 of 1950), which was due to expire on 31 December 1957.

D. Public Freedom

The Copyright Act, 1957[3] (Act No. 14 of 1957)

This Act, passed by the Parliament of India, amends and consolidates the law relating to copyright. It has revised completely the existing law relating to copyright in the light of the experience gained in the working of the existing law and also having regard to the growing public consciousness of the rights and obligations of authors and the present-day conditions, such as the new and advanced means of communications: broadcasting, litho-photography, etc. It has also made provisions to give effect to some of the recommendations of the Universal Copyright Convention, 1952, signed at Geneva,[4] to which India is a signatory.

The Act has enlarged the definition of "copyright" to include the exclusive right to communicate any work, cinematograph film or the recording embodied in a record, by radio-diffusion. A cinematograph film will have under the Act a separate copyright apart from its components — namely, story, music, etc. Similarly, a record will also have under the Act a separate copyright apart from the work in respect of which the record is made.

Following the majority of the Berne Convention countries, this Act has fixed the normal term of copyright as the lifetime of the author and fifty years thereafter. In the case of a work of joint authorship, the term of fifty years is to be computed from the death of the author who dies last. In the case of any anonymous or pseudonymous work, government work, work of any international organization, photograph, cinematograph film or record, a period of fifty years from the first publication of such work, photograph, cinematograph film or record, as the case may be, has been fixed by the Act to be the normal term of copyright.

The Act provides for the establishment of a copyright office and the constitution of a copyright board. The copyright office will be under the immediate control of a registrar of copyrights, who will act under the superintendence and direction of the Government of India. The copyright office will maintain a register of copyrights in which may be entered, at the option of the authors, the names or titles of works, the names and addresses of authors, publishers and owners of copyright for the time being and other relevant particulars. The register will make available to persons interested useful information in regard to copyrights registered in the copyright office. The copyright board has been assigned certain statutory functions under the Act, such as consideration of applications for certain licences to be granted under the Act, and assessment of compensation payable under the Act in certain circumstances.

Provision has been made in the Act for the grant of compulsory licences in respect of copyright in works withheld from the public, subject to the payment of compensation to the owner of the copyright. Power to issue such licences has been entrusted to the registrar of copyrights in accordance with the directions of the copyright board. Provision has also been made in the Act for the grant of licences by the copyright board in certain cases for the production and publication of translations of literary or dramatic works in any language subject to the condition that the applicant for the licence will, in each case, pay to the owner of the copyright in the work royalties at such rate as may be fixed by the copyright board.

Provision has also been made in the Act for regulating the activities of performing rights societies and for controlling the fees, charges or royalties to be collected by them. The Act also confers rights akin to copyright on broadcasting authorities in respect of programmes broadcast by them.

The Act has made provisions for extending copyright to works published outside India on a reciprocal basis. The Government of India has been empowered under the Act to withdraw the protection of copyright in respect of works of a foreign author if the country of origin of such author fails to accord corresponding protection of Indian authors. The Act also provides for copyright in works published by certain international organizations recognized for the purpose by the Government of India.

The acts which shall or shall not constitute an infringement of copyright have been described in detail in the Act. A fair dealing with any work for the purpose of reporting current events by radio-diffusion or in a cinematograph film or by means of photographs or the reproduction of any work for the purpose of a judicial proceeding or for the purpose of reporting a judicial proceeding will not constitute an infringement of copyright under the Act.

The Act has also specified the remedies for infringement of copyright. The owner of the copyright will be entitled to civil remedies by way of injunction,

[1] Published in the *Gazette of India Extraordinary*, part II, section 1, p. 559 of 26 December, 1957.

[2] See *Yearbook on Human Rights for 1952*, pp. 113-115.

[3] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 171-206 of 6 June 1957.

[4] See *Yearbook on Human Rights for 1952*, pp. 398-403.

damages, accounts, etc. Further, deliberate infringement of the copyright in a work or of any other right conferred by the Act has been made punishable.

E. Equality and the Principle of Non-discrimination

The Public Employment (Requirement as to Residence) Act, 1957[1]
(Act No. 44 of 1957)

Clause 2 of article 16 of the Constitution of India provides that no citizen shall, on grounds only of residence, be ineligible for, or discriminated against in respect of, any employment or office under the state. However, it has been laid down in clause 3 of that article that it would be competent for the Parliament of India to make any law prescribing in regard to a class or classes of employment or appointment to an office under the government of, or any local or other authority within, a state or union territory, any requirement as to residence within that state or union territory prior to such employment or appointment. Further, under clause (*b*) of article 35 of the Constitution, any law in force immediately before the commencement of the Constitution with respect to any matter referred to in clause 3 of article 16 of the Constitution has been continued in force until repealed or amended by Parliament.

This Act of the Parliament of India has repealed all laws in force by virtue of clause (*b*) of the said article 35 prescribing any requirement as to residence within a State or Union territory for any public employment in that state or union territory. But the Act has, in pursuance of clause 3 of article 16 of the Constitution, made certain exceptions to the general rule of non-discrimination on the ground of residence specified in clause 2 of that article by empowering the Government of India to make rules prescribing residential qualifications for a limited period not exceeding five years in regard to certain services and posts in the union territories of Himachal Pradesh, Manipur and Tripura and in the area transferred under the States Reorganization Act, 1956[2] (Act No. 37 of 1956) from the State of Hyderabad to the State of Andhra Pradesh.

F. Social and Economic Rights

The Industrial Disputes (Amendment) Act, 1957[3]
(Act No. 18 of 1957)

It was held by the Supreme Court of India that no retrenchment compensation was admissible under section 25-F of the Industrial Disputes Act, 1947 (Act No. 14 of 1947), to workmen whose services had been terminated by an employer on a real and *bona fide* closure of business or when termination had occurred as a result of transfer of ownership from one employer to another.

The Industrial Disputes Act, 1947, has accordingly been amended by the Industrial Disputes (Amendment) Act, 1957, so as to provide that compensation would, subject to certain conditions, be payable in accordance with the provisions of section 25-F to every workman whose services are terminated on account of the transfer or closure of an undertaking as if the workman had been retrenched. If, however, in the case of a transfer of business the workman is re-employed by the new owner on terms and conditions not less favourable to him, he will not be entitled to any compensation. The maximum compensation payable to a workman in the case of closure of business on account of circumstances beyond the control of the employer has been limited to the average pay of the workman for three months. No compensation will be payable to workmen employed in an undertaking engaged in any construction work, if such undertaking is closed down on account of the completion of its work within two years from the date on which the undertaking had been set up.

II. JUDICIAL DECISIONS

1. Equality before the Law and Equal Protection of the Laws — Test of Permissible Classification — Constitution of India, Article 14

Asgarali Nazarali Singaporawalla *v.* The State of Bombay
Supreme Court of India[4]
19 February 1957

The facts: The appellant, Asgarali Nazarali Singaporawalla, and five other persons who were charged with offences under section 161 read with section 116 and also with section 109 or section 144 of the Indian Penal Code for offering to a sub-inspector of police attached to the Anti-Corruption Branch of the C.I.D., the sum of Rs. 1,25,000 as illegal gratification other than legal remuneration as a motive or reward for his showing favour to the accused and to the firm of Messrs. M. M. Buxabhoy and Co. in the exercise of his official functions, were tried by the Presidency Magistrate, Bombay. The offence was alleged to have been committed on 28 July 1950, and the trial commenced on 14 July 1951. During the course of the trial, the Criminal Law Amendment Act, 1952 (Act No. 46 of 1952), which was enacted by Parliament, came into force on 28 July 1952. The said Act amended the Indian Penal Code and the Code of Criminal Procedure, 1898, so as to provide for a more speedy trial of offences punishable under

[1] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 527-528 of 9 December 1957.

[2] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 747-814 of 31 August 1956.

[3] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 213-215 of 8 June 1957.

[4] Report (1957) S.C.R. 678.

section 161, section 165 or section 165A of the Indian Penal Code or sub-section 2 of section 5 of the Prevention of Corruption Act, 1947 (Act No. 2 of 1947), and any conspiracy to commit or any attempt to commit or any abetment of any of these offences, exclusively by special judges appointed under the Act. It also provided for the transfer of all cases triable by a special judge under the Act which immediately before its commencement were pending before any magistrate to the special judge having jurisdiction over such cases. The Presidency Magistrate of Bombay proceeded with the trial. After the examination of the appellant under section 342 of the Code of Criminal Procedure, the appellant filed his written statement on 14 August 1952. The prosecution commenced its address on 26 August 1952, and concluded it on 5 September 1952. Thereafter, the defence commenced its address. The Government of Bombay, by a notification dated 23 September 1952, appointed a special judge to try the offences specified above and this notification was published in the *Official Gazette* on 26 September 1952. The defence concluded its address on 26 September 1952, and the Presidency Magistrate delivered his judgement on 29 September 1952, acquitting the appellant and two other accused, and convicting the remaining two accused. Thereupon, one of the convicted accused preferred an appeal to the High Court of Bombay against his conviction, and the State of Bombay filed an appeal against the acquittal of the appellant and two other accused. It was contended on behalf of the Government of Bombay that, since the date the Criminal Law Amendment Act, 1952, came into operation, the special judge alone had jurisdiction to try the accused, and it was the duty of the Presidency Magistrate to transfer the case to the court of the special judge appointed to try such offences and that the order of acquittal of the appellant and two other accused was therefore erroneous in law being without jurisdiction. On behalf of the appellant and two other accused who were acquitted, it was contended that the provisions of the Criminal Law Amendment Act, 1952, were violative of the principle of equal protection of laws contained in article 14 of the Constitution,[1] and therefore the said Act was *ultra vires* the Constitution, and the Presidency Magistrate had accordingly jurisdiction to continue the trial in spite of the commencement of the impugned Act and the order of acquittal of the appellant and two other accused was correct. The High Court, however, rejected the contention of the appellant and held that the impugned Act was *intra vires*, and that the Presidency Magistrate had no jurisdiction to try the case after the commencement of the impugned Act. The order of the Presidency Magistrate acquitting the appellant and two other accused was accordingly set aside and a retrial of the appellant and the other accused by the court of the special judge, Greater Bombay, was ordered and the case was remanded for disposal according to law. The appellant then appealed to the Supreme Court after obtaining special leave therefrom, and it was contended, *inter alia*, by him before the Supreme Court that the impugned Act was void as it violated the fundamental right guaranteed to him by article 14 of the Constitution, and that the jurisdiction of the Presidency Magistrate to continue the trial could not therefore be affected.

Held: That the appeal should be dismissed. The impugned Act did not violate article 14 of the Constitution, as the classification made therein of offences which were to be exclusively tried by special judges was a permissible classification, as it was founded on an intelligible differentia which distinguished the offenders that were grouped together from those left out of the group and that this differentia had a rational relation to the object sought to be achieved by the Act which was to provide for speedier trials of the said offences.

The court said:

"The principles under lying Art. 14 of the Constitution have been completely thrashed out in the several decisions of this Court ere this. The earliest pronouncement of this court on the meaning and scope of Art. 14 was made in the case of Chiranjit Lal Chowdhury *v.* The Union of India.[2] The principles enunciated in that case were summarized by Fazl Ali, J., as follows in The State of Bombay *v.* F. N. Balsara:[3]

" '(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

" '(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

" '(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

" '(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

" '(5) Every classification is in some degree likely

[1] Article 14 provides: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

[2] [1950] S.C.R. 869.

[3] [1951] S.C.R. 682, 708. [See *Yearbook on Human Rights for 1951*, pp. 164-7.]

to produce some inequality, and mere production of inequality is not enough.

" '(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

" '(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.'

"The latest pronouncement on this topic is to be found in the judgement of this Court in the case of Budhan Choudhry and others *v.* The State of Bihar,[1] where it was observed as follows:

" 'The provisions of Art. 14 of the Constitution have come up for discussion before this Court in a number of cases — namely, Chiranjit Lal Chowdhury *v.* The Union of India,[2] The State of Bombay *v.* F. N. Balsara,[3] The State of West Bengal *v.* Anwar Ali Sarkar,[4] Kathi Ranning Rawat *v.* The State of Saurashtra,[5] Lachmandas Kewalram Ahuja *v.* The State of Bombay,[6] Qasim Razvi *v.* The State of Hyderabad,[7] and Habeeb Mohamad *v.* The State of Hyderabad.[8] It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled — namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure.'

"We have to scrutinize the provisions of the impugned Act in the light of the principles enunciated above.

"The first question which we have to address to ourselves is whether there is in the impugned Act a reasonable classification for the purposes of legislation. If we look to the provisions of the impugned Act closely it would appear that the legislature classified the offences punishable under ss. 161, 165 or 165-A of the Indian Penal Code or sub-s. 2 of s. 5 of the Prevention of Corruption Act, 1947, in one group or category. They were offences relating to bribery or corruption by public servants and were thus appropriately classified in one group or category. The classification was founded on an intelligible differentia which distinguished the offenders thus grouped together from those left out of the group. The persons who committed these offences of bribery or corruption would form a class by themselves quite distinct from those offenders who could be dealt with by the normal provisions contained in the Indian Penal Code or the Code of Criminal Procedure, 1898, and if the offenders falling within this group or category were thus singled out for special treatment, there would be no question of any discriminatory treatment being meted out to them as compared with other offenders who did not fall within the same group or category and who continued to be treated under the normal procedure.

"The next question to consider is whether this differentia had a rational relation to the object sought to be achieved by the impugned Act. The preamble of the Act showed that it was enacted for providing a more speedy trial of certain offences. An argument was however addressed before us based on certain observations of Mahajan J. (as he then was) at page 314, and Mukherjea J. (as he then was) at page 328 in Anwar Ali Sarkar's case (*supra*) quoted at page 43 by Patanjali Sastri, C. J., in the case of Kedar Nath Bajoria *v.* The State of West Bengal,[9] that the speedier trial of offences could not afford a reasonable basis for such classification. Standing by themselves these passages might lend support to the contention urged before us by the learned counsel for the appellant. It must be noted, however, that this ratio was not held to be conclusive by this court in Kedar Nath Bajoria's case (*supra*) where this court held:

" '(1) That when a law like the present on eis impugned on the ground that it contravenes art. 14 of the Constitution the real issue to be decided is whether, having regard to the underlying purpose and policy of the Act as disclosed by its title, preamble and provisions, the classification of the offences for the trial of which the special court is set up and a special procedure is laid down can be said to be unreasonable or arbitrary and therefore violative of the equal protection clause;

" '(2) Having regard to the fact that the types of offences specified in the Schedule to the Act were very common and widely prevalent during the post-war period and had to be checked effectively and

[1] [1955] 1 S.C.R. 1045, 1048. [See *Yearbook on Human Rights for 1955*, pp. 113-115.]

[2] [1950] S.C.R. 869.

[3] [1951] S.C.R. 682.

[4] [1952] S.C.R. 284. [See *Yearbook on Human Rights for 1952*, pp. 115-119.]

[5] [1952] S.C.R. 435. [See *Yearbook on Human Rights for 1952*, pp. 120-2.]

[6] [1952] S.C.R. 170.

[7] [1953] S.C.R. 581.

[8] [1953] S.C.R. 661.

[9] [1954] S.C.R. 30.

speedily tried, the legislation in question must be regarded as having been based on a perfectly intelligent principle of classification, having a clear and reasonable relation to the object sought to be achieved, and it did not in any way contravene art. 14 of the Constitution.'

"In the instant case, bribery and corruption having been rampant and the need for weeding them out having been urgently felt, it was necessary to enact measures for the purpose of eliminating all possible delay in bringing the offenders to book. It was with that end in view that provisions were enacted in the impugned Act for speedier trial of the said offences by the appointment of special judges who were invested with exclusive jurisdiction to try the same and were also empowered to take cognizance thereof without the accused being committed to them for trial, and follow the procedure prescribed for the trial of warrant cases by magistrates. The proceedings before the special judges were thus assimilated to those before the courts of sessions for trying cases without a jury or without the aid of assessors and the powers of appeal and revision invested in the High Court were also similarly circumscribed. All these provisions had the necessary effect of bringing about a speedier trial of these offences and it cannot be denied that this intelligible differentia had rational relation to the object sought to be achieved by the impugned Act. Both these conditions were thus fulfilled and it could not be urged that the provisions of the impugned Act were in any manner violative of Art. 14 of the Constitution."

2. RIGHT TO FREEDOM OF SPEECH AND EXPRESSION — LAW IMPOSING RESTRICTIONS IN THE INTERESTS OF PUBLIC ORDER — VALIDITY CONSTITUTION OF INDIA, ART. 19 — INDIAN PENAL CODE, SECTION 295 A

Ramji Lal Modi *v.* The State of Uttar Pradesh
Supreme Court of India[1]
5 April 1957

The facts: The petitioner, Ramji Lal Modi, was the editor, printer and publisher of a monthly magazine entitled *Gaurakshak*, devoted to cow protection. An article was published in an issue of this magazine in November 1952, and the petitioner was prosecuted in June 1953 on the basis of this article on a complaint filed against him in the court of the district magistrate, Kanpur, for offences under sections 153 A and 295 A of the Indian Penal Code. The petitioner was then committed to the sessions court of Kanpur for trial on charges under the aforesaid two sections. The sessions judge acquitted him of the charge under section 153 A, but convicted him under section 295 A,[2] and sentenced him to rigorous imprisonment for eighteen months and a fine of two thousand rupees. The petitioner then preferred an appeal to the High Court at Allahabad. The High Court held that the article complained against was published with the deliberate and malicious intention of outraging the religious feelings of muslims, and upheld the conviction of the petitioner under section 295 A of the Indian Penal Code, but reduced the sentence of imprisonment to twelve months only and the fine from two thousand rupees to two hundred and fifty rupees only. Thereupon the petitioner presented a petition to the Supreme Court under article 32 of the Constitution praying for a declaration that section 295 A of the Indian Penal Code was *ultra vires* and unconstitutional, and for quashing the petitioner's conviction under that section. It was contended on behalf of the petitioner before the Supreme Court that section 295 A of the Indian Penal Code infringed the petitioner's fundamental right to freedom of speech and expression guaranteed to him by article 19 (1) (*a*) of the Constitution,[3] and that the section did not come within the protection of clause 2 of article 19 of the Constitution[4] as being a law imposing reasonable restrictions on the said right in the interests of public order.

Held: That the petition should be dismissed. The impugned section 295 A did not contravene article 19 (1) (*a*) of the Constitution, as it fell well within the protection of clause 2 of article 19 of the Constitution.

The court said: ". . . In the first place cl. 2 of Art. 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression 'in the interests of' public order, which is much wider than 'for maintenance of' public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalizing such activities as an offence cannot but be held to be a law imposing reasonable restriction 'in the interests of public order' although in some cases those activities may not actually lead to a breach of public order. In the next place, s. 295 A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens, but it penalizes only those acts of

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[1] Report (1957) S.C.R. 860.

[2] Section 295 A of the Indian Penal Code reads as follows: "295 A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

[3] Article 19 (1) (a) provides: "(1) All citizens shall have the right — (a) to freedom of speech and expression;"

[4] Article 19 (2) provides: "(2) 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."

insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order, and the section, which penalizes such activities, is well within the protection of cl. 2 of art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by art. 19(1)(*a*) . . ."

3. RIGHT TO PERSONAL LIBERTY — RELATIONSHIP TO THE RIGHT TO FREEDOM OF MOVEMENT, ETC. — RESTRICTIONS ON RIGHT — "PROCEDURE ESTABLISHED BY LAW" — MEANING OF — ARREST OF ASSESSEE TO RECOVER ARREARS OF INCOME-TAX — VALIDITY — INDIAN INCOME-TAX ACT, 1922, S. 46(2) AND MADRAS REVENUE RECOVERY ACT, 1864, S. 48 — CONSTITUTION OF INDIA, ARTICLES 14, 19, 21 AND 22

The Collector of Malabar *v.* Erimal Ebrahim Hajee
Supreme Court of India[1]
11 April 1957

The facts: The respondent had been assessed to income-tax for various assessment years, and the total amount of tax remaining outstanding against him in round figures was Rs. 70,000. After deducting some amount recovered by the collector in pursuance of a certificate issued by the income-tax officer under section 46(2) of the Indian Income-tax Act,[2] 1922, the arrears of income-tax due from the respondent were about Rs. 61,668 and odd for the years 1943/44 and 1945/46 to 1948/49. Meanwhile, it was discovered that the respondent had sold away some of his properties. It was further revealed on enquiries that, although the respondent had closed his business at Cannanore in August 1947, he had set up another firm in 1948 at Tellichery, carrying on an identical business in the name of V. P. Abdul Azeez and Bros., consisting of his one major and four minor sons. The respondent had alleged that the capital of that firm was mainly supplied from the sale of jewels belonging to his wife — that is, Abdul Azeez's mother. It was, however, held by the income-tax officer in the assessment proceedings concerning the firm at Tellichery that this business in the name of V. P. Abdul Azeez and Bros. belonged to the respondent. There were thus good reasons to believe that the respondent was wilfully withholding payment of arrears of income-tax, and had been guilty of fraudulent conduct in evading payment of tax. As a certificate under section 46(2) of the Indian Income-tax Act, 1922, had already been issued to him by the income-tax officer, the collector proceeded under section 48 of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864),[3] to issue a warrant of arrest against the respondent in pursuance of which he was arrested on 1 June 1954 and lodged in the central jail, Cannanore.

The respondent then presented a petition to the Madras High Court under section 491 of the Code of Criminal Procedure, 1898, contending that section 46(2) of the Indian Income-tax Act, 1922, and section 48 of the Madras Revenue Recovery Act, 1864, offended articles 14, 19, 21 and 22 of the Constitution, and praying that directions in the nature of *habeas corpus* be issued for his production before that court to be dealt with according to law and for his release from imprisonment. Thereupon, the Madras High Court held that the arrest of the respondent was illegal, and ordered that the respondent be set at liberty. The High Court held that section 46(2) of the Indian Income-tax Act, 1922, offended article 14 of the Constitution, and that section 48 of the Madras Revenue Recovery Act, 1864, offended article 22 of the Constitution, and that both the sections were therefore *ultra vires* the Constitution.

The appellant thereupon preferred an appeal to the Supreme Court under article 132(1) of the Constitution. It was contended on behalf of the appellant that neither section 46(2) of the Indian Income-tax Act, 1922, nor section 48 of the Madras Revenue Recovery Act, 1864, was in violation of articles 14,

[1] Report (1957) S.C.R. 970.

[2] Section 46(2) of the Indian Income-tax Act, 1922, reads as follows: "46 . . . (2) The income-tax officer may forward to the collector a certificate under his signature specifying the amount of arrears due from an assessee, and the collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue: Provided that without prejudice to any other powers of the collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908 (Act 5 of 1908), a civil court has for the purpose of the recovery of an amount due under a decree . . ."

[3] Section 48 of the Madras Revenue Recovery Act, 1864, reads as follows: "48. When arrears of revenue, with interest and other charges as aforesaid cannot be liquidated by the sale of the property of the defaulter, or of his surety, and the collector shall have reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter, or his surety, not being a female, as hereinafter mentioned; but no person shall be imprisoned on account of an arrear of revenue for a longer period than two years, or for a longer period than six months, if the arrear does not exceed Rs. 500, or for a longer period than three months, if the arrear does not exceed Rs. 50; provided that such imprisonment shall not extinguish the debt due to the state government by the defaulter, or his surety."

19, 21 and 22 of the Constitution, and that section 46(2) of the Indian Income-tax Act, 1922, was a valid piece of legislation, and the collector was competent under the provisions of that section to recover the arrears of income-tax as land revenue on receipt of a certificate from the income-tax officer. However, on behalf of the respondent, it was contended, *inter alia*, that both these sections did offend article 14, clauses *(a)* to *(e)* and *(g)* of article 19(1) and articles 21 and 22 of the Constitution.

Held: That the appeal should be allowed. Section 46(2) of the Indian Income-tax Act, 1922, and section 48 of the Madras Revenue Recovery Act, 1864, were not *ultra vires*, and neither of them violated article 14,[1] clauses *(a)* to *(e)* and *(g)* of article 19(1)[2] and articles 21 and 22[3] of the Constitution.

Having regard to the previous decision of the Supreme Court in Purshottam Govindji Halai's case,[4] the court held that section 46(2) of the Indian Income-tax Act, 1922, did not violate the fundamental right guaranteed by article 14 of the Constitution as the grounds stated in that case for declaring that the said section did not offend article 14 were equally applicable to the present case. (It was held in Purshottam Govindji Halai's case that the contention that section 46(2) provided for two different and alternative methods of recovery of the dues, and clothed the collector with the unfettered and unguided power to apply either of the two methods — that is to say, he might issue a warrant of arrest against the defaulter and keep him in detention for a period which might be much longer than six months, and he might proceed against another defaulter under the Code of Civil Procedure, 1908, and arrest and detain him for the maximum period of six months — and thus enabled the collector at his will to discriminate between two defaulters who were similarly situated and thereby violated the equal protection clause in article 14 of the Constitution, was without force. The said section 46(2) did not prescribe two separate and alternative modes of procedure at all.) The proviso to section 46(2) did not indicate a different and alternative mode of recovery of the amount mentioned in the certificate but merely conferred additional powers on the collector for the better and more effective application of the only mode of recovery authorized by the main provisions of that section. (It was further held in Purshottam Govindji Halai's case that the contention that the said section 46(2) required the collector, on receipt of the certificate from the income-tax officer, to recover the amount specified in the certificate as if it were an arrear of land revenue and there were different laws adopted by different states for the recovery of land revenues, and thus there was discrimination on the ground that the defaulters were treated differently in different states was also without force. There was no violation of the fundamental right guaranteed by article 14 of the Constitution by the discrimination complained of as the grouping of the income-tax defaulters in separate categories or classes state-wise was a territorial classification based on an intelligible differentia and there was a reasonable nexus or co-relation between that basis of classification and the object sought to be achieved by the Indian Income-tax Act, 1922.)

It had been laid down in Ajaib Singh's case[5] that the physical restraint put upon an abducted person in the process of recovering and taking that person into custody without any allegation or accusation of any actual or suspected or apprehended commission by that person of any offence of a criminal or quasi-criminal nature or of any act prejudicial to the state or the public interest, could not be regarded as an arrest or detention within the meaning of article 22. In the present case, the arrest made under section 48 of the Madras Revenue Recovery Act, 1864, after complying with its provisions was not an arrest for any offence committed or a punishment for defaulting in any payment. The mode of arrest was no more than a mode of recovery of the amount due. Accordingly, an arrest or imprisonment of the defaulter under section 48 of the Madras Revenue Recovery Act, 1864, could not be regarded as an arrest or detention within the meaning of article 22 of the Constitution. Such an arrest or imprisonment did not, therefore, come within the protection of article 22.

Under article 21 of the Constitution, "procedure established by law" meant procedure enacted by a law made by the State, that is to say, the Union Parliament or the legislatures of the states. In the present case, the question was whether the respondent was deprived of his personal liberty in accordance

[1] Article 14 is quoted on p. 102, footnote 1, above.

[2] Clauses *(a)* to *(e)* and *(g)* of article 19(1) provide: "19. (1) All citizens shall have the right *(a)* to freedom of speech and expression; *(b)* to assemble peaceably and without arms; *(c)* to form associations or unions; *(d)* to move freely throughout the territory of India; *(e)* to reside and settle in any part of the territory of India; . . . *(g)* to practise any profession, or to carry on any occupation, trade or business."

[3] Articles 21 and 22 provide:

"21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

"22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

"(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

"(3) Nothing in clauses (1) and (2) shall apply — *(a)* to any person who for the time being is an enemy alien; or *(b)* to any person who is arrested or detained under any law providing for preventive detention."

[4] Report (1955) 2 S.C.R. 887.

[5] Report (1953) S.C.R. 254.

with a procedure established by law, that is, a valid law. Since section 46(2) of the Indian Income-tax Act, 1922, and section 48 of the Madras Revenue Recovery Act, 1864, were both valid laws, the respondent had been lawfully deprived of his personal liberty and there had been no violation of the fundamental right guaranteed to him by article 21 of the Constitution.

It had been held in Gopalan's case[1] that the right "to move freely throughout the territory of India" referred to in article 19(1)(*d*) of the Constitution was but one of the many attributes included in the concept of the right to "personal liberty", and that when a person had been lawfully deprived of his personal liberty without offending article 21, he could not claim to exercise any of the rights guaranteed by sub-clauses (*a*) to (*e*) and (*g*) of article 19(1), for those rights could only be exercised by a free man. Article 19(1)(*d*) had therefore to be read as controlled by the provisions of article 21. The view that article 19 guarantees the substantive right and article 21 prescribes a procedural protection was incorrect. Thus, personal rights guaranteed by sub-clauses (*a*) to (*e*) and (*g*) of article 19(1) were in a way dependent on the provisions of article 21. If life or personal liberty had been taken away lawfully under article 21, no question of the exercise of fundamental rights under sub-clauses (*a*) to (*e*) and (*g*) of article 19(1) could be raised. Accordingly, the respondent could not complain of the infraction of any of the fundamental rights mentioned in sub-clauses (*a*) to (*e*) and (*g*) of article 19(1).

[1] See *Yearbook on Human Rights for 1950*, pp. 130-139.

IRAN

NOTE [1]

I. INTERNATIONAL INSTRUMENT

On 28 Esfand 1335 (21 February 1956) the Iranian Parliament approved the ratification by Iran of International Labour Convention No. 29 concerning Forced or Compulsory Labour (1930).

II. JUDICIAL DECISION

A child was born in New York of Iranian parents of Jewish faith. The mother left with the child for Teheran and the husband joined them eight months later. Since it was not possible for the family to live together and the father was not able to visit his child, he sued his wife for the son's custody, basing his claim upon article 169 of the Iranian Civil Code.

The court of first instance dismissed the custody suit, basing its decision upon the fact that custody of minors is subject to the Act of 1312 governing matters of personal status (birth, marriage, divorce, death, etc.) of non-Shiite Iranians. The appeals court reversed the lower court's decision, finding that the custody of minors is not included among the personal status matters enumerated in the Act of 1312, but is subject to the Civil Code which treats Shiites and non-Shiites alike as regards the custody of minors. The appelate court decided, therefore, to grant the custody of the two-year-old child to the father, and, furthermore, ordered the mother to pay the court costs.

The case was taken to the Supreme Court of Iran which, on 28 Khordad 1337 (23 June 1958), confirmed the decision of the appelate court.

[1] Information kindly furnished by Professor A. Matine-Daftary, Member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

IRAQ

NOTE [1]

1. Extracts appear below from the Provisional Constitution of the Republic of Iraq, promulgated on 27 July 1958.

2. In pursuance of article 16 of the Social Security Law, No. 27 of 1956, of 17 May 1956,[2] regulation No. 3 of 1958, of 24 August 1958, established periods during which certain social security benefits were to be claimed.

3. In pursuance of article 13 of the Social Security Law, No. 27 of 1956, regulation No. 4 of 1958, of 24 August 1958, regulated the distribution of survivors' benefit to the dependants of the deceased insured persons, as follows:

"*Art. 1.* Survivors' benefit shall be distributed amongst the dependents of the deceased insured person as follows: (*a*) Where the insured person is survived by a wife, wives or husband and no children or parents — all to the wife or husband or the wives in equal shares. (*b*) Where the insured person is survived by a wife, wives, both or one parent and no children — all to the wife or wives, both or one parent in equal shares. (*c*) Where the insured wife is survived by a husband, both or one parent and no children — half of the benefit to the husband and half to the parents in equal shares. If the husband and one parent are alive but no children — two thirds to the husband and one-third to the one parent. (*d*) Where the insured person is survived by a wife, wives or husband and one or more children — the benefit shall be distributed as follows: 1. Half to the husband or wife or wives in equal shares. 2. Half to the child or children in equal shares. If the amount of benefit payable to the child would exceed that payable to any of the wives, the amount of benefit shall be divided equally between the wives and the child or children. Where both or one parent and one child or children are all alive, the parents or parent shall not be entitled to any benefit. (*e*) Where the insured person is survived by a child or children but no wife or husband — all to the child or the children in equal shares. (*f*) Where the insured person is survived by no husband, wife or child — the benefit shall be divided amongst the ascendants and descendants in equal shares, and in their absence amongst his legitimate heirs in equal shares."

4. Regulation No. 10 of 1958, of 20 September 1958, regulated the training of persons on the functions of the Directorate-General of Labour and Social Security, and the liability of employers and establishments to employ persons so trained.

5. In pursuance of article 34 of the Social Security Law, No. 27 of 1956, regulation No. 12 of 1958, of 20 September 1958, regulated the payment to a person of the whole or part of that person's social security balance upon his ceasing to be insured for various reasons.

6. In pursuance of the Labour Law, No. 1 of 1958, regulation No. 13 of 1958, of 20 September 1958, required certain precautions to be taken for the protection of workmen and employees and made other provisions for safeguarding them against injuries and occupational diseases at work.

7. Regulation No. 45 of 1958 concerned the establishment of educational and vocational training centres for under-privileged boys and girls of from six to ten years of age.

8. Act No. 42 of 1958 concerned the establishment of state-supported public institutions (training centres or homes, or both) for orphans and blind or otherwise physically handicapped persons, and of homes and rehabilitation centres for unmarried mothers.

9. Act No. 84 of 1958 obliged owners of industrial enterprises to provide housing for their workers.

[1] Information kindly furnished by the Permanent Mission of Iraq to the United Nations.

[2] See *Yearbook on Human Rights for 1956*, p. 128.

PROVISIONAL CONSTITUTION OF THE REPUBLIC OF IRAQ

Promulgated on 27 July 1958 [1]

Whereas the national movement carried out July 14 by the Iraqi army with the support and backing of the people was aimed at realizing the people's sovereignty, preventing the usurpation of this sovereignty, and guaranteeing and preserving citizens' rights;

Whereas the old regime of which the country rid itself was based on political corruption, power having

[1] Text in English kindly furnished by the Permanent Mission of Iraq to the United Nations.

been usurped by certain individuals who ruled the country against the will of the majority and the interests of the people and sought to realize their own interests, preserve the interests of imperialism, and achieve imperialist aims, as set forth in the first proclamation to the people on July 14, 1958, at the outset of the national movement announcing the fall of the monarchy and establishment of the Iraqi Republic;

We, in the name of the people, declare the basic Iraqi constitution and all its amendments abolished as of July 14, 1958. Since we wish to establish the bases of government and define the rights and duties of all citizens, we announce this provisional constitution which shall be put in force during the transitional period until the permanent constitution is enacted:

Chapter I

The Republic of Iraq

. . .

Art. 3. The Iraq entity is based on cooperation among all citizens with respect for their rights and preservation of their freedoms. Arabs and Kurds are considered partners in this homeland. This constitution provides for their national rights within Iraqi unity.

Art. 4. Islam is the religion of the state.

. . .

Chapter II

The Source of Power, Rights, and Public Duties

Art. 7. All powers shall be vested in the people.

Art. 8. The law defines Iraqi nationality.

Art. 9. All citizens are equal before law in rights and public duties. In this respect, there shall be no discrimination because of race, nationality, language, religion, or beliefs.

Art. 10. Freedom of thought and expression is guaranteed and shall be defined by law.

Art. 11. Personal freedom and the sanctity of the home are guaranteed and cannot be violated except for reasons of public security, which shall be defined by law.

Art. 12. Freedom of religion is guaranteed. Religious rites shall be respected provided that they do not disturb public order and are not inconsistent with public conduct.

Art. 13. Private ownership is guaranteed, and the law shall define the nature of its social role. Private property shall not be expropriated except in the public interest and in return for just compensation in accordance with the law.

Art. 14. (A) A gricultural ownership shall be fixed and defined by the law;

(B) rights inherent in agricultural ownership shall be preserved in accordance with existing laws until such time as legislation is enacted and necessary measures for its implementation are taken.

Art. 15. No tax or duty shall be imposed, amended, or abolished except by law.

Art. 16. Defence of the homeland is a holy task. Service to the flag is an honour for citizens. Defence regulations shall be defined by law.

Art. 17. The armed forces of the Republic of Iraq belong to the people. Their task is to safeguard the sovereignty of the country and defend its territory.

Art. 18. The state alone is responsible for raising armed forces. No organization or group shall be allowed to organize military or paramilitary formations.

Art. 19. Extradition of political refugees is banned.

Chapter III

The Reins of Government

. . .

Art. 23. Judges shall be independent. They obey only the law in their decisions. No power or individual shall have the right to interfere in the independence of the judiciary or the affairs of justice. The judiciary shall be defined by law.

Art. 24. Court sessions shall be public unless the courts decide to sit in camera in the interests of public order and justice.

. . .

Chapter IV

Transitional Laws

. . .

Art. 28. All provisions of valid legislation enacted prior to July 14, 1958, shall remain valid. This legislation may be cancelled or amended in the manner provided for by this provisional constitution.

Art. 29. This provisional constitution shall become valid as of the date of its publication in the *Official Gazette.*

. . .

ISRAEL

HUMAN RIGHTS IN ISRAEL IN 1958[1]

I. LEGISLATION

1. The various provisions still in force as to food control, the prevention of profiteering and related subjects (which were scattered over many mandatory ordinances and defence regulations) have now been codified in the Commodities and Services Control Act, 5718-1957.[2] Under the Act, a minister may enforce any of the powers conferred in any of its provisions if he has reasonable ground to assume that it is necessary so to do for the maintenance of essential services or for the prevention of profiteering.[3] Any person aggrieved by any act done in the exercise of any such power, may appeal to a tribunal consisting of a district court judge as a chairman and two assessors only one of whom may be a civil servant.[4] The Act confers upon an officer appointed for that purpose by a Minister a power to search premises; but that power is confined to business premises and no search may be carried out in dwelling houses unless by the warrant of a competent court.[5] The vicarious liability for offences against the Act is limited, as to employers, in that they are not responsible if the offence was committed without their knowledge, and they have taken all reasonable steps to ensure compliance with the provisions of the Act; and as to employees, in that they are not responsible if they acted according to instructions received from their employers or on their behalf and had no reasonable ground to assume that what they did would result in excessive profit to their employers.[6]

2. The Criminal Procedure Revision (Inquiries into Crimes and the Causes of Death) Act, 5718-1958,[7] is a codification of the law of procedure relating to preliminary criminal proceedings (being the first part of a Code of Criminal Procedure to be enacted and consolidated during the next few years). On the information by any person of the commission of a crime, or upon receiving notice by any other means of the commission of a crime, the police is under obligation to initiate a criminal investigation.[8] Where the investigation produces evidence to sustain a charge, the district attorney has to present a charge to the court, unless he finds that such proceedings would not be in the public interest;[9] but any person aggrieved by the decision of the district attorney not to prosecute, whether for lack of evidence or because proceedings would not be in the public interest, has a right of appeal to the Attorney-General.[10] Where the offence with which a person is charged is punishable with imprisonment of ten years or more, both the accused and the district attorney have the right to ask for a preliminary examination; where such examination has been asked for, the charge may not be presented to the court except upon a finding of the examining judge that the evidence available to the district attorney *prima facie* supports such charge.[11] In any case where the offence with which a person is charged is punishable with imprisonment of more than three years, the district attorney is under obligation to give the accused or his advocate full information of all the evidence which will be adduced against him, either by letting him inspect his file, or by furnishing him with copies of the statements of all witnesses and of all documentary evidence, or by both;[12] such disclosure being intended as the substitute for the preliminary examinations which had to be conducted under the law previously in force in the case of every offence punishable with imprisonment of three years or more.[13] The main benefit to the accused of such preliminary examination was the production before the examining magistrate of the evidence by which the prosecution intended to prove the charge against him in court; this purpose is now being achieved by the cheaper and speedier means of full disclosure without the need of proceedings before a magistrate. The preliminary examination is retained only in the case of the grave offences as aforesaid; but even in these cases the examination is not obligatory and is not conducted by a magistrate but by a district court judge; nor is it conducted in public, but in the judge's chambers, unless the judge directs other-

[1] Note kindly furnished by Mr. Haim H. Cohn, Attorney-General of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Came into force on 9 January 1958: *Sefer Ha-hukim* 248, p. 24.

[3] Section 3.

[4] Sections 17, 18 and 19.

[5] Section 30.

[6] Section 39.

[7] Passed by the Knesset on 27 January 1958: *Sefer Ha-hukim* 242, p. 54.

[8] Sections 1 and 2.

[9] Section 3.

[10] Section 4.

[11] Sections 8, 12 and 15.

[12] Section 6.

[13] Criminal Procedure (Trial upon Information) Ordinance, Cap. 36 of the *Laws of Palestine*.

wise.[1] The examining judge may also prohibit the publication in the press of any proceeding before him, even where such proceeding was conducted in public.[2] The examining judge must give the accused reasonable opportunity to be heard, if he so wishes, and to adduce evidence in his defence.[3] Where the examining judge has found that the evidence for the prosecution does not *prima facie* support the charge, the Attorney-General has the right, either to direct additional evidence to be adduced before the examining judge in support of the charge, or to appeal against his finding to a district court (composed of three judges),[4] whereas under the law previously in force the Attorney-General had the right to direct the presentation of an indictment to the court notwithstanding a finding of the examining magistrate that the evidence produced was insufficient to support the charge. The powers vested in a magistrate to remand the accused in custody or to release him on bail pending trial are vested in the examining judge wherever a preliminary examination has been asked for.[5]

The Act also repeals the Coroners' Ordinance[6] and, indeed, abolishes the institution of coroners. Where the death of a person is suspected to have been caused by unnatural means or by a criminal offence, and where a person died while under arrest or while interned in a hospital for the mentally sick or in an institution for mentally retarded children, any prosecutor, police officer or medical practitioner, and any interested person, may apply to a magistrate for an investigation into the cause of the death.[7] The examining magistrate has all the powers previously vested in the coroner, including the power to order post mortem examinations,[8] but he has also the power to commit a person for trial if the evidence adduced before him so justifies, and provided such person was given opportunity first to be heard and to adduce evidence before the examining magistrate;[9] and where such a committal order was made, there is no right to ask for a further preliminary examination before a judge of the district court.[10] The examining magistrate has also the power to prohibit publication in the press of any proceedings before him, even though such proceedings are held in public.[11]

3. Under the Enforcement of Foreign Judgements Act, 5718-1958,[12] a foreign judgement is not enforceable in Israel if (*inter alia*) it was obtained by fraud, or if the defendant had not been given reasonable opportunity to argue his case and to adduce evidence.[13]

4. An Amendment to the Nationality Act, 5712-1952,[14] provides not only that a national of Israel who is not residing in Israel may declare his intention to renounce his Israeli nationality, but that even a national of Israel who is still residing in Israel may do so, provided he intends to give up his residence in Israel, and the Minister of the Interior sees special reason justifying such renunciation.[15] The purpose of this enactment is to enable persons wishing to emigrate to their countries of origin, to regain their previous nationality which they had lost on the acquisition of Israeli nationality.

5. The Wages Protection Act, 5718-1958,[16] provides that payment of wages must be made in cash,[17] to the worker himself[18] and may not be delayed,[19] a minimum monthly amount (of I £ 160, i.e. ,$90) is unattachable and unalienable.[20] An official in the Ministry of Labour is designated as Controller of Wages and vested with power to order, upon application of a workman or a workers' union, the payment of delayed wages, including a compensation for such delay; and, subject to the right of a magistrate's court to set aside or vary such order, the order is enforceable as if it were the judgement of a court.[21] No deductions may be made from wages, except such as are expressly authorized by any statute, contributions to charitable organizations and to pension funds, and membership fees to workers' unions.[22] The provisions of the Act do not derogate from any private or collective agreements, but the benefits conferred by the Act are in addition to the rights enjoyed under any such agreement.[23]

6. The Social Welfare Services Act, 5718-1958,[24] gives statutory recognition to the social welfare departments now existing within the framework of the local authorities, and imposes upon them the obligation to extend social welfare services to any person who because of his age, state of health, or

[1] Sections 9 and 10.

[2] Section 18.

[3] Section 11.

[4] Section 14.

[5] Section 16.

[6] Cap. 26 of the *Laws of Palestine*.

[7] Section 19.

[8] Section 26.

[9] Section 32.

[10] Section 33.

[11] Section 36.

[12] Passed by the Knesset on 10 February 1958: *Sefer Ha-hukim* 244, p. 68.

[13] Section 6.

[14] See *Yearbook on Human Rights for 1952*, p. 144.

[15] Nationality (Amendment) Act, 5718-1958, passed by the Knesset on 3 March 1958: *Sefer Ha-hukim* 246, p. 84.

[16] Passed by the Knesset on 11 March 1958: *Sefer Ha-hukim* 247, p. 86.

[17] Sections 2 to 4.

[18] Section 6.

[19] Sections 9 to 12.

[20] Section 8.

[21] Sections 17 to 22.

[22] Section 25.

[23] Section 34.

[24] Passed by the Knesset on 19 March 1958: *Sefer Ha-hukim* 249, p. 103.

mental or physical defect, or for any other reason, has become destitute; and where a social welfare officer refuses to extend such service, the person aggrieved has a right of appeal to the Minister of Social Welfare.[1] A social welfare officer may institute proceedings for the recovery of maintenance from any person who is legally liable to maintain, or to contribute to the maintenance of, any such destitute person, even where such person refuses to institute such proceedings or to take any other steps for the recovery of such maintenance; and any sum recovered as a result of such proceedings shall be paid over by the social welfare officer to such destitute person or applied to his benefit in such manner as the court may direct; where the social welfare authorities have already expended public money for the support of that destitute person, they may, by leave of the court, reimburse themselves out of the proceeds of such action.[2] The necessary powers of interrogation and investigation are given to social welfare officers so as to enable them to carry out their duties under the Act.[3] Where social welfare authorities have supported a person or his minor children, and it transpired afterwards that that person was able to support himself, a social welfare officer may institute proceedings for the recovery of any amount so expended; the same rule applies where the person supported acquires property or income sufficient to reimburse the State for money expended for him or on his behalf in the past (excluding money expended for him or on his behalf while he was below the age of 16 years).[4] Where a social welfare officer is under the Act authorized to institute proceedings, he may enter into an agreement with the respective debtor for such payments as may be fixed therein; such agreement will be enforceable as if it were the judgement of a court.[5]

7. Pension rights have now been accorded also to members of Parliament.[6]

8. The procedure in civil actions against the State has been restated and simplified in the Civil Procedure Revision (State Litigation) Act, 5718-1958,[7] section 2 of which provides that for the purpose of any judicial proceedings in a civil cause there shall be no discrimination between the State and any person; section 6 provides that a judgement in favour of the State is liable to execution as any other judgement, while, under section 7, all judgements against the State shall be forwarded by the Minister of Justice to the Minister of Finance and shall be executed by him forthwith. As to costs, the State as litigant is in the same position and under the same liabilities as any private litigant.[8]

9. Under the Local Authorities (Vesting of Public Property) Act, 5718-1958,[9] the Minister of the Interior may order the vesting in a local authority of any property registered in the name of private persons, but exclusively serving public purposes. Any person aggrieved by any such order may institute proceedings in a district court against the State and against the local authority concerned and ask for the order to be set aside or varied.[10] The Minister of the Interior, upon making an order under the Act, and the district court, upon adjudicating in proceedings to have the order set aside or varied, may fix the amount of compensation to be paid by the local authority to any person who had any beneficial interest in the property to be vested in the local authority, and the amount of compensation fixed by the Minister is subject to revision by the court.[11] Public purposes within the meaning of the Act are educational, cultural, health and social welfare services.[12]

10. A Council of High Education has been established to supervise and co-ordinate the activities of institutions of highest education and scientific research.[13] In exercising its functions, the Council may not, in any way, restrict or limit the academic freedom of any such institution, and the academic independence and freedom of conscience of all such institutions is expressly safeguarded.[14] The Council is appointed by the President of the State,[15] and is composed of 17 members with the Minister of Education and Culture as *ex officio* chairman; at least 12 members of the Council must be persons of high standing and repute in sciences or humanities.[16] The Council may make rules for the recognition of institutions of higher education and for the revocation of such recognition, and may, in accordance with rules so made, grant and revoke recognition to any such institution.[17] The decision of the Council to grant or revoke any such recognition is subject to confirmation by the Cabinet: any institution which is denied recognition by the Council, or whose recognition is revoked, may appeal to the Cabinet, and the Cabinet may either decide the issue itself or

[1] Sections 1 and 2.

[2] Section 6.

[3] Sections 3 to 5.

[4] Sections 7 and 8.

[5] Section 10.

[6] Members of the Knesset Pensions Act, 5718-1958, passed by the Knesset on 27 March 1958: *Sefer Ha-hukim* 251, p. 116.

[7] Passed by the Knesset on 27 March 1958: *Sefer Ha-hukim* 251, p. 118.

[8] Section 9.

[9] Passed by the Knesset on 5 August 1958: *Sefer Ha-hukim* 261, p. 187.

[10] Sections 8 and 11.

[11] Sections 4 and 8.

[12] Section 1.

[13] Council of High Education Act, 5718-1958, passed by the Knesset on 5 August 1958: *Sefer Ha-hukim* 261, p. 191.

[14] Sections 9 and 18.

[15] Section 2.

[16] Sections 4 and 6.

[17] Sections 9 and 18.

refer it back to the Council, provided that it may not decide the issue itself without having given the institution concerned full hearing.[1] An institution whose recognition is revoked may after the expiration of two years apply again for recognition.[2] An institution of higher education recognized under the Act, may confer such academic titles and ranks as the Council may approve,[3] and may receive such appropriations out of the annual government budget as the Council may propose.[4] The Act does not prohibit or restrict the establishment and maintenance of institutions of education or research, whether or not they seek recognition by the Council under the Act, but institutions which are not so recognized will not be financed out of state revenue, nor will they be entitled to confer any such academic ranks or titles as are approved by the Council under the Act; and a person or institution conferring any such title without being authorized so to do, and any person holding himself out as the bearer of any such title, although it was not conferred upon him by an institution authorized in that behalf, is guilty of an offence and liable to imprisonment not exceeding one year.[5]

11. There was further established a Centre for the Promotion of Human Culture,[6] with the object of searching for, evaluating and utilizing achievements of philosophy, science, research, art and literature for the elevation of the human personality; and, with this object in view, the centre shall provide national and international meeting places between men of science and research, thinkers, poets, writers and artists, for the discussion of human values and the progress of humanity, and shall promote national and international co-operation for the elevation of the human personality.[7] The idea of the centre was conceived by, and the means for its establishment and maintenance will be provided under the will of a Dutchman, Mr. I. Van Leer, who has since died.

12. The Administrative Procedure (Reasons) Act, 5719-1958,[8] imposes a duty upon all public officers who are under any law competent to make any decision affecting any private right or imposing a duty upon any person, to give reasons in writing for any decision so made.[9] This rule does not apply where the law under which the decision is made expressly authorizes the officer to decide according to his discretion or without giving reasons; or where the disclosure of his reasons would prejudicially affect the security of the State or its external relations; or where the decision was to decline an appointment or a nomination sought for a particular office; or where the disclosure of such reasons would amount to an unlawful interference with the rights of some third person or to the violation of legitimate professional or trade secrets.[10] On the refusal of a public officer to disclose the reasons for his decision, on any of the grounds enumerated above, an appeal lies to the Minister to whom the officer is subordinate or to the Minister who is charged with the implementation of the law under which the decision was made.[11] Whenever the law under which a decision is made by a public officer provides for any remedy against such decision, whether by way of appeal or otherwise, the statement of reasons of the decision must contain full particulars of such remedy and of the manner and time in which it may be invoked.[12] Non-compliance with any of the provisions of the Act does not in itself render the decision of the public officer invalid; but, in any proceedings in which the validity of the decision may be at issue, the burden of proof that the decision was valid is on the State, whenever any of the provisions of the Act have not been complied with.[13] The Act is in addition to and not in derogation of any other law providing for the reasoning of decisions, for example the laws relating to the reasoning of judicial or quasi-judicial decisions.[14]

13. The Knesset decided several years ago to enact over the course of years a number of basic laws which will in due course form the Constitution of the State. During the year under review, the Basic Law on the Knesset was passed, extracts from which appear below.

II. ADMINISTRATIVE RULINGS

1. The right of civil servants and other State employees to go on strike was questioned, and a bill, seeking to make the instigation to or participation in any such strike a criminal offence, was rejected by the Cabinet. It was held that civil servants participating in a strike do not even violate their duties as civil servants so as to become liable to disciplinary sanctions.[15]

2. There is no discrimination under the Nationality Act, 5712-1952,[16] between children born in or out of wedlock; and it was ruled that a child born out of wedlock acquired Israeli nationality by birth

[1] Sections 10, 11, 19 and 20.

[2] Section 21.

[3] Sections 22 to 25.

[4] Section 17.

[5] Section 26.

[6] Israel Centre for the Promotion of Human Culture Act, 5719-1958, passed by the Knesset on 22 December 1958: *Sefer Ha-hukim* 265, p. 10.

[7] Section 2.

[8] Passed by the Knesset on 15 December 1958: *Sefer Ha-hukim* 264, p. 7.

[9] Section 2.

[10] Section 3.

[11] Section 4.

[12] Section 5.

[13] Section 6.

[14] Section 7.

[15] Opinion of the Attorney-General to the Civil Service Commissioner, dated 8 February 1958.

[16] See *Yearbook on Human Rights for 1952*, p. 144.

where either the mother or the father were of Israeli nationality at the time of his birth.[1]

3. Under standing instructions issued to police and prosecution authorities, no disclosure may be made of the name of any person arrested on suspicion of crime, until he is brought into court for a remand in custody or for release on bail; but, without disclosing the name of such person, police may publicize the fact that a certain crime was committed, giving the particulars thereof, and may also publicise the fact that a person suspected of the crime was arrested. Nor may any disclosure be made of the names of witnesses interrogated by the police or of any statement any particular witness made to the police; but police may call, by means of publication in the press, for witnesses to a particular occurrence to come forward to testify. Nor may any disclosure be made of the fact that any person has confessed to having committed the crime, or that a person under arrest or suspicion has failed to confess or refused to make a statement. All these prohibitions do not, however, apply to anything revealed in public proceedings before a magistrate.[2]

III. JUDICIAL DECISIONS

1. Right to leave the Country — Discretion to issue Exit Permit — Vested Rights

Assyag *v.* Minister of Defence and others
Supreme Court of Israel
sitting as High Court of Justice[3]
15 January 1958

Under statutory law, a person may be refused an exit permit — which Israeli citizens require for leaving the country — if he is liable to, and has not performed, military service. Petitioner applied for an exit permit in August 1957, when he was not yet liable to be called up, being then below the age of 18 years; his application came finally to be considered in September 1957, when he had reached military age and was liable to be called up. Upon a petition to show cause why the exit permit should not be issued to him, it was

Held that the petitioner had made out his right to be granted the permit applied for.

Per Susman, J.:[4] "... When this application was first made to the respondents, they ought to have seen at once that the applicant was not liable to be called up for military duty, and they should have issued the exit permit forthwith. The time at their disposal was ample enough, sufficient even for the petitioner to leave the country before his eighteenth birthday. This birthday having occurred in the meantime, it has now become a matter for the discretion of the respondents as to whether or not to allow the petitioner to leave the country; and we have asked ourselves whether there could today be any obligation imposed on them to exercise their discretion in favour of the petitioner. In the result, we find the petitioner has made out his claim. Before his birthday in September, he had a vested right to leave the country . . . and justice requires that the authorities should deal with the citizens in fairness and, where a right was denied to a citizen not through any fault of his own, restore such right to him by exercising their discretion in his favour whenever that way is open to them . . ."

2. Discrimination — Wrongful Dismissal — Social Welfare Work among Minorities

Abdo *v.* Mayor of Acre
Supreme Court of Israel
sitting as High Court of Justice[5]
30 January 1958

The petitioner, a social worker belonging to the Arab community, was dismissed by resolution of the municipal council by which she had been employed for several years. The reason given for the dismissal was that social welfare activities on behalf of the municipality among members of the Arab community were diminishing to such an extent that the employment of a full-time social worker for that community was no longer justified. On a petition for an order directed to the mayor and councillors to show cause why the resolution to dismiss the petitioner should not be quashed as unlawful, it was

Held that

(1) The dismissal was wrongful, as, on the evidence before the court, the reason given for such dismissal was not true, and served but as a pretext to get rid of the petitioner;

(2) There was not, on the evidence before the Court, any reasonable ground why petitioner could not be employed in social welfare work outside her own community, if indeed there would not be enough work for her within that community;

(3) Had a reduction of the staff of the social welfare department of the Municipality been necessary or justified, the principle of "first in, last out" to which the respondents have subscribed in a collective labour agreement, should have been honoured by them, irrespective of the communal affiliations of the workers concerned.

The order was made absolute.

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[1] Opinion of the Attorney-General to the Legal Advisers, Ministries of the Interior and for Foreign Affairs, dated 8 July 1958.

[2] Instruction of the Attorney-General to the Inspector-General of Police, dated 21 November 1958.

[3] Judgement reported in 12 *Piskei Din* 52.

[4] At p. 54.

[5] Judgement reported in 12 *Piskei Din* 102.

3. Natural Justice — Administrative Tribunals

Sela *v.* Pensions Officer
Supreme Court of Israel
sitting as Court of Civil Appeals[1]
21 April 1958

A soldier appealed to the Appeals Tribunal against the dismissal by the Pensions Officer of his claim for compensation. The Tribunal dismissed his appeal. On appeal to the Supreme Court, it was

Held that the case would be referred back to the Appeals Tribunal for a re-hearing.

Per curiam: "The procedure adopted by the Tribunal in this case was likely to cause a miscarriage of justice. It is true that the Tribunal is not bound by rules of procedure, and even the statutory rules do not apply to proceedings before it. Still we think that the Tribunal is bound to observe some fundamental rules: it may not, for instance, receive documents, such as medical certificates, in evidence, unless the soldier knows their contents. In the case before us, after the appellant had concluded his evidence, the Pensions Officer put in the medical file relating to the appellant, where the medical certificates were found which were in direct contradiction to the appellant's story. The appellant could not, however, comment upon these certificates for the simple reason that he knew nothing of their existence. Justice requires that the soldier be given copies of all such certificates before he himself gives evidence, in order that he may be able to disprove them, whether by his own testimony, or by cross-examining the doctors who issued those certificates, or by independent evidence, as he may wish . . ."

The appeal was allowed.

4. Domestic Tribunals — Criminal Prosecution — Rights of the Accused — Intervention by Courts

Egged Co-operative Society Ltd. *v.* Sapir
Supreme Court of Israel
sitting as Court of Civil Appeals[2]
29 May 1958

Respondent, a member of the Appellant Co-operative Society, was, in accordance with its rules, brought before a domestic tribunal of the appellant and charged with several offences of embezzlement of the appellant's funds and forgeries in connexion therewith. Under section 22 of the Co-operative Societies Ordinance,[3] a co-operative society "may, by its rules, take power to impose fines upon members . . . in such manner as the rules may provide". Respondent obtained in the district court an injunction restraining the Appellant and the members appointed to its tribunal from proceeding further against Respondent. On appeal to the Supreme Court, this decision was

Held confirmed.

Per Goitein, J.:[4] ". . . The appellant argues that the court cannot disregard the fact that hundreds, maybe thousands, of co-operative societies in this country have for many years exercised domestic jurisdiction over their members: this has become a custom of which cognizance should be taken. Then, he says, mutual trust and co-operation are so fundamental in a co-operative society that it cannot be reasonably expected to leave undisturbed the membership of one who has betrayed the confidence of his fellow members. The mills of justice grind slowly, and how can you retain in the midst of such a society, for a period of two years (as in this particular case), a man whom all the members suspect of having committed the most heinous offences against the society?

"My answer to that argument is twofold. If proceedings in the ordinary courts are too protracted, maybe something should be done about it by the competent authorities; but that is no reason to open the door to private vengeance. Were we to allow the victim of theft and embezzlement to take the law into his own hands, there could be no valid reason not to allow the same to victims of violence and to parties aggrieved by murder. But it is not the case that a co-operative society has not the means to protect itself without indulging in criminal proceedings of its own: it may, by its rules, provide for the suspension of any member who is accused of crime; and in the rules of the appellant society I find, indeed, detailed provisions to this effect.

"Moreover, the very fact that many co-operative societies in this country maintain domestic tribunals exercising jurisdiction over their members affords reason enough for the ordinary courts of competent jurisdiction to watch vigilantly lest private bodies trespass on forbidden ground. Two parties at least have a vital interest in criminal jurisdiction being reserved to the competent public judicial authorities: the accused, and the public. The law is that whoever is, rightly or wrongly, accused of crime, is entitled to the protection of all those guarantees for the implementation of which the statutes of criminal law and criminal procedure have been enacted. In all civilized countries are the fundamental rights of the accused safeguarded by the provisions of such statutes. These rights, which I need not enumerate, are not safeguarded, nor even mentioned, in the rules of the appellant society . . .

"The public interest is affected in two more ways. First, this kind of domestic jurisdiction is likely to

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[1] Judgement reported in 12 *Piskei Din* 645.
[2] Judgement reported in 12 *Piskei Din* 739.
[3] Cap. 24 of the *Laws of Palestine.*
[4] At p. 750.

lead to the concealment of grave offences from the eye of the public . . . , and the danger of the jurisdiction being exercised with the intention of concealing the offences from the public is the greater as such offences very often throw a shadow on the reputation of the society itself, so that an interest is created in the society to conceal them from the public. The result may be that a criminal is secretly turned out of one society, but immediately received into another society which would never have received him had his antecedents been known; and no criminal should be accorded immunity only for reason of the interest this or the other society may have in concealing his offences. The second aspect is that of punishment. Under the rules of the appellant society, its tribunal may impose such fines or other penalties as it may think fit, "irrespective of the punishment imposed on him or which may be imposed on him by an ordinary court." This can only mean that where the law has fixed a maximum penalty for a given offence, and where the court has imposed the maximum penalty allowed by the law, a member of the appellant society is liable to be punished over and beyond that maximum which the legislation has ordained as the highest and severest punishment permissible in respect of that offence — and he is so liable even before the competent organs of the State have found that the offence had actually been committed . . .

". . . Where, as here, under the cloak of the rules of a co-operative society wide jurisdictional powers are usurped which properly belong only to the competent criminal courts of the State, and where, as here, a private body tries and punishes offences the trial and punishment of which is a matter of public interest, this court will interfere to restrain proceedings which are contrary to public order and the public good . . ."

5. Right to Trade — Import Licences — Exercise of Discretion — Suspicions and Rumours

Orbach *v.* Director of Customs
Supreme Court of Israel
sitting as High Court of Justice[1]
6 June 1958

The respondent, who is the competent authority for the grant of import licences, refused such a licence to the petitioner, for the reason that during the period of the British Mandate the petitioner had been suspected of offences connected with import transactions. On a petition for an order directed to the respondent to show cause why the import licences applied for by the petitioner should not be granted to him, it was

Held that the refusal of the licence disclosed a wrong exercise of the discretion vested in the respondent.

[1] Judgement reported in 12 *Piskei Din* 780.

Per Agranat, J.:[2] ". . . It appears that it was not so much the petitioner's conviction of an offence fourteen years ago which prompted the respondent to decide as he did, but that he was influenced by press reports according to which testimony had been given against him in the case that he had contravened the conditions of import licences issued to him. Now, in order that a competent authority may be justified in exercising its discretion against an applicant for a licence on the strength of his misconduct or dishonesty in the past, the suspicions against him must be founded on evidentiary material which is before the authority itself. Press reports of fourteen years ago as to what other people have testified against the petitioner are not such evidentiary material as is required, and are not material which is before the authority itself. Not only had the respondent not seen the transcript of the testimony concerned, and could not, of course, vouch for the accuracy of the press reports, but the petitioner denied before us on oath, emphatically, that he had ever contravened any condition of an import licence issued to him. In these circumstances, it seems to us that there was not before the respondent sufficient evidence on which he could lawfully and reasonably have based a suspicion strong enough to justify him in refusing the licence applied for . . .

"The discretion of the respondent has, therefore, been wrongly exercised, although we were all impressed by his frank and straightforward evidence before us that he acted solely in what he believed was the best public interest."

The order was made absolute.

6. Right to Privacy — Obstructing Police Officer — Right of Police to enter Private Dwelling House

El Nagib *v.* Attorney — General
Supreme Court of Israel
sitting as Court of Criminal Appeals[3]
12 June 1958

Appellant was convicted of assaulting a police officer while on duty — an offence punishable with imprisonment of not less than one month. The officer had come to the appellant's house in order to investigate a complaint which had been lodged against the sister of the appellant, who was living with him. The officer asked the appellant's sister to accompany him to the police station, which she refused to do; whereupon the appellant asked the officer to leave the house. In the ensuing quarrel the appellant struck the officer on his face. On appeal against conviction, it was

Held that conviction of assaulting a police officer while on duty be quashed, and conviction of simple assault substituted.

[2] At p. 782.

[3] Judgement reported in 12 *Piskei Din* 850.

Per Landau, J.:[1] ". . . The main question arising in this appeal is whether the policeman exceeded his authority in entering these private premises. The police have no special rights, over and above the rights of all citizens, except as may expressly be conferred upon them by law. That is the difference between a State governed by the rule of law, as our State, and a 'police state' in which the police, as the arm of the regime, is above the law. This principle is laid down in section 37 of the Police Ordinance,[2] and applies, of course, also to any right the police may have to enter private premises. As no man may enter the house of another without authority, and any such entry will be trespass in law, actionable under section 41 of the Civil Wrongs Ordinance, 1944, so the police have in every case to justify any entry into private premises by some lawful authority . . . Nothing done by a police officer without such lawful authority can ever be regarded as done by him 'on duty' within the meaning of the criminal statute under consideration. If the officer was not in this case lawfully authorized to enter the premises of the appellant, he cannot be said to have been 'on duty', and if he was then and there assaulted, he was not assaulted while 'on duty' within the meaning of the law.

"The general powers of police officers to enter private premises are regulated in the Criminal Procedure (Arrest and Searches) Ordinance,[3] which is based on the common law of England. The right of entry is, in general, given to a police officer only as ancillary to another power, particularly to the powers of arrest or search. The authority to search by virtue of a search warrant implies the right to enter the premises to be searched . . . There is even a specific provision in the ordinance to the effect that the occupier of premises 'upon which lawful entry may be made in exercise of a right of arrest or search shall, on demand, allow free entry and afford all reasonable facilities' . . .[4]

"The court below founded the appellant's conviction on the fact that the appellant had not objected, and tacitly consented, to the officer entering the premises . . . There is no doubt that where a police officer enters a house with the permission of its lawful occupier, and then does an act in the performance of his duties, such act cannot be vitiated for the reason that the officer had had no statutory right of entry. I will assume that, in proper circumstances, lack of objection to the officer's entry may also be taken as tacit permission for him to enter. But on the evidence here, the court below was not justified in arriving at its conclusion. The officer himself testified that the appellant told him to get out of the house: this is no tacit permission, nor lack of objection, but exactly the contrary . . . Even had there been permission to enter, the appellant's express objection to the officer remaining in the house after he had entered it, is sufficient to render his stay in the house unlawful. The fact is that the officer, having entered the house, stayed there unlawfully, and therefore he was not, at the time of the assault, 'on duty' within the meaning of the law . . ."

7. POLICE POWERS — SEIZURE OF PRIVATE PROPERTY — STOLEN GOODS — PRIVATE AND PUBLIC INTERESTS

Berman *v.* District Superintendent of Police, Northern District

Supreme Court of Israel
sitting as High Court of Justice[5]
26 June 1958

The petitioner bought a bicycle in good faith from a dealer who was suspected by the police to deal in stolen goods. It appeared that the bicycle had in fact been stolen from its rightful owner. The police asked for, and obtained, possession of the bicycle from the petitioner; and when the petitioner claimed its return to him the police refused on the ground that it would have to be produced in court in proceedings to be instituted against the person accused of its theft. On a petition for an order directed to the police to show cause why the bicycle should not be returned to the petitioner, it was

Held that the police had no power to claim possession of a citizen's private property without the order or warrant of a competent court.

Per Goitein, J.:[6] ". . . The seizure of any property from a citizen, albeit for temporary purposes, requires express authority from the legislature; and the legislature saw fit to authorize any such seizure only by virtue of a magistrate's warrant . . . It is true that private rights must be balanced against the public interest which the police represent; but it is the magistrate who is charged with safeguarding the public interest wherever necessary. We do not accept the proposition of counsel for the respondent, that where a man has voluntarily delivered his property into the hands of the police, he cannot thereafter be heard to say that the possession of such property by the police is unlawful. The delivery to the police may have been made under the mistaken impression that the demand on the part of the authorities was binding upon him; but even assuming that he did deliver the property of his own free will, it might well be that he was willing to place the chattel at the disposal of the police for purposes of investigation, but now investigations are completed and the thieves apprehended and identified, why should he suffer the police to retain his property

[1] At p. 852.
[2] Cap. 112 of the *Laws of Palestine.*
[3] Cap. 33 of the *Laws of Palestine.*
[4] Section 27.

[5] Judgement reported in 12 *Piskei Din* 914.
[6] At p. 908.

until after the trial, and why should the police be allowed to retain the same without the warrant of a court? . . ."

The order was made absolute.

8. By-laws of Local Authorities — Private Property — Unlawful Forfeiture

Lubin *v.* Mayor of Telaviv
Supreme Court of Israel
sitting as High Court of Justice[1]
13 July 1958

A statute authorized local authorities to make provisions, in their by-laws, "for the examination, seizure and forfeiture" of certain foodstuffs. A local authority made by-laws authorizing municipal inspectors to seize such foodstuffs and providing that upon such seizure the foodstuffs shall be forfeited and destroyed. On a petition for an order to show cause why the said by-laws should not be declared null and void, it was

Held that the by-laws were unlawful and may not be enforced.

Per Olshan, J.:[2] ". . . According to fundamental principles of the rule of law, any violation of the person or property of a citizen, claimed to be authorized by law, must first be found to be so authorized by a competent court. The principle is that the examination and determination of the question whether or not such a violation is authorized by law must be entrusted to the courts and may not be left in the hands of those very authorities which intend to carry out the violation. A further elementary principle is that you may not first violate and then afterwards seek the confirmation by the court that your violation was lawful. Every citizen is free, and his person and property are inviolable unless by authority of the law. And unless the law provides otherwise in express terms — as it does, for instance, for the arrest of a person caught *in flagranti delicto* without the warrant of a magistrate having first been obtained — the authority conferred by any law to violate the person or property of a private citizen must always be construed as subject to the order of a competent court . . . The question here is, therefore, whether on its true construction the statute authorizing these by-laws has also authorized the dispensation with normal court procedure as a condition precedent to any seizure and forfeiture of private property . . .

[3]". . . The principle that private property is not to be violated without an order of a court is universally recognized in all civilized states, and it goes without saying that our legislature is well aware of this principle and would never disregard it: it is, in fact, part of our unwritten Constitution. Every law dealing with infringements of private rights is to be construed in the light of and subject to this principle . . . Nonetheless it is to be regretted that the language of the statute before us is rather nebulous and does not lend itself to easy construction . . ."

Per Sussman, J.:[4] ". . . The question we have to determine is whether the municipality is competent to authorize its inspectors to seize the foodstuff and thereby expropriate it from its owner without any judicial proceeding. We are all agreed that the legislator does not ordinarily authorize the violation of the person or property of a citizen without a judicial hearing at which he will first be heard. The State of Israel is — according to the Declaration of Independence — "founded on freedom, justice and peace"; these words would be empty phrases and the rule of law would break down, were this principle not adhered to. But the legislator is omnipotent, and by express words he can, if he so wishes, depart from his principles and allow private rights to be infringed without judge and without justice. Did he do so in this case? I have no doubt whatever that he did not . . .

"The principles of the rule of law raise a presumption, and whoever claims that the legislator intended to depart from them has the burden to satisfy the court that in the particular case before it there was such a departure. The fact that this forfeiture is an administrative forfeiture does not prove anything; even where proceedings in court are expressly excluded, you have always at least some administrative procedure in which the legislator safeguards the rights of the citizen affected, first to be heard, as for instance in the case of forfeiture of smuggled goods under the Customs Ordinance . . .[5]

[6]". . . The forfeiture which the present statute authorizes means the seizure from the citizen of the property concerned, its expropriation and its vesting in the local authority. But the title of the local authority to the property depends upon the finding by a court that the forfeiture was lawful, or at least upon the right of the citizen to ask for the finding of a court that the forfeiture was lawful. As was said by the Supreme Court of the United States, 'the right to the property then vests in the United States, although their title is not perfected until judicial condemnation' . . ."[7]

9. Conviction of Innocent — Revision

Attorney-General *v.* David
Supreme Court of Israel[8]
11 September 1958

The Attorney-General applied to the Supreme Court under section 9 of the Courts Act, 5717–1957,[9]

[1] Judgement reported in 12 *Piskei Din* 1041.
[2] At p. 1051.
[3] At p. 1059.
[4] At p. 1079.
[5] Cap. 42 of the *Laws of Palestine*.
[6] At p. 1082.
[7] *United States* v. *Stowell* (1890) 10 S.Ct. 245 at p. 247.
[8] Judgement reported in 12 *Piskei Din* 1341.
[9] See *Yearbook on Human Rights for 1957*, p. 155.

for the re-opening of a criminal case which had finally been adjudicated upon. A district court had found David guilty of an act of rape of a girl of minor age and had made an order of hospitalization against him under the Mental Patients Treatment Act, 5715–1955.[1] David, apart from being mentally sick, was deaf and dumb. During police investigations, he had communicated with the police officers through the intermediary of his brother, who claimed to understand him and make himself understood to him, as well as of a police sergeant especially trained in communications with deaf and dumb persons; and in this way had made a voluntary confession. The court did not accept his plea of guilty, but found the confession corroborated by other evidence. Two years later, another man, charged with the rape of another girl, confessed to the police that he had committed also the rape with which David had been charged; and the detailed and accurate description of the particulars of that offence left no room for doubt that the confession was true. When he was convicted of the other offences, he asked the court to take the rape in question into account when passing sentence; and the court did so.

On application by the Attorney-General *ex parte*, the Supreme Court set aside the judgement of the district court and the hospitalization order against David and ordered a full acquittal to be entered on the record.

10. POWERS OF ARREST — INCIDENTAL POWERS — OBSTRUCTING POLICE OFFICER

Attorney-General *v.* Zyad
Supreme Court of Israel
sitting as Court of Criminal Appeals[2]
19 August 1958

The respondent was lawfully arrested on a criminal charge. While detained in police custody, a police officer asked him to pick up cigarette ends lying around and to clean up his cell. The officer gave the respondent a broom for the purpose, and when the officer turned back to go out, the respondent struck him with the broom from behind. The magistrate found the respondent guilty of assaulting a police officer while on duty; the district court, on appeal by the respondent, quashed that conviction and found him guilty of simple assault, holding that the officer was not "on duty" within the meaning of the statute. On appeal by the Attorney-General on the question of law involved, the decision was

Held confirmed.

Per Agranat, J.:[3] ". . . We are here in the realm of the freedom of the citizen, and the rule in these cases is that that freedom may not be taken away from him except to such extent and in such manner as is clearly provided by law. It is true that a person lawfully under arrest has already had taken away from him his freedom for the period of such arrest, but even during that period he has still some rights, and among them the right not to be compelled by his jailers to do anything which the law does not compel him to do; or else the power of arrest — which is drastic enough as it is — might become an instrument of oppression and tyranny against prisoners under their care . . .

"I agree that it is the duty of the police to keep the jail clean and sanitary, and that the demand of a prisoner to clean his cell is not unreasonable. But that is beside the point . . . In a regular prison, a prisoner may be asked to clean his (or any) cell, because the law so provides,[4] but no such provision is to be found in the law applicable to police custody; and any analogy from the prison rules, as if what is permissible with regular prisoners is certainly permissible with persons under police arrest, would be quite inappropriate, if only for the reason that the liberty of the citizen is not to be infringed on the strength of analogies . . . If there is a *lacuna* in the law in this respect, it is for the legislature, and not for the courts, to remedy matters . . .

[5]". . . Nor do I think that the construction this court has put on the phrase 'while on duty' in the context of the statute prohibiting assaults on police officers[6] would deprive the statute of all meaning. It is essential to bear in mind that we are not concerned with the question whether respondent was entitled to act towards the police officer as he did; or whether he should not have asserted his right without using violence. There is no doubt that — so long as no violence was used against him — the respondent was in no way justified to strike the officer, and therefore the court below convicted him, quite rightly, of an aggravated assault under section 250 of the Criminal Code Ordinance, 1936. The only question we are concerned with is whether this could have been an aggravated assault directed against a police officer 'while on duty', that is, whether the further and additional element of this special offence, that it was directed against a police officer 'while on duty', had been satisfactorily proved. This element was added by the legislature to the other elements of simple or aggravated assaults, as the case may be, with the object of giving the police officer, while on duty, some protection additional to that given to every citizen. But the legislator cannot, to my mind, have intended to protect a police officer who tried to compel his attacker to do what he had no legal right to comple him to do; where an assault is committed in circumstances like this, I think law and justice will be satisfied if the assaulter be punished according to

[1] See *Yearbook on Human Rights for 1955*, p. 137.
[2] Judgement reported in 12 *Piskei Din* 1358.
[3] At p. 1364.
[4] Rule 207 of the Prison Rules, 1925 (Palestine).
[5] At p. 1368.
[6] See *El Nagib* v. *A.G.*, *supra*.

that provision of the Criminal Code which protects all citizens against any assault . . ."

The appeal was dismissed.

IV. INTERNATIONAL AGREEMENTS

In 1958 Israel ratified the following international conventions relating to human rights:[1]

[1] See also pp. 312-313.

1. I.L.O. Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents.

2. Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property.

BASIC LAW (THE KNESSET) 5718 – 1958 [1]

1. The Knesset is the parliament of the State.

. . .

3. The Knesset shall, upon its election, consist of one hundred and twenty members.

4. The Knesset shall be elected by general, national, direct, equal, secret and proportional elections, in accordance with the Knesset Elections Law; this section shall not be varied save by a majority of the members of the Knesset.

5. Every Israel national of or over the age of eighteen years shall have the right to vote in elections to the Knesset unless a court has deprived him of that right by virtue of any law; the Elections Law shall determine the time at which a person shall be considered to be eighteen years of age for the purpose of the exercise of the right to vote in elections to the Knesset.

6. Every Israel national who on the day of the submission of a candidates' list containing his name is twenty-one years of age or over shall have the right to be elected to the Knesset unless a court has deprived him of that right by virtue of any law.

7. The following shall not be candidates for the Knesset:

(1) The President of the State;

(2) The two Chief Rabbis;

(3) A judge (shofet), so long as he holds office;

(4) A judge (dayan) of a religious court, so long as he holds office;

(5) The State Comptroller;

(6) The Chief of the General Staff of the Defence Army of Israel;

(7) Rabbis and ministers of other religions, while holding office for a remuneration;

(8) Senior state employees and senior army officers of such grades or ranks and in such functions as shall be determined by law.

. . .

40. A member of the Knesset may resign his office; resignation shall be by personal presentation of a letter of resignation by the resigning member to the Chairman of the Knesset or, if the member is unable to present the letter of resignation personally, by transmission thereof in the manner prescribed by the Rules; the letter of resignation shall be signed on the day of the presentation or transmission.

41. If a member of the Knesset tenders his resignation, his membership of the Knesset shall cease forty-eight hours after the letter of resignation reaches the Chairman of the Knesset, unless the member withdraws his resignation before then.

42. If a member of the Knesset is elected or appointed to one of the posts the holders of which are debarred from being candidates for the Knesset, his membership of the Knesset shall cease upon the election or appointment.

43. If the seat of a member of the Knesset falls vacant, it shall be filled by the candidate who, in the list of candidates which included the name of the later member, figured immediately after the last of the elected candidates.

44. Notwithstanding the provisions of any other law, this law cannot be varied, suspended, or made subject to conditions, by emergency regulations.

45. Section 44, or this section, shall not be varied save by a majority of eighty members of the Knesset.

[1] Published in *Sefer Ha-hukim* 244, of 20 February 1958, p. 69. English translation kindly furnished by Mr. Haim H. Cohn, Attorney-General of Israel, government-appointed correspondent of the *Yearbook on Human Rights*. The Basic Law entered into force on 20 February 1958.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1958 [1]

I. LEGISLATION

The most important legislation relating to human rights enacted in Italy during 1958 was undoubtedly the Merlin Act,[2] which abolishes the "closed houses" and lays down new measures for the prevention of the exploitation of the prostitution of others. The Act is closely in harmony with the general principles underlying the whole of the Universal Declaration of Human Rights and gives effect to article 4 in particular, by eliminating a last vestige of servitude from Italian life; since any form of regulated prostitution necessarily entails violation of the woman's liberty of person.

Act No. 75, of 20 February 1958 (*Gazzetta Ufficiale* No. 55, of 4 March 1958), concerning the ***abolition of regulated prostitution and suppression of the exploitation of the prostitution of others***, comprises three titles. Title I provides for the closing of brothels and prescribes penalties for any person who in any manner entices another person into prostitution or exploits another person for that purpose (articles 1–7); title II lays down measures for the assistance and rehabilitation of women leaving brothels (articles 8–11); title III contains final and temporary provisions (articles 12–15). It should be noted that the provisions of the Act concerning the suppression of the exploitation of the prostitution of others refer throughout to "persons" engaging in prostitution — i.e., persons of either sex.

Article 1 provides that:

"The operation of brothels is prohibited in the territory of the State or in territories under the administration of the Italian authorities."

Article 2 provides for the closing of the existing "houses" and similar establishments within the six months following the entry into force of the Act. Article 3 contains provisions which replace articles 531 to 536 of the Penal Code:[3]

"Without prejudice to the application of article 240 of the Penal Code,[4] a penalty of imprisonment for not less than two or more than six years and a fine of not less than 100,000 or more than 4,000,000 lire shall be imposed upon:

"(1) Any person who, after the expiry of the period prescribed in article 2, owns or keeps a brothel, by whatever name it may be known, or in any manner controls, directs or manages a brothel or has a share in its ownership, operation, direction or management;

"(2) Any person who, being the owner or manager of a house or other building, rents it for use as a brothel;

"(3) Any person who, being the owner, manager or director of a hotel, rooming-house, boarding-house, bar, club, dance hall, theatre, or the annexes and outbuildings attached thereto, or any building open to the public or used habitually by the public, allows a person or persons to use the premises for purposes of prostitution;

"(4) Any person who hires another person to engage in prostitution or abets the prostitution of such persons;

"(5) Any person who entices a woman of full age into prostitution or who engages in procuring whether in person in public places or places open to the public or through the press or by the use of any other means of publicity;

"(6) Any person who induces another person to move to the territory of another State or to a place other than that person's habitual place of residence for the purpose of prostitution or who facilitates such a change of residence;

"(7) Any person who engages in any activity in Italian or foreign associations or organizations for the purpose of recruiting persons for prostitution or exploiting the prostitution of others or who, in any manner or by any means, assists or abets the activities or purposes of such associations or organizations;

"(8) Any person who in any way promotes or exploits the prostitution of others."

Article 3 further provides that in the case of the offence to which paragraph 3 refers the licence of the establishment shall be revoked, and the establishment may be ordered to be closed.

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Communità internazionale*, a publication of the Association, and government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] Named after Angelina Merlin, the socialist senator who had campaigned since 1953 for adoption of the Act.

[3] These articles of the Penal Code related to incitement, encouragement and compulsion to engage in prostitution, the exploitation of prostitutes and the traffic in women and children.

[4] Article 240 of the Penal Code provides for and regulates the "confiscation of articles which were used or intended for use in the commission of the offence and articles which are the product or profit thereof . . ."

Where an offence to which paragraph 4 or 5 refers is committed abroad by an Italian citizen the offence shall be punishable to the extent that the international conventions allow.

Article 4 provides that the penalty shall be double if the offence is accompanied by violence, threats, or deception; if the offence is committed against a person under age or a person suffering from a physical or mental disability; if the offender is a relative, by blood or by marriage, or guardian of the person concerned; if the person concerned has been entrusted to the offender for care, education, supervision etc.; or if the offence is committed against a person in the domestic service or employ of the offender, or by public officials in the exercise of their duties, or against more than one person.

Articles 6 provides that persons committing or attempting to commit any of the offences specified in title I of the Act shall be debarred from holding public office or from acting as guardians or trustees for a period of not less than two or more than twenty years.

Article 7, which is especially significant from the standpoint of respect for and freedom of the individual, is designed to abolish the existing provisions concerning street-walkers and at the same time to preclude state recognition of any from of prostitution. The article provides that:

"Neither the public security authorities nor the health authorities nor any other administrative authority may directly or indirectly in any manner whatever, including the issuance of health certificates, register women engaged in or suspected of prostitution or oblige them to report periodically. It is likewise prohibited to issue special papers to such women."

Title II of the Act provides that the Minister of the Interior shall promote the establishment of special homes, and assist existing institutions, for the protection, assistance and rehabilitation of women leaving brothels and of other women who have been engaged in prostitution and are anxious to "return to a respectable way of living" (article 8), and that he shall be responsible for the funds required for the operation of such homes.

Article 10 provides that persons under twenty-one years of age who habitually derive their entire livelihood from prostitution shall be returned to their place of origin and their families. If there are no relatives willing to receive them, or if their relatives are of questionable morality, they shall be placed in the institutions already mentioned. They may also elect to be so placed of their own free will.

Title III, article 12, provides for the establishment of a special women's corps "which shall gradually and within specific limits take over the functions of the police with respect to public morals and the prevention of juvenile delinquency and prostitution."[1]

[1] The bill designed to give effect to this article by establishing a women's police corps is at present before Parliament and has already been approved by the Chamber.

Other legislation enacted during the year under review relates to working conditions, workers' retirement pensions, and social benefits of various kinds; all these laws contribute to the practical application of the principles laid down, in particular, in articles 22, 23, 24 and 25 of the Universal Declaration.

With regard to *working conditions*, Act No. 339, of 2 April 1958 (*G.U.* No. 93, of 17 April 1958), concerning the *conditions of employment of domestic worker*[2], should be mentioned first, on account of its intrinsic importance and because it marks a new departure in Italian law. The Act is designed to provide domestic workers, of whom there are over half a million in Italy, with adequate safeguards, in regard to conditions of employment and remuneration, comparable to those attained by other categories of workers. The disparity, before the adoption of the Act, between the position of domestic workers and that enjoyed by workers in other occupations had, among other things, had the effect of making domestic work increasingly unattractive and the drift away from domestic employment was tending both to aggravate unemployment and to create difficulties for the many people who require domestic workers in their homes.[3]

Article 1 defines the persons to whom the Act applies as follows:

"Persons engaged in domestic service who work continuously and regularly for at least four hours a day for the same employer for payment in cash or in kind. The expression 'persons engaged in personal domestic service' means workers of either sex who are employed in any capacity in the performance of household tasks, whether they are specialized workers or are engaged for general duties."

The Act distinguishes two categories of such workers: employees (teachers, tutors, certificated children's nurses, nurses, companions, etc.) and manual workers (cooks, gardeners, wet-nurses, lady's maids, uncertificated children's nurses, maids of all work, private watchmen and porters). In some respects — e.g., length of trial period, holidays, various allowances etc. — the provisions applicable to the two categories of workers are different.

Workers may be engaged either directly — in which case the employer is bound to report the engagement to the competent employment office — or through the placement authorities (article 2). The working papers prescribed (article 3) are similar to those adopted for other categories of workers. The employment of minors is subject to the consent of

[2] English and French translations of this Act have been published by the International Labour Office as *Legislative Series* 1958 — It. 2.

[3] The only provisions in force for the protection of domestic labour had been the general rules laid down in title IV, chapter II, of the Civil Code (articles 2240 to 2246); these rules, which are wholly inadequate at the present stage of social development, contain only brief provisions concerning the employment of domestic workers.

the person *in loco parentis* (article 4). Articles 5 to 10 lay down the length of trial periods of employment; define the rights and duties of workers (diligence in performance of duties and respect for the privacy of family life) and of employers (prompt payment of wages and, where the contract so requires, provision of satisfactory board and lodging; care of the worker's health and respect for his person and moral freedom; provision of free time to discharge civil and religious obligations); and lay down rules concerning weekly, daily and nightly periods of rest, public holidays and annual holidays. Provision is made for a marriage leave of fifteen consecutive days (article 15).

A central board is established under the Ministry of Labour and Social Welfare, as well as a provincial board in each province, for the administration of domestic labour (articles 11–14). The function of the central board is to advise and make proposals on the administration of domestic labour and the co-ordination of the work of the provincial boards, and to rule on appeals from the latter's decisions; the provincial boards are responsible, within their respective provinces, for making inquiries into average monthly remuneration, determining scales for board and lodging, and making rules concerning domestic employment in the province.

Rules are also laid down concerning the notice required (article 16) on the termination of employment and the payment of a "long-service allowance" in the event of dismissal or retirement (article 17). The same allowance is payable to the relatives if the worker dies (article 18). The payment of wages for "the thirteenth month" is extended to domestic workers.

Act No. 23, of 4 February 1958 (*G.U.* No. 40, of 15 February 1958), providing rules for the aggregation and equalization of the wages of porters and other workers employed as cleaners and caretakers of urban buildings, deserves mention since it embodies the principle of *equal pay for men and women for equal work.* Article 1 of the Act provides that the minimum wages and all allowances provided for in that article "shall be aggregated, for all purposes of contract and law, in a single payment which shall be equal for men and women".

The existing legal provisions concerning *hours of work* are extended under Act No. 138, of 14 February 1958 (*G.U.* No. 65, of 15 March 1958), to the crews of motor vehicles operating extra-urban public passenger services. The actual working hours of such workers may not exceed eight hours a day or forty-eight hours a week (article 2). Overtime is permitted only for special exigencies of service and is not to exceed two hours a day or a maximum of twelve hours a week. Other provisions relate to the calculation of actual working hours, the length of daily and weekly periods of rest, extra payment for emergency work, and penalties for violation of the rules laid down in the Act.

Further rules designed to offer *employment opportunities to handicapped persons*[1] are laid down in Act No. 308, of 13 March 1958 (*G.U.* No. 91, of 15 April 1958), concerning the compulsory employment of deaf mutes; government services (other than the railways), public corporations and private firms are required to engage deaf mutes, without any competitive examination, for employment in subordinate posts up to a total of 1 per cent of the subordinate staff in the case of government departments, 1 per cent of all staff in the case of public corporations, and 3 per cent of the wage-earning personnel in other cases.

Legislation was also enacted to assist *workers who have to institute legal proceedings against their employers,* since in almost all cases of this kind the worker concerned is unemployed and unable to pay legal expenses. Act No. 319, of 2 April 1958 (*G.U.* No. 91, of 15 April 1958), exempts from stamp duty, registration fees and all other fees, taxes or duties, all documents and orders relating to individual labour disputes and the contracts of public employees provided that the amount involved does not exceed 1 million lire. Orders and documents relating to the enforcement of decisions in such cases are likewise exempt. The fees payable for administrative appeals connected with the employment of public employees (special appeal to the President of the republic; appeals to the Council of State; deposits the case of petitions for the revocation of decisions of the Council of State) are abolished.

With regard to *retirement pensions,* Act No. 46, of 15 February 1958 (*G.U.* No. 47, of 24 February 1958), lays down new provisions concerning ordinary pensions payable by the State. Among other things, the Act extends entitlement to reversionary pensions to several categories previously exlcuded (including natural children legally acknowledged or recognized by order of a court, adopted or legitimized children, unmarried sons and daughters including children who are of age but incapable of gainful employment) and reduces certain requirements for eligibility to pension (especially in the case of widows, with regard to age on marriage and length of the marriage). The Act prescribes the same age-limit — sixty-five years — for the retirement of "established civil servants" of either sex; for "established wage-earners", on the other hand, the age-limit is sixty-five years for men and sixty for women.[2]

Another pension measure, Act No. 55, of 20 February 1958 (*G.U.* No. 48, of 25 February 1958), provides for *the extension of reversionary benefits and other measures to assist pensioners under the compulsory insurance scheme for disability and old age and surviving relatives.* The provisions of this Act are intended to maintain the real

[1] See *Yearbook on Human Rights for 1957*, p. 159, concerning the Act of 14 July 1957 on the employment of blind telephone operators.

[2] "Established civil servants" are persons with permanent contracts of employment in the administrative, executive and clerical branches; "established wage-earners" are subordinate workers classed as manual workers.

value of contributory pensions by increasing the cost-of-living adjustment and to provide new or improved benefits in cases not covered by previous legislation (survivors of persons pensioned before 1945, insured persons who are veterans of the late World War) or deserving special consideration (persons drawing very small pensions).

Other legislation has been enacted concerning *social welfare and assistance.*

Act No. 93, of 20 February 1953 (*G.U.* No. 57, of 6 March 1958), provides for the *compulsory insurance of physicians against disease and injury caused by the effects of X-rays and radioactive materials* (pensions for permanently disabled physicians; pensions for surviving relatives and lump-sum payments in the event of death; medical and surgical treatment; and provision of prosthetic appliances). Again in the atomic field, a subsequent ministerial decree of 14 December 1958 (*G.U.* No. 285, of 27 November 1958) established under the Ministry of Labour and Social Welfare a committee for the *protection of workers from ionizing radiations*; it is the Committee's duty (article 2):

"To examine and make proposals for the issue of regulations concerning (*a*) techniques for the use of X-rays and substances emitting ionizing radiations and harmful emanations; (*b*) precautions to be observed in the use of such materials; (*c*) protective measures to be taken for the effective protection of workers' health."

Act No. 250, of 13 March 1958 (*G.U.* No. 83, of 5 April 1958), lays down provisions for *fishermen engaged in small-scale coastal fishing and fishing in inland waters.* The essential purpose of this Act is to extend to such fishermen the welfare and assistance benefits which are the social heritage of Italian workers working for an employer and of many self-employed workers. Specifically, it provides insurance for disability, old age, surviving relatives, tuberculosis, industrial accidents and occupational diseases and sickness assistance. For workers associated in companies or co-operatives, it also provides the family allowances payable in the industrial sector.

Act No. 179, of 4 March 1958 (*G.U.* No. 72, of 24 March 1958), provides for the establishment and organization of the *National Welfare and Assistance Fund for Engineers and Architects*, which provides for the operation of a disability, old-age and surviving relatives' pension scheme. Act No. 97, of 15 February 1958 (*G.U.* No. 57, of 6 March 1958), establishes the *National Welfare and Assistance Fund for Veterinary Surgeons*, which provides registered veterinary surgeons with general and specialized medical and health care, hospital treatment, death benefits and emergency benefits. Act No. 469, of 3 April 1958 (*G.U.* No. 113, of 10 March 1958), provides medical and health care, for *disabilities other than those caused by war, for unemployable war invalids and their dependent relatives.*

Mention should also be made, because of its significance as an *anti-discriminatory measure* rather than on account of the actual provisions, of Act No. 364, of 2 April 1958 (*G.U.* No. 96, of 21 April 1958), which extends to inhabitants of the Alto Adige who served in the German armed forces during the war the benefits provided for ex-service personnel and returned prisoners of war.

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS MADE OPERATIVE IN ITALY IN 1958[1]

Convention between Italy and Spain respecting Social Insurance, signed at Madrid on 21 July 1956. Ratified and made effective in Italy by Act No. 122, of 4 February 1958 (*G.U.* No. 62, of 12 March 1958).

Agreement concerning contracts of insurance and reinsurance, concluded at Rome between Italy and the United Kingdom of Great Britain and Northern Ireland on 1 June 1954. Ratified and made effective in Italy by Act No. 123, of 7 February 1958 (*G.U.* No. 62, of 12 March 1958).

Convention on the Recovery Abroad of Maintenance, signed in New York on 20 June 1956. Ratified and made effective in Italy by Act No. 338, of 23 March 1958 (*G.U.* No. 93, of 17 April 1958)

Convention between the Italian Republic and the United Kingdom of Great Britain and Northern Ireland on Social Insurance in Northern Ireland and Italy, signed at Rome on 29 January 1957. Ratified and made effective in Italy by Act No. 355, of 13 March 1958 (*G.U.* No. 96, of 21 April 1958).

Conventions adopted by the General Conference of the International Labour Organisation: Convention No. 87 concerning freedom of association and protection of the right to organize, San Francisco, 17 June 1948;[2] Convention No. 98 concerning the application of the principles of the right to organise and to bargain collectively, Geneva, 8 June 1949.[3] Ratified and made effective in Italy by Act No. 367, of 23 March 1958 (*G.U.* No. 97, of 22 April 1958).

European Interim Agreements on social security and European Convention on social and medical assistance, with Additional Protocols, signed in Paris, on 11 December 1953.[4] Ratified and made effective in Italy by Act No. 385, of 7 February 1958 (*G.U.* No. 98, of 23 April 1958, Supplement).

III. JUDICIAL DECISIONS

The two decisions of the Constitutional Court summarized below uphold, in the one case, the principle of *freedom of assembly*, and in the other the principle of *freedom of religion and worship*, proclaimed respectively in articles 20 (1) and 18 of the Universal Declaration.

The first of these decisions is based on article 17 of

[1] See also pp. 312-314.

[2] See *Yearbook on Human Rights for 1948*, pp. 427-30.

[3] See *Yearbook on Human Rights for 1949*, pp. 291-2.

[4] See *Yearbook on Human Rights for 1953*, pp. 355-61.

the Italian Constitution concerning freedom of assembly;[1] it is worth noting that the rules laid down in that article offer a typical example of the reconciliation of the citizens' right of free assembly with the need to preserve public order and thus the safety of others. This need is fully recognized in article 29 (2) of the Universal Declaration, which provides that the individual's rights and freedoms may be subject only to such "limitations" as are determined by law "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare . . ."

The second decision of the court reported below relates to articles 8 and 19 of the Constitution,[2] concerning freedom of religion, and is predicated on the distinction between freedom to practise non-Catholic forms of worship as a pure manifestation of religious faith (article 19 of the Constitution), and the organization of the various denominations in their relations with the State (article 8).

1. Constitutional Court — Decision No. 27, of 31 March 1958 (*Raccolta ufficiale delle sentenze e ordinanze della Corte costituzionale*, vol. V, 1958, pp. 175 *et seq.*)

In this decision the court ruled on the question of the constitutionality of article 18 of the consolidated text of the Public Security Laws raised by two orders made by magistrates of Sesto Calende and Ales during criminal proceedings in two cases in which the accused were charged with having organized meetings of some sixty persons without having given notice to the local chief of police as required by the aforesaid article 18.[3] In the first case the question of the constitutionality of article 18 was raised by the defence, and in the second case, by the magistrate himself.

As the court states, article 17 of the Constitution, after affirming in the first paragraph the right of citizens to meet in peaceful and unarmed assembly, distinguishes between meetings held "in places open to the public" (second paragraph), for which it expressly provides that no previous notice is required, and meetings "in public places" (third paragraph); in the case of the latter prior notice must be given to the authorities which, however, may prohibit them only "on substantiated grounds of public security or safety".

As the court observed in its decision, article 18 of the consolidated text of the Public Security Laws stipulates that notice shall be required both for meetings in public places and for meetings in places open to the public. As was affirmed in decision No. 9, of 19 June 1956, the court held that there were no grounds for questioning the constitutionality of article 18 as regards its application to meetings in public places; on the other hand it declared "the provisions of article 18 of the consolidated text of the Public Security Laws unconstitutional . . . in so far as they relate to meetings not held in public places within the meaning of article 17 of the Constitution".

The requirement of notice for meetings in "places open to the public" obviously conflicted with article 17, second paragraph, of the Constitution.

2. Constitutional Court — Decision No. 59, of 18 November 1958 (*Raccolta ufficiale delle sentenze e ordinanze della Corte costituzionale*, vol. VI, 1958, pp. 123 *et seq.*)

In this decision the court ruled on the question of the constitutionality of article 3 of Act No. 1159, of 24 June 1929, and articles 1 and 2 of royal decree No. 289, of 28 February 1930, raised by an order of the Crotone Court.[4]

In a criminal case pending before that Court, Mr. R. F. was charged with an offence against the provisions of article 650 of the Penal Code[5] in that he had continued to conduct the activities of the Pentecostal Church and had kept the oratory of that denomination open to the public despite the fact that the Crotone police had forbidden him to conduct those activities or to keep the oratory open without first obtaining

[1] See *Yearbook on Human Rights for 1947*, p. 164.

[2] See *Yearbook on Human Rights for 1947*, pp. 163 and 164.

[3] Article 18 of the consolidated text of the Public Security Laws provides that the organizers of any meeting in a public place or in a place open to the public shall give due notice thereof to the local chief of police.

[4] *Act No. 1159 of 24 June 1929, article 3*

The appointments of ministers of religions other than the state religion shall be communicated to the Ministry of Justice and Religious Affairs for approval.

Acts performed by such ministers in the exercise of their ministry shall be without civil effect unless their appointment has received Government approval.

Royal Decree No. 289 of 28 February 1930

Article 1: For the purpose of the public practice of religions permitted in the Kingdom, members of each denomination may have their own temple or oratory.

Permission to open a temple or oratory for worship shall be sought by a minister of the denomination concerned, whose appointment has been duly approved under article 3 of the Act, by an application addressed to the Minister of Justice and Religious Affairs and accompanied by documentary proof that the temple or oratory is needed to meet the actual religious needs of substantial groups of members and that adequate funds are available for its maintenance.

The opening shall be authorized by a royal decree issued on the proposal of the Minister of Justice and Religious Affairs in agreement with the Minister of the Interior.

Article 2: Members of a religion permitted in the Kingdom may, without prior authorization from the Government, hold in buildings open for worship in accordance with the preceding article public meetings for the celebration of religious ceremonies or other religious observances, provided that such meeting is presided over or authorized by a minister of religion whose appointment has been duly approved under article 3 of the Act.

In all other cases the ordinary regulations governing public meetings shall apply.

[5] Article 650 of the Penal Code relates to non-compliance with "an order legally made by an authority for reasons of justice, public safety, public order or health . . ."

the government approval and permission prescribed for the practice of non-Catholic forms of worship by the laws already mentioned.

The issue of constitutionality was raised by the defence, which alleged that articles 2 and 3 of the Act of 24 June 1929 and articles 1 and 2 of the royal decree of 28 February 1930 were in conflict with articles 8, 19 and 20 of the Constitution.

In the court proceedings the President of the Council, represented by the Advocate-General's Office on the one hand, and Mr. R. F. on the other, entered an appearance.

The preliminary objection raised by the Advocate-General's Office and rejected by the court is of no interest in this context, and accordingly only the part of the court's decision dealing with the merits will be summarized.

The court stated that the decision was grounded "on the establishment of a clear distinction, which is the foundation of all that follows, between the freedom to practise non-Catholic forms of worship as a pure manifestation of religious faith, and the organization of the various denominations in their relations with the State". This logical distinction found legal confirmation in articles 8 and 19 of the Constitution, which differ both in content and in their position in the text of the Constitution, the one appearing under the heading "Fundamental Principles" and the other under that of civil relations and, more specifically, in the part relating to freedoms. Under article 19, the Constitution recognizes that *everyone* has the right to make profession of his own religious faith in any form whatsoever, personally or as a member of an association; to advocate the doctrines thereof, and to practise its worship in private or in public, subject to the only, and fully understandable, limitation that the religion concerned should not manifest itself in rites which offend public morality. The wide scope of this article, the court pointed out, embraces all manifestations of a religion, including the opening of temples and oratories and the appointment of ministers, as an essential prerequisite for the public practice of that religion.

In article 8, the framers of the Constitution considered "religious denominations also from the entirely different standpoint of their organization according to their own statutes and the regulation of their legal relations with the State". Under article 8, religious denominations other than Catholic are free to organize themselves according to their own statutes, with the obvious proviso that the latter should not conflict with the legal order of the State. Article 8 further stipulates that the relations of such denominations with the State are to be governed by law on the basis of agreements with their respective representatives. "But the institution of such relations, being designed to give civil effect to the acts of the ministers of a denomination and to provide various facilities, must for these very reasons be of an optional and not a compulsory nature."

Where this option is exercised, "it is evident that, just as the religious denomination derives advantages from the resultant rules, it must likewise observe the limitations which, in the State's interest, are the logical concomitant of those advantages and which, in their turn, must be such as not to violate the rights already assured by the Constitution. It is therefore wholly lawful and in accordance with the spirit of the Constitution that, where the acts of ministers of non-Catholic denominations and the opening of temples or oratories are to be recognized as legally valid, . . . the appointment of ministers of religion and the institution of temples or oratories should, for these purposes and for these purposes alone, be subject to the recognition and control of the State through the provisions for approval and permission. It follows that, in the absence of any laws enacted pursuant to article 8 of the Constitution, the existing provisions, such as those challenged, should in the meantime be regarded as valid and not in conflict with the Constitution itself, if and in so far as they govern civil effects and do not encroach upon the freedom to practise a religion.

"Accordingly, all the arguments laid before the court by the State Advocate's Office fail."

After refuting the argument on which the State Advocate's Office had based its defence, the court's decision continued: "In so far as regards the application of the foregoing to the specific content of the provision challenged, there is no ground for the assertion that article 3 of the Act of 24 June 1929 conflicts with the rules of the Constitution to which reference has been made. The two paragraphs into which this article is divided are regarded as a single whole, the one as a function of the other, so that the obligation to communicate the appointment of ministers of non-Catholic denominations to the competent minister for approval should be considered sanctioned if and in so far as the religious denomination concerned seeks to derive from such appointments certain effects within the scope of the state legal order; and the provision of the second paragraph, to the effect that the acts of ministers of religion who have not been approved cannot be recognized as having any civil effects, serves to confirm that the content and spirit of the first paragraph have that meaning. Thus article 3 of the Act, while on the one hand it leaves unimpaired the free practice of the religion (in that it does not exclude the appointment of an unapproved minister of that religion, but merely provides that acts performed by him shalll be without civil effects), is logically consistent with that part of article 8 which refers to the legal regulation of relations between the State and non-Catholic denominations.

"With regard to article 1 of the royal decree of 28 February 1930, it must be considered that, since this article stipulates in general terms that permission is needed to open temples and oratories, it covers not merely those cases in which such permission is made necessary in order to secure certain advantages, such

as, for example, that provided for in article 4 of the same decree,[1] but also *the case of the opening of the temple as a means for the independent profession of a religious faith*, regardless of any relations with the State. Hence, it is only *in relation with this second point* that *article 1 must be held unconstitutional.*[2]

"*Article 2 of the decree must be held unconstitutional as a whole*,[3] since it makes the exercise of freedom to celebrate religious ceremonies and other religious observances in buildings open for worship subject to the condition that the meeting must be presided over or authorized by a minister of religion whose appointment has been approved by the competent minister: a condition which does not involve the question of civil effects, and which conflicts with the freedom amply guaranteed by article 19 of the Constitution."

3. *The right of everyone who works "to just and favourable remuneration"* and *the right of everyone, without any discrimination, "to equal pay for equal work"*, proclaimed in article 23, paragraphs 3 and 2 respectively, of the Universal Declaration and affirmed in articles 36 and 37 of the Italian Constitution,[4] were fully confirmed in decision No. 2283, of 26 June 1958, of the Court of Cassation (*Il Foro Italiano*, 1958, first part, pp. 1075 *et seq.*), which confirms a decision of the Naples Court of Appeal.

The Supreme Court, in its decision, upheld the decision of the Naples Court of Appeal "which, using agreements of a private law character only as a yardstick of just remuneration, has strictly adhered to the legal principle repeatedly enunciated by this court in regard to this subject,[5] stating that while it is true that the representation of members of associations concluding collective agreements is not a representation of interests but merely a legal representation, inasmuch as it draws its life and foundation from the agency powers vested in the association, so that the conclusion of post-corporative collective contracts must be held binding only on the members of associations participating in the negotiations; nevertheless, when the clauses of the collective agreement go beyond the particular sphere of the contingent interests of the associates and touch upon the general and superior socio-economic contract of the labour relationship on which the worker relies for adequate and sufficient means for supplying his own vital needs and those of any dependent relatives, such clauses may serve the court as a yardstick to determine whether the remuneration should be considered sufficient or not."

In dealing with this issue, the court stated: "It was considered that the reference to wage rates included in the collective contracts is necessary chiefly in order to guarantee the minimum sufficient payment guaranteed to the worker by article 36 of the Constitution, and obviously requires individual contracts to conform to this principle; consequently, where individual wage agreements are found, as in the present instance, to conflict with that basic rule, the court is bound, upon application, to adjust the remuneration, having regard to all the particular circumstances of the case before it."

The Supreme Court's decision goes on to refute the appellant's argument that article 36 of the Constitution assured sufficient payment only to the head of the family and was therefore without legal effect in the case of the female worker in question who at the time of the employment at issue was a minor living with her parents and thus had no household of her own.

The Supreme Court held that "acceptance of such an argument would in the last analysis violate the spirit, and even the letter, of the provision in question."

Where it appears certain and evident that, through a violation of the mandatory constitutional rule, "the principle of just and sufficient remuneration commensurate with the work done has been flouted, the proven inadequacy of remuneration, which affects and impairs a perfect subjective right, cannot be justified on any ground, much less on that of the family status of the male or female worker; for, even considering the fairness and sufficiency of the remuneration solely from the standpoint of the worker's personal needs, it is obvious that the latter, as an individual and thus as an element apart from his family group — which may even be non-existent or not economically dependent on him — has the right to claim the economic treatment to which he is entitled under the Constitution having regard to his personal needs.

"If, therefore, the fact that the worker is a daughter living with her parents is to be used as a pretext for adjusting the remuneration to reflect the difference between the working woman's position and that of a male worker, it is not superfluous to recall that the framers of the Constitution themselves introduced, in plain antithesis to the widespread disposition to institute differential rates of pay, the fundamental provision in article 37 that working women have the same rights as men and are entitled to equal pay for equal work.

"And it does not appear that there can be doubt as to the mandatory character of this rule, since the principle it establishes is, by reason of the categorical nature of its wording, a constitutional guarantee which creates a perfect subjective right of working women.

"Indeed, since this rule does not make its practical

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[1] Article 4 reads:

"Ministers of a religion permitted in the kingdom, whose appointment has been approved under article 3 of the Act, may without any interference from the civil authorities take collections within and at the entrance to buildings intended for the use of their religion."

[2] Italics inserted.

[3] Italics inserted.

[4] See *Yearbook on Human Rights for 1947*, p. 166.

[5] See decisions of the Court of Cassation reported in *Yearbook on Human Rights for 1952*, pp. 159-61, and the similar decisions of other tribunals in *Yearbook on Human Rights for 1953*, pp. 162 *et seq.*

application dependent upon the future enactment of particular provisions of law, and since, by reason of the conditions it lays down and the fact that it clearly complements the preceding article 36, it takes the form of a direct order intended to influence and act directly upon the economic balance of employer-employee relationships, it may be regarded as an inter-subjective rule — i.e., as a rule intended directly to regulate relations between the subjects to whom they are addressed."

JAPAN

NOTE[1]

I. LEGISLATION

Act amending the Prostitution Prevention Act (Act No. 16, of 25 March 1958); Act concerning Women's Guidance Homes (Act No. 17, of 25 March 1958)

The Prostitution Prevention Act (Act No. 118, of 24 May 1956)[2] has been in force since 1 April 1957, with the exception of its penal provisions and some others, which constitute important parts of the Act and which entered into force on 1 April 1958 together with the Act amending the Prostitution Prevention Act. This amendment establishes a new system of guidance which is not a criminal but a security provision having the purpose of correcting the woman's tendency to habitual prostitution and aiding prostitutes in their rehabilitation in society. Under the amended Act, when the sentence of penal servitude or imprisonment for committing an offence laid down in article 5 of the Prostitution Prevention Act (solicitation, etc.) is suspended for an adult woman, she may be put under guidance and accommodated in a women's guidance home and given the guidance necessary for her rehabilitation. In this connexion it should also be mentioned that the Act concerning women's guidance homes (Act No. 17, of 25 March 1958), containing basic provisions concerning accommodation, institutions and methods of guidance and other details, has been adopted and put into force.

II. COURT DECISIONS

1. *Freedom of Expression and Restrictions on Journalistic Activities in Courtrooms*

Article 215 of the Rules of Criminal Procedure (Supreme Court Rules No. 32 of 1948) provides: "No photographing, tape recording or broadcasting over the radio or otherwise in the open court shall, without the permission of the court, be conducted unless otherwise provided." The Supreme Court stated in its ruling of 17 February 1958 in respect of this article that the principle that newspapers should report the truth constitutes freedom of expression as provided for in article 21 of the Constitution and that, needless to say, activities necessary for obtaining materials for newspapers for such reporting should be admitted. But such freedom could not be limitless, and even if the activities were for the purpose of reporting the conditions of the courtroom to the public they could not of course be allowed if they disturbed the order of the court and harmed the rightful interests of the accused and of those who were concerned in the case, without due reason. Depending upon the time, place, and other circumstances, taking photographs, etc. in the courtroom could cause such undesirable results; consequently, article 215 of the Rules of Criminal Procedure, providing that such activities shall not be carried out as long as they are not permitted by the court at its discretion, was not unconstitutional.

2. *Freedom of Travel Abroad and its Restriction in the Interests of the Public Welfare*

The Supreme Court, in its judgement rendered on 10 September 1958, stated that the freedom to travel abroad included in the freedom to move to a foreign country guaranteed in article 22, paragraph 2, of the Constitution could not be admitted without limitation, but was to be subjected to reasonable restriction in the interests of the public welfare. Article 13, paragraph 1, of the Passport Act providing that the Minister for Foreign Affairs may refuse to issue a passport to a person of whom there is sufficient reason to suppose that he intends to perform acts that would materially and directly harm the interests or public security of Japan, could be regarded as laying down a reasonable restriction on freedom to travel abroad in the interests of public welfare, and the court decided that this provision of the Passport Act was constitutional.

III. OTHER DEVELOPMENTS

1. *System of Legal Aid*

The State has provided nothing towards legal aid to the poor in civil suits other than the temporary release from payment of the costs of the suit which is provided for in the Code of Civil Procedure. The rest has been left to the voluntary legal aid activities of a juristic person, the Legal Aid Association, which is a non-governmental organization set up by the Japanese Federation of Bar Associations in 1952, but such aid has not been sufficient to guarantee the exercise of the rights of the poor when resorting to lawsuits.

From 1958, however, legal aid to persons of no means was strengthened, as a link in the policy of social security; by a budgetary appropriation for the fiscal year 1958 (1 April 1958 to 31 March 1959) a

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[1] Information kindly furnished by Mr. Saizo Suzuki, Director of the Civil Liberties Bureau of the Japanese Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Yearbook on Human Rights for 1956*, p. 145.

subsidy of 10,000,000 yen was granted from the National Treasury to the above-mentioned association for its legal aid work.

The subsidy is only intended for the payment for aid in lawsuits given by the Association; for legal consultation, bar associations have to be approached for their services. The Legal Aid Association is planning to consolidate and develop its legal aid work by setting up branches in various localities throughout the country.

The recipient of the legal aid given by the bar associations must be a person who fulfills the following three requirements: (1) he is a person of no means; (2) in the lawsuit there are prospects of his winning the case; (3) it is appropriate in the light of the purpose of the aid to give it to him. Whether the person to be aided has any means is not to be determined on the uniform basis of his income; instead he must be in such a condition that his protection under the Daily Life Protection Law is necessary, or that he finds it difficult to live and it is feared that his living will be threatened by his paying the costs of the suit.

Whether or not aid should be given is determined, on the application of the person desiring it, through examination by the Legal Aid Examination Committee made up of lawyers, social workers, etc.

The aid covers the costs of the action, lawyer's fees and security money, in other words nearly all the expenses necessary for an action. The aid is given by payment of such expenses by the Legal Aid Association in advance and in principle they are to be repaid by the person aided after the conclusion of the case.

The cases of legal aid handled by the Legal Aid Association from 1 April to 31 December 1958 are as follows:

Number of applications for aid....... 457
Number of decisions for aid......... 174
Number of cases in which aid was deemed unnecessary............... 146
Number of pending cases............ 137

2. *Tenth Anniversary of the System of Civil Liberties Commissioners*

The system of Civil Liberties Commissioners was inaugurated in 1948, and 1958 saw its tenth anniversary.

The number of commissioners at the time of inauguration was as small as 150, but it had increased to 6,531 by the end of 1958. They are residents of cities, towns and villages all over the country and are working for the protection of the human rights of the residents in their respective regions.

For the mutual liaison and co-ordination of the work of civil liberties commissioners numerous Civil Liberties Commissioners' Consultative Assemblies have been established throughout the country, one Federation of Civil Liberties Commissioners Consultative Assemblies for each "To", "Do", "Fu" or prefecture, and an All-Japan Federation of Civil Liberties Commissioners' Consultative Assemblies. A grand national meeting of Civil Liberties Commissioners was held on 10 December 1958 at Sankei Hall, Otemachi, Tokyo, in commemoration of the 10th anniversary, of the system of commissioners.

3. *Trend of Cases of Violations of Human Rights*

Cases of violations of human rights are being handled by the Civil Liberties Bureau of the Ministry of Justice, and legal affairs bureaux and district legal affairs bureaux under the former, and the civil liberties commissions throughout Japan, and in 1958 it was a characteristic trend that cases of violations of human rights by mass violence accompanying labour disputes, etc., have frequently been taken up.

LEBANON

NOTE

The Ministry of Foreign Affairs of Lebanon has informed the United Nations Secretariat that it has no new information to furnish which would be of interest to the *Yearbook on Human Rights for 1958.*

LIBERIA

AN ACT TO AMEND THE PENAL LAW TO MAKE RACIAL SEGREGATION AND DISCRIMINATION A CRIME AND TO PRESCRIBE THE PUNISHMENT THEREFOR

approved on 14 February 1958 [1]

Whereas, the exercise and enjoyment of freedom and liberty as an inherent and inalienable right of all men was the great permeating and activating purpose and force that brought the pioneers of this nation from the Western Hemisphere to found this nation in consequence of which they came here, suffered, fought, bled and died to find a home where they could worship God free from molestations and enjoy the liberty and benefits of life without discrimination; and

Whereas, certain foreign concessionaires are practising racial segregation and discrimination in many forms against the people of Liberia upon their own soil by dismissing and/or refusing to renew the contracts of their employees who marry Liberian women, or women of a race different from their; and by fostering racial segregation and discrimination in schools, in churches, in hospitals and other businesses; and

Whereas, such attitudes, practices and acts contravene and outrage the very purpose for which this nation was founded and is an assault upon, and an insult to the honour, dignity and self-respect of the people of Liberia against which every Liberian must fight until it is completely exterminated,

It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. Chapter 9 of the penal law is hereby amended by the addition thereto of a new section 263, which shall read as follows:

Section 263

RACIAL SEGREGATOIN AND DISCRIMINATION

1. Any person, concessionaire, syndicate, corporation or firm, being an employer, who:

(*a*) Terminates the services of any employee, because such an employee consummates marriage with an individual of a race different from his; or refuses to renew or extend the contract of any employee because such an employee consummates marriage with an individual of a race different from his; or performs any act which has a tendency to affect the job relationship or job status of any employee because such an employee consummates marriage with an individual of a race different from his; or

(*b*) Refuses to admit into a hotel, club house, guest house, restaurant, bar, hospital, school, place of worship or other social or religious institution, persons of a race different from the race of the owners, proprietors, or managers, when such person or persons offer to comply with the general terms and conditions of the institution; or

(*c*) Assigns people of a race different from that of the owners, proprietors or managers of a hotel, club house, guest house, restaurant, bar, hospital, school, place of worship or other social or religious institution to accommodations different from those assigned to people of his own race, should such people be able to meet the general terms and conditions of the institution; or

(*d*) Refuses to permit their employees and servants to be decently clad and shod; or

(*e*) Performs any act or wilful omission or conduct not specifically mentioned in this section, that can be construed as indicating an attitude of race superiority, segregation or discrimination,

is guilty of the crime of racial segregation and discrimination.

2. In an action under sub-section 1 (*a*) of this section, the presumption shall arise that such employer acted against his employee because of the marriage of the employee to an individual of a race different from his.

3. Any person, concessionaire, syndicate, corporation or firm not a private individual found guilty of the crime racial segregation and discrimination, shall be punishable, for the first offence, by a fine of fifteen thousand dollars; for the second offence, by a fine of thirty thousand dollars and the representative of the organization or business shall be adjudged an undesirable alien; for the third offence, the business of such person, concessionaire, syndicate, corporation or firm shall be closed down and not permitted to operate; the organization or business shall be adjudged dangerous to the liberty, honour and self-respect of the people of Liberia and as a measure to ensure the safety of the State, the right, franchise, agreement, or contract, if any, of such organization or business, to operate in the Republic of Liberia, shall be annulled by decree

[1] Published in *Acts Passed by the Legislature of the Republic of Liberia during the Session 1957-58*, by the Government Printing Office, Monrovia, 1958.

of a court of equity upon petition of the Attorney-General.

4. Any private individual found guilty of the crime racial segregation and discrimination shall be punishable for the first offence by a fine of one thousand dollars; for the second offence, by a fine of five thousand dollars; and for the third offence, in the case of foreigners by a fine of ten thousand dollars and declared an undesirable alien; for the third offence and any subsequent offences in the case of Liberians, by a fine of ten thousand dollars and imprisonment for a period of one year.

5. Any person, concessionaire, syndicate, corporation or firm engaged in business of any and every kind in Liberia shall be required, within thirty days after the effective date of this Act, to file a declaration with the Department of Justice, upon oath, that, as a matter of policy, they will not indulge in nor subscribe directly or indirectly to any practice or practices defined by the provisions of this Act as racial segregation and discrimination. Upon failure or refusal on part of any alien, concessionaire, syndicate, corporation, company or firm to file such declaration within the time prescribed, the manager or proprietor of such an organization or business shall be declared an undesirable alien and deported; and until the above mentioned declaration has been filed, no successor to such a manager or proprietor shall be granted a visa to enter the country; nor will such an organization or business be permitted to continue its operations in the Republic of Liberia. Upon failure or refusal on part of any Liberian concessionaire, syndicate, corporation, company or firm to file such a declaration within the time prescribed, such an organization or business shall not be permitted to continue its operations in the Republic of Liberia until the above-mentioned declaration has been duly filed.

6. In order effectively to ensure that the provisions of this section shall be faithfully observed and enforced all employers of every concessionaire, syndicate, corporation, company or firm shall register, in the office of the Registrar of Deeds, every contract of employment; and, should it be found that there is a provision or that there are provisions in any employment contract tending to violate the provisions of this Act, directly or indirectly, or that there is a secret parole agreement between the employer and the employee to violate any of the provisions of this section, such a contract shall be considered void, the employee holding such a contract, in the case of an alien, shall be declared an undesirable alien and deported and in the case of a Liberian, shall be fined in the sum of five thousand dollars. In each such case, the employer shall be prosecuted for perjury, and subjected to a fine of five thousand dollars and imprisonment for a period of three months. Upon failure or refusal on part of any employer to register every contract of employment of his employees as prescribed in this sub-section, such employer shall be subjected to a fine of one thousand dollars, and the contract of employment shall be voidable.

Section 2. This Act shall take effect immediately and be published.

Any law to the contrary notwithstanding.

CRIMINAL PROCEDURE LAW [1]

Chapter 1

Preliminary Provisions

. . .

4. *Rights of defendant in a criminal action.* In a criminal action the defendant is entitled:

(*a*) To be seasonably furnished with a copy of the charge;

(*b*) To be confronted with the witnesses against him;

(*c*) To have compulsory process for obtaining witnesses in his favour;

(*d*) To have a speedy, public and impartial trial, and to have a trial by jury except where otherwise provided by statute;

(*e*) To be heard in person or by counsel or both.

. . .

Chapter 3

Arrest

. . .

52. *Issuance of warrant of arrest upon complaint.* If it appears from the examination of the complainant and his witnesses that there is probable cause to believe that an offence has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it.

. . .

54. *Warrant; form.* The warrant shall be signed by the clerk of the magistrate's court upon order of the magistrate, or by the justice of the peace, and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall name the offence charged and shall contain the substance of the complaint. It shall command that the defendant be arrested and brought before the officer issuing it or any other magistrate or justice of the peace.

55. *Warrant; execution.* The warrant shall be exe-

[1] The Criminal Procedure Law is title 8 of the Liberian Code of Laws of 1956 (see *Yearbook on Human Rights for 1956*, p. 150, and *Yearbook on Human Rights for 1957*, pp. 171-7), published by Cornell University Press, Ithaca, New York, U.S.A.

cuted by the arrest of the defendant at any place within the jurisdiction of the republic, by a constable, police officer or by some other officer authorized by law. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offence charged and of the fact that a warrant has been issued.

. . .

57. *Arrest with or without warrant.* Police and detective officers and constables may arrest or cause to be arrested, with or without warrant, any person in the act of violating any law or aiding and abetting any such violation, or who may reasonably be suspected of the commission of a crime.

58. *Appearance before the magistrate or justice.* An officer making an arrest under a warrant issued upon a complaint shall take the arrested person without delay before the issuing magistrate or justice of the peace. Any person making an arrest without a warrant shall take the arrested person without delay before the nearest available magistrate or justice of the peace. When a person arrested without a warrant is brought before any magistrate or justice, a warrant shall be issued forthwith upon the oath of the person making the arrest.

Chapter 4
Preliminary Examination

70. *Statement by magistrate or justice of the peace.* When the defendant is accused of having committed an offence which is not triable by the magistrate or justice of the peace, the magistrate or justice of the peace shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail in a proper case.

71. *Preliminary examination.* The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the magistrate or justice of the peace shall forthwith hold him to answer in the Circuit Court. If the defendant does not waive examination, the magistrate or justice of the peace shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him. . . .

[Chapter 5 deals with bail in criminal actions.]

. . .

Chapter 9
Process upon Indictment or Information

160. *Issuance of warrant.* Upon the receipt of an indictment, the court shall forthwith order the clerk to issue a warrant for the arrest of the defendant or defendants . . .

161. *Form of warrant.* The form of the warrant shall be as provided in section 54. It shall be signed by the clerk, shall describe the offence charged in the indictment, and shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

162. *Execution.* The warrant shall be executed as provided in section 55. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail where the judge is not available, before a commissioner of bail. The officer executing the warrant shall make return thereof to the court.

. . .

Chapter 10
Arraignment and Preparation for Trial

180. *Arraignment.* Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be furnished with a copy of the indictment or information at the time of his arrest or, if he is summoned, when he appears. In any case he must have been seasonably furnished with a copy of the indictment or information before he is called upon to plead.

181. *Assignment of counsel.* If the defendant appears in court without counsel, the court shall advise him of his right to counsel. If the court is satisfied that the defendant is financially unable to retain counsel, it shall assign the county Defense Counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel.

182. *Pleas.* A defendant may plead not guilty or guilty. The court may refuse to accept a plea of guilty, and shall not accept such plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead, the court shall enter a plea of not guilty.

. . .

189. *Defendant's counsel and payment of expenses.* If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the Republic. In that event the proper authority of the government shall be notified and cause the payment to be made accordingly.

. . .

194. *All process in all criminal actions free.* Neither party to a criminal action in any court in this Republic shall be required to pay any fee for the issuance of any subpoena or other process.

. . .

Chapter 13

TRIAL

260. *Right to trial by jury.* The defendant in any criminal action, except a prosecution for a petty offence, or petty larceny, or a prosecution by information, has a right to a trial by jury.

261. *Presence of defendant.* The defendant shall be present at the arraignment, at every stage of the trial including the impanelling of the jury and the return of the verdict, and at the imposition of sentence.

. . .

268. *Defendant presumed innocent; reasonable doubt requires acquittal.* A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

. . .

274. *Defendant as witness.* The defendant may testify as a witness in his own behalf, in accordance with the rules governing other witnesses; provided, however, that he cannot be compelled to testify and he cannot be compelled to answer questions which may incriminate him. No inference shall arise from failure of the defendant to testify.

. . .

Chapter 16

JUDGEMENT AND SENTENCE

. . .

321. *Sentence.* Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or alter the bail. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any facts in mitigation of punishment.

. . .

[Chapter 17 deals with probation, and chapter 18 with appeals.]

Chapter 20

TRIAL IN COURTS OF JUSTICES OF THE PEACE AND MAGISTRATES

430. *Appearance of defendant.* When a defendant brought before a justice of the peace or magistrate is charged with committing an offence within the jurisdiction of the justice or magistrate to try, the justice or magistrate must immediately inform him of the charge against him and of his right to the aid of counsel, and must give the defendant a reasonable opportunity to send for counsel if defendant desires counsel.

At the call of the case, the complaint against the defendant must be clearly read to him and he must be required to plead thereto.

. . .

436. *Interpreter.* Whenever it is necessary to examine as a witness any person not having a knowledge of the English language, the justice or magistrate shall appoint an interpreter. The provisions of sections 561, 760 of the Civil Procedure Law relating to the oath or affirmation of an interpreter are applicable to an interpreter appointed under this section.

. . .

Chapter 22

SEARCH AND SEIZURE

480. *Authority to issue warrant.* A search warrant authorized by this chapter may be issued by a magistrate, justice of the peace or clerk of a court within the magisterial area or county wherein the property sought is located.

481. *Grounds for issuance of warrant.* A warrant may be issued under the provisions of this chapter to search for and seize any property:

(*a*) Stolen or embezzled; or

(*b*) Designed or intended for use or which is or has been used as a means of committing a criminal offence or;

(*c*) Upon suspicion of an officer of the law or private individual.

482. *Issuance and contents.* A warrant shall issue only on an affidavit sworn to before the magistrate, justice of the peace or judge and establishing the grounds for issuing the warrant. If the magistrate, justice of the peace or judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the Republic authorized to enforce or assist in enforcing any law thereof. It shall state the grounds of probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or the place named for the property specified. The warrant shall direct it to be served in the daytime but if the affiants are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the magistrate, justice of the peace or judge to whom it shall be returned.

483. *Execution and return with inventory.* The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and receipt for the property taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possessions or premises the property is taken, if they are present, or in the presence of one credible person other than the applicant for the warrant or the person from whose possession or premises the property is taken, and shall be verified by the officer. The magistrate, justice of the peace or judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property is taken and to the applicant for the warrant.

484. *Motion for return of property and to suppress evidence.* A person aggrieved by an unlawful search and seizure may move the court in which the property is seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

(*a*) The property was illegally seized without warrant, or

(*b*) The warrant is insufficient on its face, or

(*c*) The property seized is not that described in the warrant, or

(*d*) There was not probable cause for believing the existence of the grounds on which the warrant was issued, or

(*e*) The warrant was illegally executed.

The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be restored unless otherwise subject to lawful detention. The motion to suppress evidence may also be made in the county where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

. . .

[Chapter 23 deals with prisons and prisoners, and chapter 24 with extradition.]

. . .

MEXICO

HUMAN RIGHTS IN MEXICO IN 1958 [1]

I. INTRODUCTION

In 1958, as in the years immediately preceding it, no constitutional reform was introduced relating to the rights set forth in the Universal Declaration of Human Rights, as all of these are not only provided for but indeed exceeded by the guarantees offered by the Political Constitution of the United Mexican States to every individual, without distinction as to race, sex, nationality or creed.

It is only natural, therefore, that both the acts, decrees and international agreements promulgated during 1958 and the judgements of the Supreme Court of Justice which have any bearing on human rights are, as can be seen from the passages cited hereunder, imbued with the spirit underlying the Universal Declaration.

The policy developed by the previous government to promote good labour-management relations, based on an advanced concept of social justice, has been even more keenly pursued during the present regime, for the present president of the republic was the initiator of that policy in the Secretariat of Labour.

Two principal results have been obtained: the workers, through their trade unions, and the employers negotiate collective labour contracts directly and the contracts are subsequently given force of law; and any disputes arising between the two sides are in most cases resolved by negotiation designed to secure satisfactory solutions for the parties, with the State intervening solely as a conciliator.

II. LEGISLATION

The new legislative provisions and the amendments to existing legislation which entered into force during 1958 and which have a bearing on the Universal Declaration of Human Rights, by contributing to its development, are the following:

1. *Statute of the International Atomic Energy Agency* (published in the *Diario Oficial* of 23 June 1958)

Article III, dealing with the functions of the Agency, stipulates that the Agency is authorized "4. To encourage the exchange and training of scientists and experts in the field of peaceful uses of atomic energy." This provision may be regarded as consistent with article 26, paragraph 1, *in fine*, and paragraph 2, *in fine*, of the Universal Declaration of Human Rights. The Statute also provides that, in carrying out its functions, the Agency shall not make assistance to members subject to any political, economic, military, or other conditions incompatible with the provisions of the Statute. This provision is in harmony with article 2, paragraph 2, of the Universal Declaration of Human Rights.

2. *Decrees introducing compulsory social insurance in the States of Nayarit, San Luis Potosí and Zacatecas and in the Territories of Baja California and Quintana Roo* (published in the *Diario Oficial* of 29 July 1958); *and in the State of Tamaulipas* (*Diario Oficial* of 29 July 1958).

Article 1, which is related to article 25 of the Universal Declaration of Human Rights, stipulates compulsory insurance against occupational accidents and diseases, as well as non-occupational diseases, maternity, disability, old-age, unemployment and death; article II extends to this insurance the relevant provisions of the Social Insurance Act and the related regulations.

3. *Decree stipulating compulsory collective labour contracts in the sugar, alcohol and similar industries* (published in *Diario Oficial* of 24 November 1958).

Article 22 of this Decree grants workers, in addition to the weekly rest day referred to in article 19, various other free days with pay during the year, and stipulates that, if they work on those days, they shall receive double pay, without prejudice to the provisions governing the official holiday and the weekly rest day; article 24 also grants them an annual paid leave of twelve days in the first year of service and of eighteen days in each following year.

Article 33 provides that it is expressly understood that equal payment shall be made for equal work, without taking into account sex or nationality, in conformity with article 123, paragraph 7, of the Constitution.[2]

Article 35 stipulates that, besides the medical treatment, supplies and compensation referred to in article 295 of the Federal Labour Act, workers sustaining industrial accidents shall be entitled to receive their full pay during the whole period of their disability, and that when the accident causes death or a

[1] Note kindly furnished by the Permanent Representative of Mexico to the United Nations. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1946*, p. 199.

permanent total or partial disability the compensation shall be calculated on the basis of their daily wage, bonuses, allowances and all other sums which may be paid to workers in consideration for their ordinary work.

Article 36 states that the medical services referred to in articles 52 and 53 shall be furnished by the employer until the complete cure of the worker or dependent concerned.

Articles 55 and 56 protect the wives of workers during confinement.

Article 56 requires employers to provide for the workers, free of charge, comfortable and hygienic living quarters; article 60 obliges them to furnish electric lighting for workers' meeting places, trade union halls, schools and the like; article 61 stipulates the provision of playing fields on favourable terms; article 62 requires them to make available premises to trade unions on favourable terms; article 65 requires undertakings owning sugar mills to maintain primary schools, while article 66 prescribes that they must finance the attendance of their workers and of the children of such workers who meet certain specified conditions at technical, industrial or practical courses in special centres in Mexico or abroad.

All the aforesaid provisions are in perfect accord with articles 25 and 26 of the Universal Declaration of Human Rights.

4. *Act concerning Government Secretariats and Departments* (published in *Diario Oficial* of 24 December 1958)

Article 2 provides that the Secretariat of the Interior must ensure, *inter alia*, that the public authorities comply with constitutional principles, especially in the matter of individual guarantees, and must also take the necessary administrative measures to that end; it must also ensure that printed publications and radio and television broadcasts and films maintain due respect for privacy, public peace and morality and personal dignity, and that they do not attack the rights of any person or instigate the commission of any offence or disturb public order.

Article 13 provides that the functions of the Secretariat of Public Education shall include the organization, supervision and development in official, incorporated or recognized schools, of pre-school, primary, and secondary education and urban, semi-urban, and rural teacher training, all of which is given in the schools specified in article 123 of the Constitution,[1] as well as of technical, industrial and commercial education and instruction in arts and crafts, including adult education, agricultural training with the co-operation of the Secretariat of Agriculture and Stock-breeding and of the Department of Agrarian Affairs, higher and professional education, and military and sports instruction in schools. The Secretariat of Education is also required to promote the establishment of scientific and technical research institutes, and of laboratories, observatories, planetariums, and other centres necessary for the development of education at all levels, and to grant scholarships to enable students of Mexican nationality to undertake research or complete courses abroad; it is also required to promote and secure from other authorities measures designed to serve the general interest of communities which adhere to their traditional or indigenous way of life, etc.

Article 14 requires the Secretariat of Health and Assistance, *inter alia*, to organize public assistance in the Federal District and Territories, to provide medical and social assistance to mothers and children, and to supervise assistance given by public or voluntary agencies; to ensure the social welfare of children up to the age of six, over whom the Secretariat exercises the guardianship duties vested in the State, to study, adapt and carry into effect the measures necessary to control contagious diseases, social scourges affecting health, alcoholism, drug addiction and other social vices, and begging; to take practical measures designed to safeguard the health and life of country and city workers, industrial hygiene and the observance and application of the provisions contained in article 123 and in the Federal Labour Act and its regulations; and finally, to study and order industrial health and safety measures for the protection of workers.

As can be seen, all of these provisions are consistent with articles 25 and 26 of the Universal Declaration of Human Rights.

III. DECISIONS OF THE SUPREME COURT OF JUSTICE: PRINCIPAL RULINGS WITH A BEARING ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, TAKEN FROM THE REPORT SUBMITTED TO THE COURT BY ITS PRESIDENT AT THE END OF 1958

1. *General Highways Act: the chapter relating to the use of roads is not unconstitutional*

It is incorrect to assert that this chapter limits the freedom to work, as it can be inferred from article 152 that the Act neither prevents road users from providing a service nor establishes insuperable difficulties for persons wishing to obtain the necessary permits or concessions, but solely seeks to ensure that every transport service on federal highways, being a public service, meets the necessary standards of efficiency and safety; moreover, national highways are for the common use of the public and therefore come within the public domain, which means that they cannot be used by private individuals freely but only subject to the conditions specified in the relevant legislation — i.e., those fixed in article 152 of the General Highways Act — which is designed not to limit the freedom of work nor of passage over the national territory but only to establish the necessary basis to ensure that the public service is furnished in a manner consistent

[1] See *Yearbook on Human Rights for 1946*, p. 199.

with the interests of the community. (*Amparo en revision* 7163/956; application of Alfredo Franco Cagiga.)

2. *Credits due to workers are excluded from proceedings relating to cession of property or bankruptcy. Article 97 of the Federal Labour Act is not unconstitutional*

Article 123 of the Federal Political Constitution[1] stipulates that, in case of cession of property or bankruptcy, the credits due to workers in respect of the last year of service shall have absolute preference over all other obligations. This means that the workers need not join in the bankruptcy and that, to ensure the satisfaction of their claims, they need only apply to the labour authorities, whose awards must not be subject to the assessments of the bankruptcy judge in the execution proceedings or permitted to accumulate alongside other claims against the bankrupt estate. Moreover, since claims for salary and allowances are legally regarded as maintenance claims, the need to pay them is urgent and permitting of no delay; the award determining the amount due should therefore be executed promptly and effectively for compliance therewith is in the public interest. Thus the resolution of the Conciliation and Arbitration Council which calls for the immediate disposal of such property as is necessary to secure the payment of workers' credits, in preference to all other obligations, is but a consequence of the exclusion of such credits from bankruptcy proceedings and of their absolute priority in all cases of forced cession of property, as stipulated in article 123, paragraph 23 of the Constitution; all this leads to the conclusion that article 97 of the Federal Labour Act is consistent with the constitutional provisions relied upon. (*Amparos en revision* 6846 and 7273 of 1957; motion of *Eje de ingenieros FNI*, in bankruptcy.)

3. *Completion of a notice of appeal*

If a court of appeal declines to examine the substance of a judgement solely on the grounds that no particulars have been furnished by the accused or his counsel to substantiate the appeal, the court holding that the law requires it to complete a defective list of grounds for appeal but that nothing can be defective unless it already exists, and that, in the total absence of any such list, it is impossible for the court to complete it, the court is violating the safeguards designed to protect the accused; for, while in a strictly logical or mathematical context such reasoning might be valid, the extension thereof to penal law is contrary both to the spirit of the law and to the principles which pervade our statute book, since in this context it is not certain that the total absence of a statement of grounds means that the appellant has no case; consequently, the judge of second instance, when confronted with an appellant's express challenge of a lower court's decision, must determine whether or not the law has been adhered to and can only uphold or vary the earlier ruling after having scrutinized it thoroughly. (Ruling unanimously adopted on 24 June 1958.)

[1] See *Yearbook on Human Rights for 1946*, p. 200.

4. *Right of petition: its respect by the authorities*

The effect of article 8 of the General Constitution of the Republic,[2] which affirms the right of petition, is that if a petitioner relies thereon in requesting that he be given the benefit of a conditional sentence and the responsible authority never gives a ruling on that point, such authority has violated a constitutional guarantee and the appeal must be allowed as a means of repairing the wrong caused. (*Amparo directo* 1249/57, on the application of Aurelio Poblano Cebada.)

5. *Conditional sentence: the judge may justifiably refuse it in cases of vagrancy*

Conviction for vagrancy implies the certainty that the defendant is of bad conduct and has no honest means of livelihood; accordingly, if the judge, in the exercise of the discretion vested in him by law, denies conditional sentence, despite the fact that the penalty may be less than two years' imprisonment, he is acting within the rules which govern that privilege and his decision, if justified and accompanied by a statement of grounds, does not violate articles 14 and 16 of the Constitution;[3] the appeal should therefore be denied. (*Amparo directo* 6376/57, on the application of Fernando Pizana Arredondo.)

6. *Right to be heard*

If a court of appeal, without hearing the appellant's case, declares an appeal lodged against the findings of a court of first instance unfounded, solely on the grounds that the appellant has not formulated a statement of grounds for his appeal, the declaration violates civic guarantees. (*Amparo directo* 6476/57; application by Casimiro Santoyo.)

7. *Weight of expert evidence*

If the judge does not accept expert evidence favouring the accused, holding that it is in clear contradiction with his other findings, he is not violating any individual guarantees, provided that he bases his decision on sound and logical reasons, for the judicial organ is not bound to accept expert opinions but is only required by law to weigh them against other elements adduced and considered as merely technical views, the cogency of which can be determined solely by the court itself. (*Amparo directo* 6961/57; application of Andres Barragan Ruiz.)

8. *Right of petition: article 8 of the Constitution*[4]

The pretext that a certain procedure must be followed before a reply to a petition can be given is not sufficient to excuse the silence of the responsible authority, which must notify that fact to the petitioner if it is not to incur liability for a breach of the Constitution. (*Amparo en revision* 4283/957; application of Miguel López Avila.)

[2] See *Yearbook on Human Rights for 1946*, p. 190.

[3] See *Yearbook on Human Rights for 1946*, p. 191.

[4] *Ibid.*, p. 190.

MONACO

NOTE[1]

I. ACTS

Five new Acts have been passed which supplement the existing legislation on the subject of the conomic and social rights of both wage-earning and self-employed workers:

1. *Act. No. 636 of 11 January 1958 (Journal de Monaco* No. 5234, of 27 January 1958) concerning registration of, compensation for and insurance against industrial accidents.

This Act amends and recodifies Monegasque legislation on the subject, which consists of the Basic Act No. 141, of 24 December 1930, and amendments thereto of 16 May 1946, 6 August 1947, 21 December 1950, 12 May 1951 and 11 April 1956.

This legislation is based on the principle of a lump-sum payment in compensation for injuries resulting from industrial accidents to manual workers and employees; it rests on the theory of liability which has been substituted for that of negligence.

The new text embodies the rule, already adopted in jurisprudence, which extends the benefit of legal protection to cases of accidents occurring to manual workers on their way to work from their place of residence or from the place where they normally take meals, and vice versa.

Furthermore, the new law increases the amount of compensation payable.

In cases of temporary disablement the daily compensation, which was previously fixed at 50 per cent of a day's wages, is henceforth fixed at 66.66 per cent from the 29th day after that on which the accident occurred.

In cases of permanent disablement compensation takes the form of a pension equal to:

(*a*) Where the disablement does not exceed 50 per cent, half the loss in yearly earnings resulting from the accident;

(*b*) Where it exceeds 50 per cent, to one and a half times the loss in such earnings resulting from the accident.

In the case of permanent total disablement the amount of the pension, calculated as above, is increased by a sum to be fixed by ministerial decree after consultation with the Special Commission on Industrial Accidents.

When the accident results in death the law provides:

(*a*) For a pension equal to 30 per cent of the yearly wage, payable to the surviving spouse unless there has been a divorce or legal separation, on condition that the marriage had taken place prior to the accident;

(*b*) For a pension payable to any legitimate, natural or adopted children, in the amount of 15 per cent if there is only one child, 25 per cent if there are two, 35 per cent if there are three and so on, with an additional 10 per cent for each child under the age of sixteen.

In the case of children who have lost both father and mother at the time of the accident or during the ensuing three years, the pension shall be increased to 20 per cent for each child.

The total of the pensions cannot in any case exceed 85 per cent of the yearly wage. If it exceeds that amount a proportionate reduction is effected.

2. *Act No. 637 of 11 January 1958 (Journal de Monaco* No. 5234, of 27 January 1958), setting up and organizing a labour medical service

This Act, which is based on the principles of the Universal Declaration of Human Rights, is designed to protect workers from danger to their health arising from the actual conditions of their work and to defend them against the psychological effects of mechanization.

For that purpose, a Labour Medical Office has been established. Its role is to be essentially preventive. Its functions include a thorough medical examination of every manual worker before a work permit is issued to him, periodical check-ups, and supervision of general sanitary conditions and security measures in industry.

A committee presided over by the Government Councillor for the Interior is responsible for the administration and functioning of the office.

Technical medical supervision is exercised by the General Commissioner of Health.

3. *Act No. 639 of 11 January 1958 (Journal de Monaco* No. 5234, of 27 January 1958), amending the status of workers' representatives in industrial undertakings

The purpose of this Act is to safeguard the personal situation in industrial undertakings of representatives

[1] Note received through the courtesy of Dr. Louis Aureglia, National Councillor, Monte Carlo, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

elected by their fellow-workers in accordance with Act No. 459, of 19 July 1947.

It lays down the following rules:

"*Single article.* The provisions of article 16 of Act No. 459, of 19 July 1947, are hereby amended as follows:

"'*Art. 16.* No workers' representative or alternate may be dismissed without the consent of a commission consisting of: (*a*) the Labour Inspector, who shall be chairman; (*b*) two representatives of the employers' association relating to the employer's occupation; (*c*) two representatives of the trade union relating to the occupation of the workers' representative, provided that they fulfil the eligibility requirements laid down in article 7.

"'Nevertheless, in case of serious misconduct the head of the undertaking shall be empowered immediately to suspend the person concerned pending the decision of the commission.

"'Decisions by the commission shall be without prejudice to any recourse by the parties to the competent authorities.'

"The provisions of this article also apply to candidates for election as workers' representatives two weeks before the date of the election."

4. *Act No. 643 of 17 January 1958 (Journal de Monaco* No. 5234, of 27 January 1958), laying down conditions of work and payment in respect of legal holidays.

The following days are legal holidays, apart from Sundays, and compensatory days: 19 November (the birthday of the Sovereign Prince), 1 January, Easter Monday, 1 May (Labour Day), 15 August (Assumption), 1 November (All Saints' Day) and 25 December (Christmas Day). Workers should be paid for these days although they do not work on them.

Other free days may be provided for by collective agreements.

Manual workers of establishments and services which must function without interruption, who are called upon to work on legal holidays, are entitled, in addition to their wages, to an equal sum as compensation or to paid compensatory time off.

The head of a business, after consulting the personnel, is empowered to make up the time lost on legal holidays. Such make-up days shall be paid on the basis of 1/25 of the monthly salary for staff paid by the month and of the hourly wage plus the amount fixed for overtime for staff paid by the hour.

5. *Act No. 644 of 17 January 1958 (Journal de Monaco* No. 5234, of 27 January 1958), concerning retirement benefits for self-employed workers.

This Act, which is a complete innovation, extends to all self-employed workers the system of retirement benefits established by Act No. 455, of 27 June 1947, which applies to wage-earning workers only.

It marks the transition from "retirement by categories" to "national retirement".

Artisans, tradesmen, manufacturers and members of the liberal professions all benefit by the new retirement scheme.

The right to retirement benefits is accompanied by the obligation to pay contributions.

Pensions are payable from the age of sixty-five.

A "uniform" retirement benefit shall be payable on the basis of a period of professional activity prior to the passage of the Act of not less than 180 months' work, sixty of them after the age of fifty, or of twenty-five years of activity.

In future, pensions shall be "proportional" and shall be calculated on the basis of the contributions paid by the person concerned.

II. SOVEREIGN ORDINANCES

By sovereign ordinance No. 1792, of 7 May 1958 (*Journal de Monaco* No. 5249, of 12 May 1958), a procedure of "appeal against administrative action" is established.

The following is the text of this ordinance, which concerns the protection of persons under administration from arbitrary administrative proceedings:

"*Art. 1.* Ordinances necessary for the execution of Acts and decisions or measures relating to administrative matters, except in cases of infringement of the rights and liberties guaranteed in chapter II of the Constitution,[1] which are within the competence of the Supreme Court, may be submitted to the Prince by any person who can prove a direct personal interest, for annulment on the grounds of violation of the law or abuse of power.

"*Art. 2.* The right to appeal will lapse after two months from the day of the action on which it is based or from the day on which the person concerned had knowledge of that action.

"*Art. 3.* The appeal shall not have the effect of suspending the execution of the acts to which it relates.

"*Art. 4.* It shall be lodged by means of a request signed by the applicant or by defending counsel, containing a statement of the facts and the grounds for the claim, the conclusions and a list of documents in support of the case.

"The request and three copies thereof shall be deposited at the office of the clerk of the court, and a receipt for them shall be given immediately.

"Within the two days following, the office of the clerk shall forward two copies to the Minister of State by registered post, accompanied by a request for acknowledgement of receipt.

"*Art. 5.* Within two months after receipt of the copy, the Minister shall reply by a memorandum deposited with the office of the clerk of the court; the

[1] See *Yearbook on Human Rights for 1946*, p. 204.

applicant shall be notified of such deposit and may obtain a copy.

"*Art. 6.* The chief clerk of the court shall indicate the expiration of the interval fixed by the preceding article in a receipt attached to the documents; if appropriate he shall also indicate that no memorandum has been produced; within twenty-four hours, he shall transmit the file to the Procureur Général; within two weeks the latter shall return it with his conclusions to the chief clerk, who shall immediately forward it to the President of the Supreme Court.

"*Art. 7.* The aforementioned judge shall appoint a member of the said court to present the case and shall transmit the file to him for that purpose.

"After hearing the presentation of the case and within two months from the receipt of the file by the President, the Supreme Court shall consider the appeal solely on the basis of the documents and shall submit a report to the Prince.

"*Art. 8.* The Prince's decision shall be in the form of an ordinance.

"In case of rejection, the applicant may not lodge a further appeal against the same decision on any pretext and by any means whatsoever.

"If the appeal is allowed the decision appealed against shall be annulled and also as far as possible any actions or measures resulting from it.

"*Art. 9.* No stamp duty or registration fee shall be required for the documents composing the file.

"*Art. 10.* Our Court of First Instance is and shall be competent to decide on all disputes in administrative matters except those which are within the jurisdiction of the Supreme Court by virtue either of article 14 of the Constitution of 5 January 1911[1] or of the provisions of this Ordinance.

[1] See *Yearbook on Human Rights for 1946*, p. 204.

"*Art. 11.* Our Secretary of State, our Head of the Judiciary and our Minister of State, each in his own domain, shall be responsible for the promulgation and application of this ordinance."

Certain criticisms of this sovereign ordinance were voiced in the National Council, the Monegasque legislative assembly. The chief objections raised in the course of a public debate (meeting of 9 June 1958 — see verbatim record issued as an annex to the *Journal de Monaco*) were:

1. That a procedure of administrative appeal could not be established by a mere ordinance of the Prince, but should be introduced in due legislative form (by agreement between the Prince and the National Council);

2. That in effect the ordinance establishes merely a procedure for petition, whereas what was required was a genuine procedure for appeal to an independent administrative tribunal;

3. That the procedure established, which provides neither for an oral debate in which the defence is given a hearing nor for publicity, is irrational and ineffective: the Prince acts both as judge and as a party, since all the actions of the executive derive from him under the Monegasque system of government;

4. That from the point of view of the guarantees due to persons under administration this ordinance is a retrograde step in comparison with the existing texts, since the latter have for a long time ensured the separation of the executive and the judiciary.

The questions raised by the ordinance of 7 May 1958 are linked with a number of constitutional and administrative reforms of a liberal character, the principle of which had been agreed to by the Sovereign Prince, but has not been put into practice.

MOROCCO

PROTECTION OF HUMAN RIGHTS IN 1958 [1]

I. LEGISLATION

Criminal Assessors

Dahir No. 1-58-199, of 20 September 1958 (6 Rabia I 1378) (*Bulletin officiel* No. 2397, of 3 October 1958) reorganizes the system of criminal assessors. In addition to the list of Moroccan sworn assessors, alien sworn assessors resident within the jurisdiction of the court for at least two years may be called upon to serve. The trial jury consists of four sworn assessors whose names are drawn by lot from the panel. Where the accused are Moroccans the assessors are all Moroccans; where the accused are all aliens, two alien assessors of their own nationality are called in.

Commission of Inquiry

Dahir No. 1-58-103, of 27 March 1958 (6 Ramadan 1377) (*Bulletin officiel* No. 2372, of 11 April 1958) establishes a Commission of Inquiry composed of a chairman and four members to sit at Rabat, its function being to impose penalties on persons who took a leading part in the preparation, execution or consolidation of the coup de force of 20 August 1953 or who committed acts of violence against the population or against those who resisted them. The text of the dahir is given below.

Extradition

Dahir No. 1-58-057, of 8 November 1958 (25 Rabia II 1378) (*Bulletin officiel* No. 2408, of 19 December 1958) lays down new provisions regarding the conditions and procedure for the extradition of aliens, in the absence of contrary provisions arising under treaties. Control over extradition is judicial inasmuch as all requests are submitted for examination and prior decision to the Criminal Chamber of the Supreme Court, instituted in Morocco by the dahir of 27 September 1957 (2 Rabia I 1377).[2]

Nationality

Dahir No. 1-58-250, of 6 September 1958 (21 Safar 1378) (*Bulletin officiel* No. 2394, of 12 September 1958) enacts a Moroccan Nationality Code containing forty-six articles. It is applicable from 1 October 1958. Extracts from the dahir are given below.

It should also be noted that dahir No. 1-58-315, of 27 November 1958 (15 Jumada I 1378) (*Bulletin officiel* No. 2408, of 19 December 1958) rescinds with retroactive effect from the date of its entry into force the dahir of 8 November 1921 (7 Rabia I 1340) on Moroccan nationality, inasmuch as the latter dahir had never had the effect of giving Moroccan nationality to persons born in the former French zone of Morocco of alien parents one of whom was also born there.

Personal Status

Dahir No. 1-57-343, of 22 November 1957 (28 Rabia II 1377) (*Bulletin officiel* No. 2378, of 23 May 1958) promulgates the first two books of a Code of Personal Status and Succession, dealing with marriage and the dissolution of marriage. Extracts from this dahir are given below.

Dahir No. 1-57-379, of 19 October 1957 (25 Jumada I 1377) (*Bulletin officiel* No. 2387, of 25 July 1958) promulgates the third book, dealing with filiation and its effects.

Dahir No. 1-58-019, of 25 January 1958 (4 Rajab 1377) (*Bulletin officiel* No. 2409, of 26 December 1958) gives effect throughout the territory of the kingdom to the provisions of book IV on legal capacity and legal representation.

Protection of Children

Dahir No. 1-58-260, of 2 September 1958 (17 Safar 1378) (*Bulletin officiel* No. 2395, of 19 September 1958) approves the new statutes of an association known as the "Moroccan League for Child Protection and Health Education", with headquarters at Rabat.

The Press

Extracts are reproduced below from dahir No. 1-58-378, of 15 November 1958 (3 Jumada I 1378) (*Bulletin officiel* No. 2404 *bis* of 27 November 1958) establishing the Moroccan Press Code.

Public Assembly

Extracts are reproduced below from dahir No. 1-58-377, of 15 November 1958 (3 Jumada I 1378) (*Bulletin officiel* No. 2404 *bis*, of 27 November 1958) relating to public assembly.

Right of Association

Dahir No. 2-57-1465, of 5 February 1958 (15 Rajab 1377) (*Bulletin officiel* No. 2372, of 11 April 1958) recognizes the right of officials and agents of public

[1] Information kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1957*, p. 186.

administrations, offices and establishments to form professional associations.

Extracts are reproduced below from dahir No. 1-58-376, of 15 November 1958 (3 Jumada I 1378) (*Bulletin officiel* No. 2404 *bis* of 27 November 1958) governing the right of association.

Public Service

Dahir No. 1-58-008, of 24 February 1958 (4 Shaban 1377) (*Bulletin officiel* No. 2372, of 11 April 1958) systematizes the general public service rules and provides that "All Moroccans shall have access to public office on an equal footing".

Chambers of Commerce and Industry

Dahir No. 1-57-161, of 6 January 1958 (14 Jumada II 1377) (*Bulletin officiel* No. 2370, of 28 March 1958) governs the new statutes of the Chambers of Commerce and Industry with respect to the election and eligibility of their members and their composition, operation and prerogatives.

Agricultural Employees

Dahir No. 1-57-182, of 9 April 1958 (19 Ramadan 1377) (*Bulletin officiel* No. 2377, of 16 May 1958) determines the conditions of employment and remuneration of agricultural employees.[1]

Minimum Wages

Dahir No. 1-58-074, of 13 February 1958 (28 Rajab 1377) (*Bulletin officiel* No. 2367, of 7 March 1958) extends to Tangier province and to the former Spanish zone the provisions of the dahir dated 18 June 1936 (28 Rabia I 1355) concerning the minimum wages of manual workers and salaried employees and those of the dahir dated 12 April 1941 (14 Rabia I 1360) concerning the system of wages.

Medical Services

Decree No. 2-56-248, of 8 February 1958 (18 Rajab 1377) (*Bulletin officiel* No. 2368, of 14 March 1958) systematizes the administration of workers' medical services, in application of a previous dahir dated 8 July 1957.[2]

Social Assistance Fund

Dahir No. 1-57-257, of 25 December 1957 (2 Jumada II 1377) (*Bulletin officiel* No. 2361, of 24 January 1958) defines the functions of the Social Assistance Fund set up under the dahir of 22 April 1942 (3 Rabia II 1361). The fund grants allowances or benefits to wage-earners, provision being made for the servicing of such allowances by the members. The allowances are unassignable and not subject to attachment except for the payment of maintenance obligations for which the recipient is liable.

Employment Accidents

Dahir No. 1-57-238, of 13 January 1958 (21 Jumada, II 1377) (*Bulletin officiel* No. 2363, of 7 February 1958) extends to various categories of civil employees of public bodies the benefits of the dahir of 25 June 1927 respecting workmen's compensation.

II. INTERNATIONAL AGREEMENTS[3]

1. With a view to ensuring co-operation between Morocco and France in legal matters, on 5 October 1957, at Paris, the two governments concluded a convention of mutual judicial assistance for the enforcement of judgements and extradition (*Bulletin officiel* No. 2359, of 10 October 1958).

2. Dahir No. 1-57-294, of 16 December 1957 (23 Jumada I 1377) (*Bulletin officiel* No. 2363, of 7 February 1958) ratifies various conventions adopted by the International Labour Organisation, among them Convention No. 11 concerning the Right of Association and Combination of Agricultural Workers (1921), Convention No. 29 concerning Forced or Compulsory Labour (1930), Convention No. 52 concerning Annual Holidays with Pay (1936) and Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (1949).

[1] The French text of the dahir and an English translation have been published by the International Labour Office in the *Legislative Series* 1957 — Mor. 1.

[2] See *Yearbook on Human Rights for 1957*, p. 185.

[3] See also p. 312.

DAHIR No. 1-57-343 CONCERNING THE APPLICATION OF BOOKS I AND II OF THE CODE OF PERSONAL STATUS AND SUCCESSION

Dated 22 November 1957 (28 Rabia II 1377)[1]

Art. 1. A series of books shall be published relating to personal status which shall collectively constitute a code entitled "Code of Personal Status and Succession".

Art. 2. The provisions of books I and II annexed to this dahir, the first concerning marriage and the second, the dissolution of marriage, shall come into force in all the territory of our kingdom on 1 January 1958.

. . .

BOOK I. — *MARRIAGE*

Chapter I

BETROTHAL AND MARRIAGE

Art. 1. Marriage is a legal contract by which a man and woman unite with a view to living together permanently as husband and wife.

[1] Published in *Bulletin Officiel* No. 2378, of 23 May 1958, kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

Its aim is a life based on fidelity, purity and the desire for procreation with the founding of a stable home, under the direction of the husband, where the spouses may carry out their obligations towards each other in security, peace, affection and mutual respect.

. . .

Chapter II

BASIC CONSTITUENTS OF MARRIAGE AND REQUIREMENTS FOR THE VALIDITY OF MARRIAGE

Art. 4. (1) Marriage is legally concluded by the exchange of consent of the parties, expressed in traditional terms or in any phraseology accepted by usage.

. . .

Art. 8. For a marriage to be valid:

(1) The man must have completed his eighteenth year.

If however serious difficulties are involved the case is referred to the judge in order to obtain a special age dispensation.

(2) The woman must have completed her fifteenth year.

Art. 9. Marriage before the age of legal majority is subject to the consent of the wali (matrimonial guardian); if the latter withholds consent and disagreement between the parties continues, the matter is referred to the judge.

Chapter III

MATRIMONIAL GUARDIANSHIP

. . .

Art. 12. (1) The system of matrimonial guardianship is instituted for the protection of the woman; the wali can only bestow her in marriage if she authorizes him to do so, except in the case of compulsory marriage (djebr) mentioned below.

. . .

(4) The wali, whether the girl's father or not, cannot oblige a girl who has reached the age of consent, even if she is a virgin, to contract a marriage without her previous consent and authorization, unless there is reason to fear that she will misbehave, in which case the judge has the right to force her to marry a man of similar station to herself and able to provide for her.

Art. 15. If the wali should wrongfully withhold his consent to the marriage of a woman placed under his guardianship, the judge may compel him to give her in marriage. If he should refuse to do so, the judge himself may bestow her in marriage, subject to an appropriate dowry, to a man of similar circumstances.

. . .

Chapter V

IMPEDIMENTS TO MARRIAGE

. . .

Art. 30. (1) Polygamy is prohibited where it is likely to involve injustice towards the wives.

(2) If a wife has not reserved the right of option and her husband contracts a new marriage she can appeal to the judge for assessment of the damage she suffers by the new marriage.

(3) The marriage contract concerning the second wife shall not be drawn up until the latter has been informed that her prospective spouse is already married.

Art. 31. The wife has the right to ask for an undertaking by her husband in the marriage contract that he will not take an additional wife and will admit her right to request a dissolution of the marriage in the event of the undertaking not being observed.

Chapter VI

EFFECTS OF MARRIAGE AND SAFEGUARDS ATTACHED TO REGULARLY-CONTRACTED MARRIAGE

. . .

Art. 33. Valid and regular marriage gives rise to a series of effects and creates reciprocal rights and duties on the part of the spouses.

Art. 34. The reciprocal rights and duties incumbent on spouses are:

(1) Cohabitation;

(2) Good relations, mutual respect and affection and the protection of the moral and material interests of the family;

(3) Rights of succession;

(4) Family rights, such as the attachment to the spouses of children born of the marriage and the creation of a relationship by marriage.

Art. 35. The rights of the wife in respect of her husband are:

(1) Maintenance as specified by law, including food, clothing, medical care and lodging;

(2) Equality of treatment with other wives, in the case of polygamy;

(3) The right to visit her relatives, and to entertain them in her home, within reason.

(4) Complete liberty to administer and dispose of her property without reference to her husband, who has no power over the property belonging to his wife.

Art. 36. The rights of the husband in respect of his wife are:

(1) Conjugal fidelity;

(2) Obedience in accordance with usage and custom;

(3) The right to have the children of the marriage breast-fed, where possible;

(4) Repsonsibility for maintaining and running the household;

(5) Deference towards the father, mother and near relatives of the husband.

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Chapter VII

DISPUTES BETWEEN SPOUSES

Art. 39. In the event of a dispute concerning the ownership of property in the home, and in the absence of proof, credence shall be given to:

The statements made on oath by the husband in the case of property normally belonging to men;

The statements made on oath by the wife in the case of property normally belonging to women.

If the disputed property is in the nature of merchandise it shall be attributed to whichever of the spouses is proved to be engaged in commerce.

Property customarily belonging to either men or women shall be divided between the spouses, on their oath.

. . .

[Book II of the code deals with repudiation and divorce and the effects thereof.]

DAHIR No. 1-58-103 OF 27 MARCH 1958 (6 RAMADAN 1377) ESTABLISHING A COMMISSION OF INQUIRY [1]

Having regard to dahir No. 1-56-131, of 22 Shawwal 1376 (23 May 1947) establishing a Court of Justice, and in particular to its preamble;

Having regard to dahir No. 1-57-236, of 22 Hijja 1376 (20 July 1957) requiring prior authorization for certain transactions involving movable and immovable property;

Having regard to decree No. 2-57-1319, of 7 Safar 1377 (2 September 1957) establishing the first list of persons subject to the provisions of dahir No. 1-57-236, of 22 Hijja 1376 (20 July 1957) requiring prior authorization for certain transactions involving movable and immovable property;

Art. 1. A Commission of Inquiry for the whole of Our Kingdom is hereby established; it shall sit at Rabat, and its functions, prerogatives and organization shall be determined by the following provisions.

Art. 2. It shall be the function of the Commission to impose the penalties prescribed in article 5 below on persons of Moroccan nationality who, during the period from 24 December 1950 to 16 November 1955, knowingly and wilfully, either took a leading part in the preparation, execution or consolidation of the coup de force of 20 August 1953; or committed acts of violence against the population or against those who resisted them.

The following shall be brought before the said Commission:

Persons whose names appear on the list established by decree No. 2-57-1319, of 7 Safar 1377 (3 September 1957) aforesaid; and

Persons designated jointly by the President of the Council and by the Minister of the Interior within one month from the date of promulgation of this dahir.

Art. 3. The Commission shall consist of a Chairman and four members appointed by dahir.

The Commission shall establish its own rules of procedure; three of its members, including the Chairman, shall constitute a quorum.

The sittings of the Commission of Inquiry shall not be public; no publicity shall be given, by any means whatever, to the matters referred to it; the chairman and members shall be bound to observe professional secrecy.

The Commission shall hear the persons brought before it; it shall collect all evidence serving to establish the truth; it may delegate its powers to one of its members or may address a letter of request to judges selected from a list established under an order in council; it may call upon the law enforcement officers to compel attendance upon any person refusing to appear before it.

The Commission may render judgement by default.

Art. 4. Persons brought before the Commission of Inquiry shall be entirely at liberty to offer their defence either orally or in writing. They may have the assistance of a defence counsel of Moroccan nationality or of any other person of their choice, provided that the latter is approved by the Commission; implicated persons must in all cases appear in person.

Art. 5. The Commission of Inquiry may declare the persons referred to in article 2 guilty of civic infamy (indignité nationale) and, on that ground, may impose upon them the penalty of national degradation (dégradation nationale) for a period of three to fifteen years. All provisions of laws, regulations, statutes or contracts notwithstanding, such penalty shall entail deprivation of all civic and civil rights, in particular:

Disqualification for voting;

Prohibition from engaging in political or trade-union activity;

Exclusion from public office;

Loss of all rank in the army;

Dismissal from any office in State-subsidized undertakings;

Disqualification for serving as member of a jury or as an expert, and for giving evidence before a court;

Prohibition from teaching;

Prohibition from managing or otherwise working for Press, radio or cinematographic undertakings;

[1] Published in *Bulletin officiel* No. 2372, of 11 April 1958, kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

Loss of the right to possess arms;

Prohibition from acting as director or manager of a company;

Prohibition from acting as director of a banking undertaking.

The Commission may impose one or more of these penalties.

It may also order, either as a principal or as an accessory penalty, the confiscation of all or part of the property of the persons referred to in article 2 above if, in the course of the inquiry, it becomes evident that all or part of their wealth was acquired either by illegal dealings, or by abuse of authority or corrupt practices.

Art. 6. At any stage of the proceeding, the Commission may order the sequestration of the property of the persons brought before it. The sequestrated property shall be placed in the custody of the Office of the Under-Secretary of State for Finance, which shall also be empowered to dispose of it if necessary.

A decree shall be made prescribing the conditions governing the administration and disposal of the said property, as well as the amount of the administrative costs to be collected and the person to whom the costs shall be payable.

Art. 7. Any person on whom any of the penalties mentioned in article 5 above has been imposed may, within four days, address an appeal to Us.

DAHIR No. 1-58-250 TO ENACT THE MOROCCAN NATIONALITY CODE Dated 6 September 1958 (21 Safar 1378) [1]

Chapter I
GENERAL PROVISIONS

Art. 1. Sources of law relating to nationality. The provisions relating to Moroccan nationality are fixed by law and by duly ratified and published international treaties or agreements where these are applicable.

The provisions of duly ratified and published international treaties or agreements shall take precedence over those of internal legislation.

Art. 2. Chronological application of the provisions relating to nationality. The new provisions relating to the attribution of Moroccan nationality as the nationality of origin shall apply to persons who were born before the date of the entry into force of the said provisions and had not attained their majority by that date.

Nevertheless, the application of the said provisions shall not affect the validity of instruments executed by the persons concerned or rights acquired by third parties on the basis of earlier legislation.

The conditions governing the acquisition or loss of Moroccan nationality shall be those laid down in the legislation in force at the time of occurrence of the event or execution of the instrument capable of leading to such acquisition or loss.

Art. 3. Nationality and personal status. With the exception of Moroccans of the Jewish faith, to whom the personal status of Moroccan Jews shall apply, the Code of Personal Status and Succession to which Moroccans of the Moslem faith are subject shall apply to all nationals.

The following stipulations shall, however, apply to Moroccans who are neither Moslems nor Jews:

1. Polygamy shall not be permitted;

2. The regulations concerning the suckling of infants shall not be applicable;

3. Divorce must be pronounced judicially only after an attempt at reconciliation has proved fruitless and following an inquiry concerning the reasons for which separation is sought.

In the event of a conflict, the law of the husband or that of the father shall prevail.

Art. 4. Majority and method of reckoning time. For the purposes of this code, a person who has attained his majority shall be deemed to be any person who has attained the age of twenty-one years Gregorian.

All periods referred to in this code shall be reckoned according to the Gregorian calendar.

Art. 5. Definition of the term "in Morocco". For the purposes of this code the term "in Morocco" covers all Moroccan Territory, Morocco's territorial waters, and vessels and aircraft of Moroccan nationality.

Chapter II
NATIONALITY OF ORIGIN

Art. 6. Nationality by filiation. The following persons are Moroccan nationals:

1. The child of a Moroccan father;
2. The child of a Moroccan mother and an unknown father.

Art. 7. Nationality by reason of birth in Morocco. The following persons are Moroccan nationals:

1. A child born in Morocco of a Moroccan mother and a stateless father;
2. A child born in Morocco of unknown parents.

Provided that a child born in Morocco of unknown parents shall be deemed never to have been a Moroccan national if, during his minority, filiation is proved to exist with respect to an alien and if, under such alien's national law, the child possesses the alien's nationality.

[1] Published in *Bulletin officiel* No. 2394, of 12 September 1958, kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

A newborn child found in Morocco shall be presumed, until the contrary is proved, to have been born in Morocco.

Art. 8. Common provisions. The nationality of a child shall not be affected by filiation unless this is established during his minority.

Filiation shall be established in accordance with the provisions governing the personal status of the parent, which is the source of the right to nationality.

A child who is a Moroccan national by virtue of the foregoing articles 6 and 7 shall be deemed to have been a Moroccan national at birth, even if proof of the conditions prescribed by statute for the attribution of Moroccan nationality is not produced until after his birth.

Nevertheless, neither the attribution of Moroccan nationality at birth nor the withdrawal of such nationality by virtue of the provisions of article 7, paragraph 2, shall affect the validity of instruments executed by the person concerned, or rights acquired by third parties on the basis of the child's former apparent nationality.

Chapter III

Acquisition of Moroccan Nationality

Section 1. *Acquisition through the Operation of Law*

Art. 9. Acquisition of Moroccan nationality by birth and residence in Morocco. In the absence of any objection on the part of the Minister of Justice in accordance with articles 26 and 27 below, a child acquires Moroccan nationality in the following cases, provided that he declares his desire to acquire the said nationality during the two years before attaining his majority:

1. If he was born in Morocco of a Moroccan mother and an alien father and at the time of making the declaration was regularly and habitually resident in Morocco;

2. If he was born in Morocco of alien parents who were themselves born in Morocco subsequent to the entry into force of this code.

In the absence of any objection on the part of the Minister of Justice in accordance with articles 26 and 27 below, a person born in Morocco of an alien father who was himself born in Morocco shall acquire Moroccan nationality by opting to that effect, provided that his father belongs to a country where the majority of the population consists of a community speaking the Arabic language and practising the Moslem religion and is a member of that community.

Art. 10. Acquisition of Moroccan nationality by marriage. An alien woman who marries a Moroccan national may, after the couple has resided in Morocco habitually and regularly for a period of not less than two years, submit a signed declaration to the Minister of Justice with a view to acquiring Moroccan nationality.

If within six months from the submission of the declaration the Minister has not raised any objection, she shall acquire Moroccan nationality with effect from the date of celebration of the marriage. Nevertheless, instruments executed in accordance with the former national law of the person concerned prior to the express or tacit consent of the Minister shall remain valid.

An alien woman who has married a Moroccan national prior to the date of entry into force of this code may acquire Moroccan nationality under the conditions laid down above, provided that the marriage she has contracted has not been annulled or dissolved at the time when she signs the declaration.

Section 2. *Naturalization*

Art. 11. Conditions governing naturalization. Save as otherwise provided in article 12, an alien applying for naturalization may not be naturalized unless he fulfils the following conditions:

1. He must be resident in Morocco at the time of signing the instrument of naturalization;

2. He must show proof of habitual and regular residence in Morocco for five years prior to submission of his application;

3. He must have attained his majority;

4. He must be of sound body and mind;

5. He must be of good conduct and moral character; if he has been convicted of a crime or deprived of liberty for an offence punishable by civic degradation, he must have been restored to his full rights;

6. He must show proof that he has an adequate knowledge of Arabic;

7. He must show proof that he has adequate means of subsistence.

Art. 12. Exceptions. Notwithstanding the provisions of article 11, paragraph 4, an alien who has sustained a disability or contracted an illness in the service or interests of Morocco may be naturalized.

Notwithstanding the provisions of article 11, paragraphs 2, 4, 6 and 7, an alien who has rendered outstanding services to Morocco or whose naturalization is of exceptional value to Morocco may be naturalized.

. . .

Section 3. *Restoration of Nationality*

Art. 15. Moroccan nationality may be restored by decree to any person who has possessed it as his nationality of origin, and requests restoration.

. . .

Section 4. *Effects of Acquisition*

Art. 16. Individual effect. A person who acquires Moroccan nationality shall from the date of acquisition enjoy all the rights attaching to Moroccan nationality, subject to the disabilities mentioned in article 17 of this code or in special legislative provisions.

Art. 17. Special disabilities of naturalized aliens. A naturalized alien shall be subject to the following disabilities for a period of five years:

1. He may not hold public or elective office for the discharge of which the possession of Moroccan nationality is required;

2. He may not vote in elections where registration on the electoral rolls is conditional on possession of Moroccan nationality.

He may be relieved partially or wholly of the disabilities referred to in the preceding article by dahir or by cabinet council decree, according as naturalization was granted by dahir or by decree.

Art. 18. Collective effect. Minor children of persons who acquire Moroccan nationality by virtue of article 9 of this code shall become Moroccans at the same time as their parents.

Unmarried minor children of a person who recovers Moroccan nationality shall, provided they actually live with the latter, automatically recover or acquire Moroccan nationality.

The instrument of naturalization may grant Moroccan nationality to the unmarried minor children of a naturalized alien. Minor children who were at least sixteen years of age at the time of naturalization shall be at liberty to renounce Moroccan nationality between the ages of eighteen and twenty-one.

Chapter IV

LOSS AND DEPRIVATION

Section 1. *Loss*

Art. 19. Circumstances involving loss of nationality. The following shall lose their Moroccan nationality:

1. Any Moroccan national who, having attained his majority, has voluntarily acquired a foreign nationality in a foreign country and is authorized by decree to renounce Moroccan nationality;
2. Any Moroccan, even if a minor, who, having a foreign nationality as his nationality of origin, is authorized by decree to renounce Moroccan nationality;
3. Any Moroccan woman who, by marrying an alien, acquires the nationality of her husband and who has been authorized by a decree, issued before the celebration of the marriage, to renounce Moroccan nationality;
4. Any Moroccan national declaring that he renounces Moroccan nationality under the terms of article 18 of this code;
5. Any Moroccan national who holds an appointment in the public service of a foreign State or in a foreign army and retains such appointment six months after he has been directed, by the Moroccan Government, to relinquish it.

Art. 20. Effective date of loss of nationality. Loss of Moroccan nationality shall take effect:

1. In the cases referred to in article 19, paragraphs 1 and 2 above, from the date on which the decree authorizing the person concerned to renounce Moroccan nationality was published;

2. In the case referred to in article 19, paragraph 3, above, from the date on which the marriage was contracted;

3. In the case referred to in article 19, paragraph 4, above, from the date of the declaration duly signed by the person concerned and addressed to the Ministry of Justice;

4. In the case referred to in article 19, paragraph 5, above, from the date of publication of the decree declaring the person concerned to have lost Moroccan nationality. Such decree shall not take effect until six months after the person concerned has been directed to relinquish his employment in a foreign country and only if he has been given an opportunity to submit his observations. The decree shall be rescinded if it is proved that the person concerned was totally unable to relinquish the appointment during the period allowed.

Art. 21. Collective effect of loss. The loss of Moroccan nationality shall extend automatically to the unmarried minor children of the person concerned provided they actually live with the latter, in the cases referred to in article 19, paragraphs 1, 2 and 4, above.

In the case referred to in article 19, paragraph 5, above, the loss shall not extend to such children unless the decree expressly so provides.

Section II. *Deprivation*

Art. 22. Circumstances involving deprivation. Any person who has acquired Moroccan nationality may be deprived thereof:

1. If he has been sentenced for any of the following:

An attempt or offence against the sovereign or members of the royal family;

An act held to constitute a crime or offence against the internal or external security of the State;

An act held to constitute a crime, involving a penalty of more than five years' imprisonment.

2. If he has evaded his military obligations;

3. If he has engaged, to the advantage of a foreign State, in acts incompatible with Moroccan nationality or detrimental to the interests of Morocco.

A person shall not suffer deprivation of nationality unless the acts with which he is charged and which are specified above occurred within ten years following the date on which he acquired Moroccan nationality.

Deprivation of nationality may only be pronounced within five years following the commission of the said acts.

. . .

Art. 24. Collective effect of deprivation. Deprivation of nationality may be extended to the wife and minor

children of the person concerned if they are of foreign origin and have retained a foreign nationality.

Nevertheless, it may not be extended to his unmarried minor children if it is not extended to the mother.

Chapter V

ADMINISTRATIVE FORMALITIES

Art. 25. Filling of applications and declarations. Applications and declarations made in connexion with the acquisition, forfeiture or renunciation of Moroccan nationality, as also applications for reinstatement, shall be addressed to the Minister of Justice. They shall be accompanied by instruments, certificates and documents designed:

(*a*) To show that the application or declaration fulfils the conditions stipulated by law;

(*b*) To make it possible to judge whether the favour requested is in the national interest.

. . .

Art. 26. Inadmissibility, rejection or objection. If the statutory requirements are not fulfilled, the Minister of Justice shall declare the application or declaration to be inadmissible and shall state the reasons for his decision in a communication to the person concerned.

If the statutory requirements are fulfilled the Minister of Justice may, by a decision communicated to the person concerned, reject the application or, where he is empowered to do so, object to the declaration.

Art. 27. Examination of declaration. When the Minister of Justice receives a declaration he shall issue a ruling within six months from the date thereof.

Otherwise his silence shall be taken as signifying consent once the time-limit has expired.

A declaration which has not been ruled inadmissible or opposed shall take effect from the date on which it was made.

. . .

Chapter VII

TRANSITIONAL AND EXTRAORDINARY MEASURES AND APPLICATION OF THE CODE

Art. 44. Transitional measures. In the absence of any objection by the Minister of Justice in accordance with articles 26 and 27 above, persons born prior to the publication of this code who are granted Moroccan nationality in virtue of article 7 of the code may decline such nationality by making a declaration to the Ministry of Justice not later than one year from the entry into force of this code.

The persons mentioned in article 9, paragraph 1, who are more than twenty years of age on the date on which this code enters into force shall have a period of one year from the said date in which to apply for Moroccan nationality.

Art. 45. Extraordinary measures. In the absence of any objection on the part of the Minister of Justice in accordance with articles 26 and 27 above, any person who is originally from a country where the majority of the population constitutes a community speaking the Arabic language or practising the Moslem religion, and who belongs to that community, may within a period of one year from the date of publication of this code declare that he opts for Moroccan nationality provided that:

(*a*) He has his domicile and residence in Morocco on the date of publication of this code; and

(*b*) He meets one of the following conditions:

He has habitually resided in Morocco for at least fifteen years; or that he has held a post in the Moroccan public service for at least ten years;

He is married to a Moroccan woman, the marriage being currently valid, and has resided in Morocco for at least one year.

Moroccan nationality acquired by the declarant in virtue of the provisions of this article shall automatically extend to his unmarried minor children and also to his spouse if the latter does not already possess Moroccan nationality.

In the absence of any objection on the part of the Minister of Justice in accordance with articles 26 and 27 above, any person who is originally from a Moroccan frontier zone and has established his domicile and residence on Moroccan soil may declare that he opts for Moroccan nationality within a period of one year from the publication of the decree defining Morocco's frontier zones.

Art. 46. This code shall enter into force on the first day of the month following its publication in the *Bulletin officiel.*

DAHIR No. 1–58–378 ESTABLISHING THE MOROCCAN PRESS CODE of 15 November 1958 (3 Jumada I 1378) [1]

Chapter I

PRINTING AND BOOKSELLING

Art. 1. Printing and bookselling are free.

Art. 2. All written matter which is to be published, with the exception of jobbing work, shall bear the name and address of the printer.

The distribution of printed matter which does not bear the particulars prescribed in the preceding paragraph is prohibited.

Any contravention of the provisions of this article shall be punishable by a fine of not less than 50,000 nor more than 300,000 francs.

[1] Published in *Bulletin officiel*, No. 2404 *bis*, of 27 November 1958, kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

If the printer or distributor has been convicted of a similar offence during the preceding twelve months he shall be liable to imprisonment for not less than one month nor more than six months.

Chapter II

THE PERIODICAL PRESS

Section 1. *Right of Publication, Direction, Ownership, Declaration and Deposit*

Art. 3. Newspapers or periodicals may be published freely after the declaration prescribed in article 5 of this dahir has been made.

Art. 4. There shall be a managing editor for every newspaper or periodical.

The managing editor must be of full age, domiciled in Morocco, in full exercise of his civil rights, and must not have been deprived of his civic rights by any judicial sentence.

Art. 5. Before any newspaper or periodical is published, a declaration in triplicate shall be lodged with the parquet of the court of first instance or, if there is none, with the parquet of the regional court at the place where the management and the editorial offices are located, giving the following particulars:

1. The title of the newspaper or periodical and the method of publication;
2. The civil status, nationality and domicile of the managing editor and permanent members of the editorial staff;
3. The name of the printing works where it is to be printed;
4. The registration number of the enterprise in the commercial registry where appropriate;
5. The amount of capital invested in the enterprise, the source of these funds and, in the case of a corporate body, the nationality of the owners of the share certificates representing the capital;
6. The language or languages in which it is to be published;

In addition for enterprises organized as corporations:

7. The date of the instrument establishing the corporation and the place where the public notice required by law was given;
8. The civil status, occupation, nationality and domicile of the members of the board of directors, shareholders or partners, and, in a general way, of the managers and members of the corporation and the names of the commercial, industrial or financial corporations of which they are administrators, directors or managers. Any change in the particulars required under this article shall be communicated within fifteen days to the parquet with which the original declaration was lodged.

Art. 6. Declarations shall be made in writing and signed by the managing editor. A receipt shall be issued.

Art. 7. In the event of any contravention of the provisions of articles 4, 5 and 6 the proprietor, the managing editor or, failing them, the printer, shall incur a fine or not less than 100,000 nor more than 500,000 francs.

It shall not be lawful for the publication of any newspaper or periodical to be continued until the formalities prescribed above have been complied with. In the event of further unlawful publication, the persons mentioned above shall be jointly liable to a fine of 100,000 francs for each number published from the day sentence was pronounced, if the parties were heard, and from the third day after notification, if judgement was given by default. These penalties may be imposed even if an objection or appeal has been lodged.

The convicted person may lodge an appeal even if sentenced by default.

Art. 8. On publication of each number or instalment of the newspaper or periodical, two copies signed by the managing editor shall be deposited with the parquet of the court of first instance or, if there is none, with the parquet of the regional court.

The managing editor shall similarly deposit two copies with the office of information. The managing editors of newspapers or periodicals published outside Rabat shall send to the office of information two copies of each issue, registered, post-free, and by the first post following publication.

Failure to deposit copies as herein prescribed shall render the managing editors liable to a fine of 6,000 francs on each occasion.

Art. 9. The name of the managing editor shall be printed on the front page of every copy at the top, and in default the printer shall be liable to a fine of not less than 2,000 nor more than 12,000 francs in respect of each number published in contravention of this regulation.

Art. 10. Every periodical, in whatever form it is produced, must publish the names of its managerial staff and state what is their position.

Art. 11. The term "publication", for the purposes of this dahir, shall include all newspapers, magazines, brochures or news bulletins other than those of a strictly scientific, artistic, technical or professional character, published periodically at least once a month.

Art. 12. All proprietors, associates, shareholders, partners, lessors or other participants in the financing of publications published in Morocco must be Moroccan nationals.

. . .

Art. 18. Each issue of a publication must include a statement of the number of copies printed. The number shall be verified periodically by a representative of the office of information delegated for the purpose.

. . .

Section 2. *Corrections and the Right of Reply*

Art. 25. The managing editor shall insert free of charge at the head of the next number of the newspaper or periodical corrections communicated to him by a public official with regard to acts, carried out in the exercise of his office, which have been incorrectly reported by the said newspaper or periodical.

If the managing editor fails to comply with these provisions, he shall incur a fine of not less than 100,000 nor more than 1 million francs.

Art. 26. The managing editor shall insert, within three days of receipt or in the succeeding issue if the newspaper or periodical is not published within three days of receipt, the reply of any person named or designated in the newspaper or periodical, and in default shall be liable to a fine of not less than 100,000 nor more than 2 million francs, and imprisonment for not less than one month nor more than six months, or one of these penalties only without prejudice to any other penalties or damages to which the article may render him liable.

A reply shall be inserted in the same place and in the same type as the article which gave rise to it. Replies shall be inserted free of charge if they are not more than twice the length of the article. If they are in excess of that length, a charge shall be made for the excess only, at the legal notice rate.

Section 3. *Foreign and Foreign-language Newspapers and Periodicals*

Art. 27. For the purposes of this dahir, every newspaper or periodical, in whatever language it is published, shall be regarded as foreign if it is established or published in whole or in part on the basis of foreign capital or if the person in charge is an alien.

Art. 28. Every foreign newspaper or periodical printed in Morocco shall be subject to the general provisions of this dahir, and to the following special provisions:

It may not be established or published unless a prior authorization order is issued on the strength of a written application made in the form prescribed by article 5 and lodged with the office of information.

Any contravention of the provisions of the preceding paragraph shall be punishable by a fine of not less than 50,000 nor more than 500,000 francs and imprisonment for not less than six days nor more than six months, or one of these penalties only. The penalties shall apply to the proprietor, managing editor and printer, who may be made jointly responsible for the fine.

Copies published without authorization shall be liable to administrative seizure; in the event of a conviction, the sentence may include the confiscation and destruction of such copies.

Art. 29. The introduction and circulation in Morocco of newspapers or other matter, whether periodical or not, printed outside Morocco, and the publication and circulation of newspapers, or other printed matter whether or not of foreign origin or published wholly or partly in a foreign language, may be prohibited by order of the President of the Council. Any person knowingly offering for sale, distributing, or reproducing prohibited newspapers or printed matter, shall be punished by imprisonment for not less than six days nor more than one year and a fine of not less than 60,000 nor more than 600,000 francs.

Any person publishing a prohibited newspaper or other written matter under a different title shall be punished by the same term of imprisonment and a fine of not less than 120,000 nor more than 1.2 million francs.

Copies and reproductions of prohibited newspapers and other written matter and such prohibited material published under a different title, shall be subject to administrative seizure. In the event of a conviction, the sentence may include the confiscation and destruction of all copies.

Art. 30. It shall be unlawful to distribute, offer for sale, exhibit to the public or keep with a view to distribution, sale or exhibition, for propaganda purposes, tracts, bulletins, and leaflets of foreign origin or instigation, likely to harm the national interest.

Infringement of the prohibition laid down in the preceding paragraph shall be punishable by imprisonment for not less than six months nor more than five years, and a fine of not less than 120,000 nor more than 1.2 million francs.

Art. 31. Such foreign newspapers or periodicals printed in Morocco as exist at the date of publication of this dahir shall be allowed six months from that date in which to conform to the relevant provisions thereof.

Chapter III

BILLPOSTING, HAWKING AND SALE ON PUBLIC THOROUGHFARES

Section I. *Billposting*

Art. 32. In each municipality, township or commune, the local administrative authority (pasha or caïd) shall designate by an order the places to be used exclusively for posting laws and other announcements of the public authorities.

It shall be unlawful to post private notices in such places. Notices of official acts shall be printed on white paper only.

Notwithstanding the provisions of the dahir on historic monuments, the public authorities may by order designate places where the posting of private notices, publicity or advertisement shall be prohibited.

Art. 33. Any person removing, mutilating, covering or otherwise defacing notices posted in accordance with an order of the administration in such a way as to misrepresent them or render them illegible shall

incur a fine of not less than 2,000 nor more than 24,000 francs.

An official or public servant found guilty of any of the aforesaid acts, shall be punished by a fine of not less than 20,000 nor more than 200,000 francs, and imprisonment for not less than six days nor more than one month, or one of these penalties only.

Section 2. *Hawking and Sale on Public Thoroughfares*

Art. 34. Any person wishing to take up as an occupation the hawking, peddling or distribution on public thoroughfares, or in any other public or private place, of books, written matter, pamphlets, newspapers, drawings or signs, engravings, lithographic prints and photographs shall make a declaration to that effect to the local authority at his place of domicile.

The declaration shall give the person's surname, first name, occupation, domicile, age and birthplace.

A receipt for the declaration shall be issued immediately, free of charge, in the form of a personal card.

Art. 35. It shall be an offence to engage in the occupation of hawking, peddling or distributing without having made the declaration, to make a false declaration, or to fail to produce the personal card on demand.

Offenders shall incur a fine of not less than 1,000 nor more than 12,000 francs, and may in addition be sentenced to imprisonment for not less than one day nor more than five days.

The sentence of imprisonment shall be obligatory in the event of a repetition of the offence.

Art. 36. Newspapers, and in general written or printed matter of any kind distributed or sold on public thoroughfares, may be advertised only under their title; otherwise the hawker, distributor or peddler shall be liable to a fine of not less than 1,000 nor more than 12,000 francs and, in the event of a repetition of the offence, to imprisonment for not less than one day or more than five days.

Art. 37. Hawkers or distributors of any book, written matter, pamphlet, newspaper, drawing, engraving, lithographic print or photograph of an unlawful kind shall be prosecuted in accordance with the following provisions.

Chapter IV

CRIMES AND OFFENCES COMMITTED THROUGH THE PRESS OR ANY OTHER MEDIUM OF PUBLICATION

Section 1. *Incitement to Crimes and Offences*

Art. 38. Any person directly inciting another by speeches, cries or threats uttered in a public place or meeting, or by written or printed matter sold, distributed, offered for sale or exhibited in a public place or meeting, or by posters or notices exhibited in public, to commit an act constituting a crime or an offence, shall be punished as an accessory if such incitement is followed by an overt act.

This provision shall also be applicable if the incitement is followed only by an attempt to commit a crime.

Art. 39. Any person, who by one or other of the means enumerated in the preceding article directly incites another to theft, or to commit wilful homicide, looting or arson, or destruction by the use of explosives, or crimes and offences against the external security of the State, shall be punished by imprisonment for not less than one year nor more than five years, and a fine of not less than 100,000 nor more than 10 million francs, where such indictment is not followed by an overt act.

Any person who by the said means directly instigates any of the crimes against the internal security of the State shall incur the same penalties.

Any person who by any of the means enumerated in article 38 advocates the crimes of wilful homicide, looting, arson, theft or destruction by the use of explosives, shall incur the same penalties.

Art. 40. Any person, who by any of the means enumerated in article 38 incites members of the military, naval and air forces or the police to shirk their duties and to fail in the obedience they owe to their superior officers in all commands relating to the execution of the laws and regulations, shall be liable to imprisonment for not less than two nor more than five years, and a fine of not less than 100,000 nor more than 10 million francs.

Section 2. *Offence against the State*

Art. 41. Any person who by any of the means referred to in article 38 insults His Majesty or the royal princes and princesses shall be punished by imprisonment for not less than one year nor more than five years, and a fine of not less than 100,000 nor more than 10 million francs, or one of these penalties only.

Art. 42. The malicious publication, dissemination or reproduction by any means whatsoever of false reports or documents forged, fraudulently altered or falsely attributed to third persons shall be punishable, if a disturbance of public order results or might result from such acts, by imprisonment for not less than one year nor more than five years, and a fine of not less than 100,000 nor more than 10 million francs, or one of these penalties only.

If such malicious publication, dissemination or reproduction is calculated to upset the discipline and morale of the armed forces, it shall be punishable by imprisonment for not less than one year nor more than five years, and a fine of not less than 100,000 nor more than 10 million francs.

Art. 43. Any person, who by false or slanderous statements, intentionally noised abroad, or by any fraudulent ways or means whatever, incites or attempts to incite the public to withdraw money from the State banks or from institutions required by law to

pay their funds into the State banks, shall be punished by imprisonment for one month and a fine of not less than 300,000 nor more than 1 million francs.

Section 3. *Offences against Persons*

Art. 44. Any allegation or imputation of an act prejudicial to the honour or good name of the person to whom or the body to which the act is imputed shall be deemed defamation. Publication of such allegations or imputations, whether direct or by a process of reproduction, shall be punishable, even if the allegations or imputations are ambiguous or refer to a person or a body not explicitly named, but identifiable by the terms of the speeches, shouts, threats, written or printed matter, posters or notices which are the subject of the complaint.

Any offensive expression, term of contempt or invective which does not contain the imputation of any act shall be deemed to be an insult.

Art. 45. Defamation by any of the methods enumerated in article 38 of courts, tribunals, the military, naval and air forces, the public authorities and public administrative departments of Morocco shall be punishable by imprisonment for not less than one month nor more than one year, and a fine of not less than 100,000 nor more than 10 million francs, or one of these penalties only.

Art. 46. Defamation by the same methods, in respect of their functions or status, of a minister or ministers, a public official, a depository or agent of public authority, any person entrusted with administrative authority or holding public office, whether temporary or permanent, or an assessor or witness in respect of his deposition, shall be punishable by the same penalties.

Defamation in respect of the private lives of any of the aforesaid persons shall be punishable by the penalties provided in article 47 hereunder.

Art. 47. Defamation of private persons by any of the methods enumerated in article 38 shall be punishable by imprisonment for not less than six days nor more than six months, and a fine of not less than 50,000 nor more than 2 million francs, or one of these penalties only.

Art. 48. Insults uttered by the same methods against the bodies or persons specified in articles 45 and 46 shall be punishable by imprisonment for not less than six days nor more than three months, and a fine of not less than 50,000 nor more than 5 million francs, or one of these penalties only.

Insults uttered in the same manner against private persons shall be punishable, when not preceded by provocation, by imprisonment for not less than six days nor more than two months, and a fine of not less than 50,000 nor more than 5 million francs, or one of these penalties only.

If the insult is not uttered in public, the penalty shall be a fine of not less than 2,000 nor more than 24,000 francs.

Art. 49. The truth of a defamatory statement which concerns public bodies, the military, naval and air forces and public administrations or the persons specified in article 46, may be established by the ordinary procedure, but only in so far as it relates to their official functions.

The truth of defamatory or insulting allegations against the manager or director of an industrial, commercial or financial undertaking which publicly solicits savings and credit may also be established.

The truth of a defamatory statement may always be established, save:

(*a*) When the allegation concerns the private life of the individual;

(*b*) When the allegation refers to facts which occurred more than ten years previously;

(*c*) When the allegation refers to an act constituting an offence which is covered by amnesty or limitation of time, or which led to a conviction cancelled by rehabilitation or review.

In the case specified in the two preceding paragraphs, the right to offer evidence to the contrary is reserved. If the truth of the defamatory matters is established, the accused shall be acquitted.

In all other circumstances and in relation to any other person not specified, when the alleged act is the subject of proceedings initiated by the ministère publique (Office of the State Counsel) or of an action by the accused, proceedings and trial for the offence of defamation shall be suspended during the preliminary examination.

Art. 50. A reproduction of any allegation which has been judged defamatory shall be deemed malicious, failing proof to the contrary by its author.

Art. 51. If any person uses the services of the Postal and Telegraphic Department to send an open message containing a defamation either of private individuals or of the bodies or persons designated in articles 41, 45, 46, 52 and 53, he shall be liable to imprisonment for not less than six days nor more than six months, and a fine of not less than 10,000 nor more than 500,000 francs, or one of these penalties only.

If the message contains an insult, the offence shall be punishable by imprisonment for not less than six days nor more than two months, and a fine of not less than 5,000 nor more than 50,000 francs, or one of these penalties only.

Section 4. *Offences against foreign Heads of States and Diplomatic Agents*

Art. 52. Any person publicly insulting the Head of State, the Head of Government or the Minister of Foreign Affairs of a foreign country shall incur a fine

of not less than 100,000 nor more than 10 million francs, and imprisonment for not less than three months nor more than one year, or one of these penalties only.

Section 5. *Prohibited Publications; Immunities of the Defence*

Art. 54. It shall be unlawful to publish a criminal accusation or any other document relating to procedure before the criminal or correctional courts before it has been read in public on pain of a fine of not less than 30,000 nor more than 120,000 francs.

The same penalty shall be applicable on conviction for the publication by any method of photographs, engravings, drawings or portraits purporting to reproduce, wholly or partly, the circumstances of a crime or offence of wilful homicide, murder, parricide, infanticide, poisoning, making threats, infliction of bodily harm or wound, commission of a sex offence, unlawful arrest or false imprisonment.

No offence shall, however, be deemed to have been committed if publication was undertaken at the written request of the examining judge. The request shall be attached to the file of the investigation.

Art. 55. It shall be unlawful to publish reports of actions for defamation or insult, or of affiliation, divorce and separation proceedings. This prohibition shall not apply to judgements, which may always be published.

In all civil cases the courts and tribunals may prohibit the publication of reports of the trial.

It shall also be unlawful to publish reports of the private deliberations of juries, courts or tribunals.

Any person contravening these provisions shall incur a fine of not less than 100,000 nor more than 3 million francs.

Art. 56. It shall be unlawful to open or advertise a public subscription to meet the expenses of fines, costs and damages imposed by a judgement of the courts in criminal or correctional cases on pain of imprisonment for not less than six days nor more than six months, and a fine of not less than 100,000 nor more than 10 million francs, or one of these penalties only.

Art. 57. No action for defamation, insult or slander shall lie with respect to accurate reports of judicial proceedings or of statements made or writings produced in courts if published in good faith. Judges trying a case and deciding on its substance may, however, make an order for the omission of insulting, slanderous or defamatory speeches and order any person who fails to obey the order to pay damages. Judges may also, in the same circumstances, admonish advocates, and may even suspend them from the performance of their functions.

The duration of such suspension may not exceed one month, or three months in the event of a repetition of the offence within a year.

Defamation in connexion with matters unrelated to the case before the court may give rise to criminal proceedings or to civil action by the parties if their right thereto has been reserved by the court, and in any case to civil action by third parties.

Art. 58. In the event of a conviction the sentence may in the cases enumerated in articles 39, 40, 41, 52 and 53 include the confiscation of the written or printed matter, placards or notices seized, and may in all cases contain an order for the seizure and suppression or destruction of all copies on sale, distributed or exhibited to the public.

Nevertheless, the suppression or destruction may apply only to certain parts of the copies seized.

Section 6. *Offences against Public Decency*

Art. 59. Any person who manufactures or holds for disposal, distribution, hire, display or exhibition, or who knowingly imports or causes to be imported, exports or causes to be exported, transports or causes to be transported for the same purpose, or who displays, exhibits or projects in public, or who offers, even without charge or privately, in any form whatever, directly or indirectly, or who distributes or delivers for the purpose of distribution or by any method whatever, any kind of pornographic printed and written matter, drawings, posters, engravings, paintings, photographs, films or negatives, matrices or copies, signs, and objects or images of any kind contrary to public decency, shall be punished by imprisonment for not less than one month nor more than two years, and a fine of not less than 12,000 nor more than 600,000 francs.

Art. 60. Any person who publicly sings songs, or cries or words contrary to public decency, or who publicly draws attention to debauchery or publishes an advertisement or a notice of this kind, in whatever terms shall be liable to the same penalties.

Art. 61. If the offences specified in articles 59 and 60 above are committed through the press, the managing editors or publishers shall, for the mere act of publication, be liable as principals to the penalties laid down above.

In their default, the author, and in his default the printers, distributors and bill-posters shall be prosecuted as principals.

If proceedings are not taken against the author as principal, he shall be prosecuted as an accessory.

Art. 62. If the offence is committed against a minor, the penalties shall be doubled.

Art. 63. The penalties laid down above may be imposed even though the various acts making up the offence have been committed in different countries.

Art. 64. Judicial police officers may, before initiating proceedings, seize any written matter, printed

matter (other than books), drawings or engravings of which a copy or copies have been exhibited in public, if the work is felt to constitute an immediate danger to public morality as being contrary to public decency. They may also seize, tear down, deface or cover over notices of the same kind.

The court shall order the seizure and destruction of the objects which were used to commit the offence; if the artistic character of a work justifies keeping it, however, the court may order the whole or part to be deposited in the State collections or storehouses.

Judicial police officers may, before initiating proceedings, seize at the frontier written or printed matter, drawings, posters, engravings, paintings, photographs, films and negatives, cylinders or records, signs and other objects or images as referred to in article 59 above, which are imported into Morocco.

Section 7. *Publications contravening Public Morality*

Art. 65. Without prejudice to the application of the penalties provided above, any person

(1) Offering, giving or selling to minors under 16 years of age any kind of publication, which, whether or not intended especially for youth, constitutes a danger to them because of its licentious or pornographic character or because of the treatment given to crime therein,

(2) Exhibiting such publications on public thoroughfares, outside or inside shops, or advertising them in the same places,

shall be liable to imprisonment for not less than one month nor more than one year, and a fine of not less than 50,000 nor more than 500,000 francs.

Art. 66. Irrespective of any judicial proceedings which may be taken in application of this dahir, the president of the council or the authority delegated by him for that purpose and the local administrative authorities (pasha or caïd) may, within their territorial jurisdiction, prohibit the exhibition on public thoroughfares and in all cases open to the public, and the dissemination by any method whatever on the public thoroughfare, of any publication contrary to public morality or harmful to youth.

These authorities may also, within the same limits, prohibit shows contrary to public decency or harmful to youth, both on public thoroughfares and in all places open to the public.

Any person contravening the orders issued in execution of the preceding paragraphs shall incur a fine of not less than 20,000 nor more than 120,000 francs, without prejudice to any more severe penalties which may be applicable.

Confiscation of the seized publications shall be ordered in all instances.

Chapter V

PENAL PROCEEDINGS AND PENALTIES

Section 1. *Persons responsible for Crimes and Offences committed through the Press*

Art. 67. The following, in the order named, shall be liable as principals to the penalties enacted for the repression of crimes and offences committed through the press: (1) managing editors or publishers, whatever their profession or description; (2) in their default, the authors; (3) in default of the authors, the printers; (4) in default of the printers, the vendors, distributors and bill-posters.

Art. 68. Where proceedings are taken against the managing editors or publishers, the authors shall be prosecuted as accessories.

Proceedings may also be taken on the same grounds and in all cases against accessories as defined by the criminal laws in force. This provision shall not be deemed to apply to printers in respect of offending printed matter.

However, printers may be prosecuted as accessories if it has been established by the courts that the managing editor is not criminally liable. In that case, prosecution shall be instituted within three months of the crime or, at the latest, within three months of the court's finding of absence of liability.

Art. 69. The proprietors of newspapers or periodicals shall be responsible for any pecuniary sentences imposed on the persons designated in articles 67 and 68 above, and payable to third persons.

Section 2. *Jurisdiction and Procedure*

. . .

Art. 75. . . .

In the event of a conviction under articles 38, 39, 40 and 42 of this dahir, an order for suspension of the newspaper or periodical for a period not to exceed three months may be included in the sentence. This suspension shall have no effect on labour contracts binding the employer, who shall continue to be bound by all the contractual or legal obligations arising therefrom.

Art. 76. Any newspaper or periodical which has been sentenced, in the person of its managing editor and of the author of the accused article, to the payment of a fine and damages shall be obliged within fifteen days from the date of the sentence, even if an appeal or objection has been lodged, to deposit security for the amount of the damages and fines. If such deposit is not made within that period, publication shall cease.

Section 3. *Preventive Suppression*

Art. 77. The Minister of Internal Affairs may order the administrative seizure of any issue of a newspaper or periodical the publication of which might tend to disturb the peace.

. . .

DECREE No. 1–58–377 RELATING TO PUBLIC ASSEMBLY of 15 November 1958 (3 Jumada I 1378)[1]

Part I

PUBLIC MEETINGS

Section I

Art. 1. Public meetings shall be free.

The term "public meeting" means any temporary but organized gathering open to the public in which items on an agenda prepared in advance are discussed.

Art. 2. Subject to the conditions hereinafter specified, public meetings may take place without previous authorization.

Art. 3. All public meetings shall be preceded by an announcement stating the date, hour and place of meeting. The announcement shall specify the object of the meeting. It shall be signed by two persons who are domiciled in the locality where the meeting is to take place and shall state the names, titles and addresses of the signers.

The announcement shall be delivered to the local administrative authority (pasha or caïd).

A receipt stating the date and hour of the meeting shall be issued for the purpose of being produced, upon request, to any representative of the public authorities.

If the persons making the announcement are unable to obtain a receipt, the announcement shall be sent to the competent authority by registered post.

The meeting shall not take place until twenty-four hours after the issue of the receipt or forty-eight hours after the dispatch of the registered letter.

No previous announcement as provided in the first paragraph of this article shall be required in respect of the meetings of legally-constituted associations and groups having specifically cultural, artistic or sporting aims, or of the meetings of welfare and charitable associations and agencies.

Art. 4. Meetings may not be held on a public thoroughfare nor may they continue beyond the hour fixed by the competent authorities for the closing of public places.

Art. 5. Each meeting shall have a committee consisting of a chairman and at least two advisers.

Art. 6. The committee shall be responsible for maintaining order, preventing infractions of the law, and prohibiting any speech contrary to law and order or to good morals or any speech designed to provoke the commission of a crime or offence; no discussion extraneous to the object of the meeting shall be tolerated.

Art. 7. A duly authorized administrative official may attend the meeting and shall not be prevented by any person from doing so.

He shall be entitled to dissolve the meeting at the request of the committee or in the event of incidents or violence.

. . .

Part II

DEMONSTRATIONS ON A PUBLIC THOROUGHFARE

Art. 11. A previous announcement shall be required for any procession, parade or, in general, any demonstration on a public thoroughfare.

No announcement shall, however, be required for outings on a public thoroughfare that conform with local custom.

Art. 12. The announcement shall be delivered to the local administrative authority (pasha or caïd) not less than three, nor more than fifteen, clear days before the date of the demonstration. The said authority shall forthwith issue a receipt for the announcement. If the persons making the announcement are unable to obtain a receipt, the announcement shall be sent to the competent authority by registered post.

The announcement shall state the surnames, given names, nationalities and domicile of the organizers; it shall be signed by three of the organizers who have elected domicile in the locality where the demonstration is to be held. It shall state the purpose of the demonstration, the place, date and hour of assembly of the groups invited to participate and the proposed route.

Art. 13. If the local administrative authority considers that the proposed demonstration is apt to disturb law and order, it shall prohibit the demonstration by so notifying the signers of the announcement at the domicile which they elected.

Art. 14. Imprisonment for a term of fifteen days to six months or a fine of 12,000 to 100,000 francs or both such penalties together may be imposed upon any person:

(1) Who makes an incomplete or inaccurate announcement likely to give a false impression of the proposed demonstration or who, either before the announcement provided for in article 12 has been deposited or after the demonstration has been prohibited, sends out, by any means whatsoever, invitations to take part in the demonstration;

(2) Who takes part in organizing a demonstration which has not been announced or has been prohibited.

. . .

Part III

UNLAWFUL ASSEMBLY

Art. 17. Any armed unlawful assembly on a public thoroughfare shall be prohibited. Any unlawful assembly which, though not armed, is likely to disturb the peace shall likewise be prohibited on a public thoroughfare.

. . .

[1] Published in *Bulletin officiel* No. 2404 *bis*, of 27 November 1958, kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

DAHIR No. 1-58-376 GOVERNING THE RIGHT OF ASSOCIATION of 15 November 1958 (3 Jumada I 1378)[1]

Title I

GENERAL PROVISIONS REGARDING ASSOCIATIONS

Art. 1. An association is a covenant whereby two or more individuals permanently pool their knowledge or their activities for a purpose other than that of sharing profits.

Its validity is governed by the general principles of the law applicable to contracts and agreements.

Art. 2. Subject to the provisions of article 5 below, associations of individuals may be formed freely, without prior authorization or notice.

Art. 3. Any association established to further a cause or objective which is illegal, contrary to law or morality, or intended to threaten the integrity of the national territory or the monarchical system of Government is null and void.

Art. 4. Notwithstanding any provision to the contrary, any member of an association not formed for a specified period may withdraw from it at any time, on payment of any dues outstanding and of those for the year then current.

Art. 5. If any association desires to possess the capacity provided for in article 6 below, prior notice shall be given to the office of the local administrative authority (the caïd or the pasha) and to the government procureur commissaire at the court of first instance of the judicial district or, in the absence of such official, to the parquet of the regional court. Such notice shall also contain:

The name and purpose of the association;

The name in full, nationality, age, date and place of birth, profession and domicile of each of the founders and more especially of those who are to represent the association in the capacity of chairman, director, or manager, whatever their titles may be. Founders and officers of associations must not have been sentenced for any crime or offence involving civic degradation;

The address of the offices of the association;

The number, and the addresses, of any branches, subsidiaries and separate establishments set up by the association which operate under its control or maintain continuous relations with it for the achievement of a common purpose.

The statutes of the association and a list of the members responsible for directing or managing it shall be attached to the notice referred to in the first paragraph of this article. One copy of each of these documents shall be deposited with the parquet and five copies at the offices of the local administrative authority; the latter shall forward three of these copies to the offices of the president of the council (i.e., the Secretariat-General of the Government).

The notice and the documents enclosed with it must be signed and certified to be true copies, by the person giving the notice. Graduated stamp duty shall be paid, except on two of the copies.

Any change in the management or in the board, any alteration in the statutes and the opening of any new branches, subsidiaries or separate establishments shall be reported within fifteen days in the same manner as that set out above. Such changes and alterations shall be binding on third parties only from the day on which they are notified.

If no change has taken place among the persons directing the association, those concerned shall so report at the date provided in the statutes for such changes.

A receipt shall be given for any notification made or for any documents deposited.

Art. 6. Any association the formation of which has been duly notified shall be entitled, without special permission, to sue, acquire for valuable consideration and own property, and, in addition to subsidies from public funds, to administer:

(1) Subscriptions paid by its members or the funds for which such subscriptions have been compounded, which may not exceed 24,000 francs;

(2) The premises and equipment required for the conduct of the business of the association and for the meetings of its members;

(3) Such buildings as are absolutely necessary for carrying out the purposes of the association.

Art. 7. Where the association is void under article 3, the order for dissolving it shall be made, either at the request of any interested party or at the instance of the ministère public, by the court of first instance or, in the absence of such court, by the regional court.

The ministère public shall give three clear days' notice to appear, and the court shall provisionally and notwithstanding any grounds for appeal order the premises of the association to be closed and forbid any meeting of its members, under pain of the penalties provided for in article 8.

In case of failure to comply with the provisions of article 5, the association shall be declared dissolved at the request of any interested party or of the ministère public.

Art. 8. Any person who after forming an association has performed any of the acts referred to in article 6 without complying with the formalities prescribed in article 5 shall be punished by a fine of 12,000 to 100,000 francs and, in case of a repeated offence, shall be fined double the amount.

[1] Published in *Bulletin officiel* No. 2404 *bis*, of 27 November 1958, kindly furnished by the Minister of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

The founders, directors or managers of any association which is unlawfully kept in existence or reconstituted after a court order has been made dissolving it shall be punished by a fine of 50,000 to 2 million francs and imprisonment for six days to one year, or one or other of these penalties alone.

Any person who has encouraged members of an organization which has been dissolved to meet shall be subject to the same penalties.

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Title III

UNIONS AND FEDERATIONS OF ASSOCIATIONS

Art. 14. Associations concerning which notification has been duly given shall be entitled to form unions or federations.

Notification of such unions or federations shall be given in accordance with the procedure prescribed in article 5 and shall in addition include particulars of the names, objectives and addresses of the component associations.

Notification in accordance with the same procedure shall be given concerning the incorporation of any further associations, unions or federations.

Unions and federations shall be subject to the same regulations as associations the formation of which has been duly notified.

Title IV

POLITICAL PARTIES AND ASSOCIATIONS OF A POLITICAL CHARACTER

Art. 15. Associations which constitute political parties or which in any way engage in political activities shall be subject to the provisions of this dahir.

For the purposes of this dahir, political activities shall mean any activities the purpose of which is, directly or indirectly, to win acceptance for the tenets of the association in question, in the conduct and management of public affairs and to ensure that such tenets are put into effect by its representatives.

Art. 16. In addition, political parties and associations of a political character shall be subject to the special provisions given below.

Art. 17. Political parties and associations of a political character shall be lawfully constituted only if they are not void under the terms of article 3 and if, after giving the notification called for under article 5, they comply in addition with the following conditions:

(1) Membership must consist solely of Moroccan nationals and must be open to all our subjects, without any discrimination on the grounds of race, creed or the region from which they come;

(2) The funds with which they are established and with which they conduct their activities must be solely of Moroccan origin;

(3) They must possess statutes entitling all members of the association to take an active part in its control;

(4) Membership must not be open to members of the armed forces on the active list, judges, officials in positions of authority, members of the police force and of the auxiliary forces, prison warders, officers and rangers of the forestry service and customs officials on the active list;

(5) Membership must not be open to persons who have been deprived of civic rights or who have been punished in any other way for anti-national activities.

Art. 18. Political parties and associations of a political character may not receive subsidies, either directly or indirectly, from the State, municipalities or other public bodies, boards or institutions.

Art. 19. In case of failure to comply with the provisions of articles 3, 5 and 17 above, a political party or an association of a political character shall be declared dissolved in accordance with the procedure laid down in article 7 of this dahir.

In case of failure to comply with article 3, any political party or association of a political character may be suspended by decree for a maximum of fifteen days. If at the end of this period proceedings have not been instituted with a view to having the association dissolved by the competent court, suspension shall be automatically terminated and the association may, without further formality, recommence its activities.

During an election campaign, however, an order for such suspension can be made only by a dahir approved by the Council of Ministers.

The competent court before which the matter is brought shall give its decision within thirty days.

Failure to comply with the dahir or decree ordering suspension shall be punishable by the penalties laid down in article 8, second and third paragraphs.

Art. 20. Any person who, in breach of the provisions of Article 17, sub-paragraphs 1, 4 and 5, shall have joined a political party or an association of a political character or who shall have knowingly admitted to membership persons who do not fulfil the conditions laid down in those sub-paragraphs shall, without prejudice to the penalties provided in articles 7 and 8, be punished by a fine of 12,000 to 100,000 francs and in case of a repeated offence shall be fined double the amount.

Any person paying or accepting subsidies contrary to the provisions of article 18 shall be liable to the same penalties.

Any person receiving funds from a foreign country with a view to setting up or operating a political party or an association of a political character shall be punished by imprisonment for one to five years, and by a fine of 1 million to 5 million francs.

Title V

FOREIGN ASSOCIATIONS

Art. 21. For the purposes of this title and whatever the form under which they may disguise themselves, groups which exhibit the characteristic features of an association and either have their headquarters abroad or their headquarters in Morocco but are in fact controlled by foreigners, or have foreign directors or one-half of whose members are foreigners, shall be deemed to be foreign associations.

Art. 22. In order to ensure that the provisions of the preceding article are carried out, governors may at any time request the officers of any group operating in the province or prefecture for which they are responsible to furnish in writing, within one month, any information which will make it possible to determine the headquarters of the organization to which they belong, the real purpose of the organization, and the nationality of its members, directors and actual leaders.

Any person failing to comply with such request or making a false declaration shall be liable to the penalties laid down in article 8, second paragraph.

Art. 23. No foreign association may be formed, nor may it carry on its activities in Morocco, unless it has given prior notification in accordance with the procedure laid down in article 5.

Art. 24. The Government may, within three months of the date appearing on the last receipt, raise objection to the formation of a foreign association and oppose any alteration in the statutes of an existing foreign association, any change in its board or management, or the opening of any branch, subsidiary or separate establishment.

Art. 25. Foreign associations may engage in the activities permitted under article 6 only after the period of three months provided for in article 24 has expired.

Art. 26. Unions and federations of foreign associations shall be subject to the provisions of article 14 and must in addition be authorized by decree.

Art. 27. Any foreign association to which the provisions of article 3 apply or which infringes the provisions of article 23 shall be declared dissolved in accordance with the procedure provided for in article 7, first paragraph.

Such associations may, for reasons of public policy (ordre public), be dissolved by decree.

Art. 28. Foreign associations shall be subject to all the provisions of this dahir which are not in conflict with those of the present title.

Title VI

PRIVATE COMBAT UNITS AND PRIVATE ARMIES

Art. 29. Any association or *de facto* group which:

(1) instigates armed demonstrations in the streets, or

(2) as a result of its military or quasi-military form and organization partakes of the nature of a private combat unit or a private army, or

(3) is aimed at threatening the integrity of the national territory or overturning the Government by violence or undermining the monarchical system of government,

shall be dissolved by decree.

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Title VII

GENERAL AND TRANSITIONAL PROVISIONS

. . .

Art. 35. If at the meetings of any association there has been deliberate instigation, whether by means of speeches, exhortation or appeals, in any language whatever, or by reading, posting up, publishing, distributing or exhibiting any kind of written matter, or by means of films, to commit a crime or an offence, the officer or officers of the association who are found to be responsible for it shall be liable to a fine of 12,000 to 100,000 francs and to imprisonment for three months to two years, without prejudice to any severer penalties which may be prescribed by dahir against the individuals found personally guilty of such instigation. In no case shall the latter receive a lesser penalty than that imposed on the officers found to be responsible.

Art. 36. Any association engaging in any activity other than that provided for in its statutes may be dissolved in accordance with the procedure laid down in article 7.

The officers of such associations shall be liable to a fine of 12,000 to 100,000 francs.

. . .

NETHERLANDS

CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS as promulgated by Royal Decree of 11 September 1956 (Staatsblad no. 472)[1]

Chapter I

THE REALM AND ITS INHABITANTS

Art. 1. The territory of the Kingdom of the Netherlands shall comprise the Netherlands, Surinam, the Netherlands Antilles and Netherlands New Guinea.

Art. 2. The Constitution shall have binding force over the kingdom in Europe only, in so far as the contrary is not stated therein.

References to the kingdom in the following articles are to the kingdom in Europe only.

State institutions in Netherlands New Guinea shall be regulated by law.

. . .

Art. 4. All persons within the territory of the kingdom shall have an equal right to protection of person and property.

The law shall regulate the admission and expulsion of foreigners and the general conditions under which treaties may be concluded with foreign powers regarding their extradition.

Art. 5. Every Netherlands national may be appointed to any public office.

No alien may be appointed thereto except in accordance with the provisions of the law.

Art. 6. The law shall state who are Netherlands nationals and who are residents.

Naturalization shall be effected by or in accordance with the law.

The law shall regulate the consequences of naturalization in respect of the wife and minor children of the person naturalized.

Art. 7. No one shall require previous authorization in order to publicize thoughts or opinions through the Press, except that every person shall be responsible according to law.

Art. 8. Every person shall have the right to present petitions, provided they are in writing, to the competent authorities.

Every petition must be signed by the petitioner. Petitions may be signed on behalf of others only by virtue of a written power of attorney to accompany the petition.

Legally existing bodies may petition the authorities, but only upon matters pertaining to their particular sphere of activity.

Art. 9. Residents have the rights of association and of assembly.

The law regulates and restricts the exercise of these rights in the interests of public order.

Chapter II

THE KING

. . .

Section 6. *The Powers of the King*

. . .

Art. 60. Agreements with other powers and with organizations having an international legal status shall be concluded by the King, or on his authorization, and, where the agreement so requires, shall be ratified by him.

Agreements shall be communicated to the States-General as soon as possible. They shall not be ratified or come into force unless and until they have been approved by the States-General.

The judiciary are not empowered to pronounce upon the constitutionality of agreements.

Art. 61. Approval shall be given explicitly or tacitly.

Explicit approval shall be given by law.

. . .

Art. 63. If the development of international law so requires, the provisions of the Constitution may be departed from in the terms of an agreement. In such a case, approval shall be given only explicitly. The Chambers of the States-General may not adopt such a draft act unless two-thirds of the votes are cast in its favour.

. . .

Art. 66. Legal regulations in force within the kingdom shall not be applied in cases in which such application would be incompatible with provisions by which everyone is bound contained in agreements concluded either before or after the entry into force of such regulations.

[1] This royal decree promulgated the Constitution as it read after the amendments made by the laws of the Realm of 23 August 1956 (*Staatsblad* Nos. 435-438) and by the laws of 23 August 1956 (*Staatsblad* No. 439-445).

The provisions here quoted are principally the amended texts of the articles of the Constitution which were quoted in *Yearbook on Human Rights for 1948*, pp. 147-51, or paraphased in *Yearbook on Human Rights for 1953*, pp. 199-200. Chapter XIV of the Constitution, of which articles 208-11 were quoted in *Yearbook on Human Rights for 1948*, pp. 150-51, has been deleted from the Netherlands Constitution.

Art. 67. Subject, where necessary, to the provisions of article 63, legislative, executive and judicial powers may be conferred, by or in accordance with an agreement, to organizations having an international legal status.

Articles 65 and 66 shall apply in an analogous manner to the decisions of organizations having an international legal status.

. . .

Chapter III
THE STATES-GENERAL

Section 1. *The Composition of the States-General*

Art. 88. The States-General represent all the people of the Netherlands.

Art. 89. The States-General shall be divided into an Upper and a Lower House.

Art. 90. The members of the Lower House shall be elected directly by the inhabitants who are Netherlands citizens or recognized by law as Netherlands subjects and have attained the age prescribed by law, which shall not be less than twenty-three years. Each elector shall have one vote only.

The law shall determine to what extent the exercise of the right to vote is to be suspended in the case of members of the armed forces, during the time they are under arms.

The following may not exercise the right to vote: those who have been deprived of this right by an irrevocable sentence of a court; those who have been deprived of their liberty by law; those who, on account of insanity or feeble-mindedness, have lost the control or management of their property by an irrevocable sentence of a court; and those who have been deprived of parental authority over, or guardianship of, one or more of their children. Persons irrevocably sentenced to imprisonment for more than one year, or for beggary and vagrancy or who have received two irrevocable sentences for drunkenness in public falling within a period to be prescribed by law, shall be temporarily or permanently deprived of the right to vote.

. . .

Section 2. *The Second Chamber of the States-General*

Art. 94. To be eligible as a member of the Lower House a person is required to be a citizen of the Netherlands or recognized by law as a Netherlands subject, to have attained the age of thirty years, and not to be deprived of eligibility or excluded from the exercise of the right to vote by virtue of the regulation made on the subject pursuant to article 90, third clause, with the exception of judicial deprivation of freedom and sentence to imprisonment for other offences than beggary or vagrancy or for an act indicating drunkenness in public.

. . .

Section 3. *The First Chamber of the States-General*

Art. 100. In order to be eligible for membership in the Upper House, the same requirements must be fulfilled as for membership in the Lower House.

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Chapter IV
PROVINCIAL ESTATES AND MUNICIPAL ADMINISTRATIONS

Section 1. *The Composition of the Provincial Estates*

Art. 137. The members of the Provincial Estates shall be chosen directly, for a term of years to be prescribed by law, by the persons residing in the province who are Netherlands nationals or recognized by law as Netherlands subjects and who have reached the age prescribed by law, which shall not be under twenty-three years. . . .

Section 3. *The Municipal Administration*

. . .

Art. 152. At the head of the commune shall be a council the members of which shall be elected directly for a certain number of years by the residents of the commune who are Netherlands citizens or recognized by law as Netherlands subjects, who have reached the age prescribed by law, which shall not be under twenty-three years. . . .

Chapter VII
JUSTICE

Section 1. *General Provisions*

. . .

Art. 165. Expropriation shall take place only after a preliminary declaration is made by law that it is required in the public interest and provided that compensation for such expropriation is received or guaranteed in advance and in accordance with the provisions of the law.

The law shall also determine the cases in which the previous declaration by law is not required.

The requirement that the compensation be paid or guaranteed in advance shall not apply when war, danger of war, revolt, fire or inundation renders necessary the immediate taking of possession.

This article shall not apply to *aardhaling* (the use of another person's soil to repair dykes), where such a right existed in 1886.

Art. 166. When the public interest requires that property be destroyed by the public authorities or rendered temporarily or permanently unusable, any such action shall be subject to the payment of compensation, save as otherwise provided by law.

The use of property for the preparation and execution of military inundations, when rendered necessary by war or by danger of war, shall be regulated by law.

Art. 167. All disputes concerning property or the rights arising therefrom, debts and other civil rights shall be within the exclusive jurisdiction of the courts.

Art. 168. Disputes not included among those mentioned in article 167 may by law be assigned either to the regular courts or to a body vested with administrative jurisdiction; it shall regulate the procedure to be adopted and the effects of the decisions.

Art. 169. The judicial power shall be exercised only by the courts established by law. The law may provide that persons who are not members of the judiciary may participate in the adjudication of such cases within the meaning of article 167 as it may indicate.

Art. 170. No one shall be removed against his will from the jurisdiction of his lawful judge.

The law shall determine the manner of deciding conflicts regarding jurisdiction that may arise between the administrative and the judicial authorities.

Art. 171. Save as provided by law, no one shall be taken into custody except upon a warrant from a judge, stating the reasons for the arrest. This warrant must be shown to the person against whom it is issued, either at the time of or as soon as possible after the arrest.

The law shall prescribe the form of this warrant and the period within which the persons arrested must be given a hearing.

Art. 172. Entry into a dwelling against the will of the occupant shall be allowed only in the cases determined by law and by virtue of a special or general order from an authority designated by law.

The law shall prescribe the formalities to be complied with in exercising this authority.

Art. 173. The secrecy of letters entrusted to the mail or to other public carriers may not be violated except by order of a judge in the cases prescribed by law.

Art. 174. General confiscation of the property of a guilty person shall not be imposed as a penalty for any offence.

Art. 175. All judgements shall state the reasons upon which they are based, and, in criminal cases, the provisions of the law upon which the sentence is based.

Sentences shall be pronounced in open court.

Saving the exceptions provided by law, the sessions of courts shall be public.

A judge may depart from this rule in the interests of public order and morals.

For punishable acts, to be specified by law, exceptions may be made to the requirements stipulated in the first and second clauses.

. . .

Chapter VIII

RELIGION

Art. 181. Every person shall be absolutely free to profess his religious opinions, always provided that society and its members are protected against violations of the criminal law.

Art. 182. Equal protection shall be granted to all religious denominations in the kingdom.

Art. 183. The adherents of the various religious denominations shall all enjoy the same civil and political rights and shall have an equal right to hold dignities, offices and employments.

Art. 184. All public religious worship in buildings and enclosures shall be permitted, provided that the necessary measures are taken to preserve the peace and public order.

Subject to the same reservation, public religious worship shall be allowed outside of buildings and enclosures, wherever it is now permitted under the laws and regulations.

. . .

Art. 186. The King shall see that all religious denominations duly obey the laws of the State.

Art. 187. Intervention by the Government shall not be required in correspondence with the heads of the various churches, nor, without prejudice to statutory responsibilities, in the promulgation of ecclesiastical regulations.

Chapter IX

FINANCES

Art. 188. No taxes shall be levied for the benefit of the State Treasury except by virtue of law.

This provision shall apply also to charges for the use of State works and installations, in so far as the right to regulate such charges is not reserved to the King.

. . .

Chapter X

DEFENCE

Art. 194. All Netherlands nationals who are able to do so are obliged to assist in maintaining the independence of the kingdom and in defending its territory.

This obligation may also be imposed upon inhabitants who are not nationals.

Art. 195. For the protection of the interests of the State there shall be armed forces composed of volunteers and of conscripted persons.

Compulsory military service shall be regulated by law. The obligations which may be imposed, with regard to national defence, upon those who do not belong to the armed forces, shall also be regulated by law.

Art. 196. The conditions upon which freedom from military service may be extended, for reasons of serious conscientious objections, shall be regulated by law.

. . .

Art. 201. All the expenses of the armies of the Kingdom shall be borne by the national treasury.

The quartering and maintenance of the troops and the transportation and furnishing of supplies of every

kind required for the armies or for the defence works of the kingdom may be imposed upon one or more inhabitants or communes only in accordance with general rules to be established by law and upon payment of compensation.

The exceptions to these general rules in case of war, danger of war, or other exceptional circumstances shall be determined by law.

The King shall decide whether "danger of war" exists in the sense in which that phrase is used in the country's laws.

Art. 202. For the maintenance of external or internal security any part of the territory of the kingdom may be declared by or on behalf of the King to be in a state of war or of siege. The law shall determine the manner and the cases in which this may be done and shall regulate the effects of such a declaration.

In these regulations it may be provided that the constitutional powers of the civil officers in respect of public order and the police shall be wholly or partly transferred to the military authorities, and that the civil authorities shall be subordinate to the military authorities.

In that event exceptions may also be made to articles 7, 9, 172 and 173 of the Constitution.

In the event of war, exceptions may also be made to paragraph 1 of article 170.

Art. 203. For the maintenance of external or internal security in exceptional circumstances, the King or his representatives may order, in respect of any part of the national territory, that the constitutional powers of civil authorities with regard to public order and police be transferred wholly or partially to other civil authorities. The law shall lay down the manner and cases in which this may take place and shall regulate the effects.

The provisions of the third paragraph of article 202 shall apply.

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Chapter XII

Education and Relief Administration

Art. 208. Education shall be an object of constant care on the part of the Government.

There shall be freedom to impart education, subject to supervision by the authorites, and, in addition, as regards general primary or secondary education, to examination of the qualifications and moral character of the teaching staff; these matters shall be regulated by law.

Public education shall be governed by law, the religious beliefs of all being respected.

In every commune, adequate public general elementary education shall be provided by the authorities in a sufficient number of schools. Exceptions to this provision may be granted by statutory regulations, provided that such education is made available.

The standards to be applied in the case of education, all or part of the costs of which are defrayed by the public treasury, shall be prescribed by law, due regard being paid, in the case of private education, to freedom of belief.

In the case of general primary education, the requirements shall be such that the standards of private education, all or part of the cost of which is defrayed by the public treasury, and the standards of public education, are equally adequately guaranteed. The regulations shall in particular respect, in the case of private education, the freedom to select the means of instruction and to appoint teachers freely.

The cost of private institutions for general primary education which satisfy the statutory conditions shall be defrayed by the public treasury to the same extent as in the case of public education. The law shall lay down the conditions under which grants from the public treasury will be made to private institutions for private general secondary education and preparatory higher education.

The King shall cause a report on the state of education to be made annually to the States-General.

Art. 209. The relief of the poor shall be an object of constant care on the part of the Government, and shall be regulated by law. The King shall cause a detailed report to be made annually to the States-General concerning the measures taken in this matter.

. . .

EMPLOYMENT OF MARRIED WOMEN AS TEACHERS [1]

By the Act of 4 August 1958 (*Staatsblad*, 1958, No. 387), amending the Primary Education Act (1920), the general legal impediment to retaining on the staff of public primary schools women teachers when they marry has been removed. As a result of the constitutional nature of the other regulations in force concerning the legal position of civil servants of the local authorities (in this case the municipalities) it will, however, in view of the existing municipal autonomy, remain possible for the municipalities to regulate the legal position of their civil servants — and consequently also of the women teachers of the municipal primary schools — in such a way that it will still be possible to discharge a woman civil servant (including a woman teacher) when she marries.

The Act also removed the general legal impediment to retaining, in private primary schools wholly or partly supported from public funds, women teachers when they marry. The private organizations sponsoring these schools are, however, free not to make use

[1] Information kindly furnished by the Government of the Netherlands.

of the possibility of retaining married women teachers in their service.

The legal impediments to retaining women teachers when they marry, which were in force for grammar and modern grammar schools and secondary schools for girls of the central government have also been removed. The position of women teachers in grammar and modern grammar schools and secondary schools for girls, sponsored by local authorities (municipalities) and private organizations, is not different from the position of such women teachers in primary schools sponsored by local authorities and private organizations.

Also in these branches of education it remains possible for local authorities and private organizations to dismiss their women teachers upon marriage.

NEW ZEALAND

NOTE[1]

I. LEGISLATION

1. *Child Welfare Amendment Act, 1958*

Amends the Child Welfare Act, 1925, in order to provide for the registration, licensing and control of child care centres. These are defined as premises for the care of three or more children under the age of seven years, by the day or for part of a day, for a period of less than eight consecutive days, whether for reward or not.

The effect of the Act will be to bring commercial play centres, creches, and similar institutions for children under the supervision of the Child Welfare Division of the Department of Education.

2. *Defamation Amendment Act, 1958*

Provides that the Defamation Act 1954 shall bind the Crown.

3. *Divorce and Matrimonial Causes Amendment Act, 1958*

Amends the Divorce and Matrimonial Causes Act, 1928, in the following ways:

It extends the class of cases in which recognition will be given in New Zealand to decrees of divorce or nullity that are made overseas.

It provides that any party to a proceeding may apply for a Chambers hearing, i.e., for a hearing in camera. Previously only the petitioner or the respondent to a proceeding could make such an application. The position now is that the Court, on the application of any party, or at its discretion, if it thinks proper in the interests of public morals, may hear any proceedings in Chambers.

The Act also restricts the particulars of divorce proceedings that may be published in any newspaper to the names, addresses and occupations of parties and witnesses, the grounds of the petition, a concise statement of the charges, defences and counter-charges on which evidence has been given, submissions on points of law, the summing up of the Judge and the findings of the jury (if any) and the decision of the court on the case, together with the Court's observations. The court may, however, authorize the publication of other particulars if it thinks fit.

The restrictions set out in the Act do not apply to periodicals of a technical character intended for circulation among members of the legal or medical professions, psychologists, or social welfare workers. The Act leaves unaffected the existing power of the Court to forbid the publication of any report or account of the evidence or other proceedings, either in whole or in part, in any manner whatsoever.

4. *Domestic Proceedings Amendment Act, 1958*

Restricts the particulars that may be published after the hearing and determination of a case of domestic proceedings. The restrictions follow those imposed, in respect of matrimonial causes, by the Divorce and Matrimonial Causes Amendment Act, 1958. The Amendment follows the latter Act in making an exception for periodicals of a technical character with a restricted circulation.

Under the Domestic Proceedings Act, 1939, it is already an offence to publish in a newspaper, before the Magistrate has heard and determined the case, any particulars relating to proceedings between husband and wife for separation or maintenance under the Destitute Persons Act, 1910, or relating to proceedings for the maintenance of children.

5. *Family Benefits (Home Ownership) Act, 1958*

Provides that the family benefit of 15s. per week for each child, payable under the Social Security Act, 1938, may, subject to certain conditions, be capitalized and paid to the beneficiary for housing purposes. The amount of any advance is to be a charge upon the land in respect of which it is made, until such time as the advance is repaid or deemed to be repaid.

6. *Geneva Conventions Act, 1958*

This Act contains the legislative provisions necessary to enable the New Zealand Government to ratify and give effect to the four Geneva Conventions of 1949 for the Protection of War Victims.[2]

7. *Health Amendment Act, 1958*

Authorizes the making of regulations under the Health Act, 1956, providing for the registration, licensing and control of homes for old people. The intention of the Act is to provide supervision by the Department of Health of private lodging houses and rest homes for old people.

8. *Social Security Amendment Act, 1958*

Increases the rate of certain social security benefits and also makes certain other provisions.

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[1] Note kindly furnished by the Permanent Representative of New Zealand to the United Nations.

[2] See *Yearbook on Human Rights for 1949*, pp. 299-309.

These include provisions allowing for the payment in advance, for a period not exceeding fifty-two weeks, of a family benefit in respect of the first child of a marriage or a child who has commenced his first year of post-primary instruction; stipulating that any income up to fifty-two pounds per year is not to be taken into account in calculating the rate of monetary benefit payable to persons who have attained the age of 65 years; and granting the Social Security Commission the power to make advances of up to £200 to persons receiving age or other benefits, in order that beneficiaries may carry out essential repairs and maintenance to their homes.

9. *War Pensions Amendment Act, 1958*

Increases the rates of certain war pensions and allowances. It also increases the amount of income which a pensioner may receive from other sources in cases where the income of a pensioner and of his or her spouse is taken into account in assessing the amount of any pension, and either or both of them are over 65 years of age.

The Act provides that a war pensions Board may refuse a pension, or may grant a pension at a reduced rate, where it is of the opinion that an applicant has deprived himself of property or income for the purpose of qualifying for a pension or for a pension at an increased rate.

10. *Workers Compensation Amendment Act, 1958*

Provides that expenses payable by an employer for medical or surgical attendance in respect of an employee shall include expenses for first aid treatment, for maintenance as a hospital patient, and for physiotherapy. The Act also provides that in assessing compensation, no account shall be taken of any money accruing to a worker in respect of any life or accident insurance policy affected by his employer.

II. REGULATIONS

1. *Employers' Liability Insurance Regulations, 1958*

These provide a new schedule of rates of employers' liability insurance premiums replacing one contained in the second schedule to the Employers' Liability Insurance Regulations, 1957.

2. *Health (Infirm and Neglected Persons) Regulations, 1958*

These relate to the procedure for the committal to hospital of aged, infirm or neglected persons who are living in insanitary conditions, or without proper care or attention. They replace regulations made in 1921.

3. *Penal Institutions (Appellants) Regulations, 1958*

These provide that an inmate of a penal institution who has appealed against a conviction or order is to be treated in the same manner as an inmate awaiting trial, unless he is also in custody for some other reason. The inmate may elect not to be specially treated, in which case he is to continue to serve his sentence. If, however, he is specially treated as an inmate awaiting trial, the running of his sentence is suspended.

4. *Proxy Marriage Regulations, 1958*

These regulations provide machinery enabling the solemnization of marriages by proxy, as authorized by the Marriage Act, 1955. They prohibit the solemnization of any marriage by proxy unless a document containing the assent of the absent party, the appointment of a proxy, and a declaration by the absent party that he knows of no impediment to the marriage, is produced to the officiating minister or the registrar.

5. *Social Security (Monetary Benefits) Regulations, 1958*

These make such amendments to the Social Security Regulations, 1939, as are necessary to give effect to part III of the Social Security Amendment Act, 1958.

6. *Workers' Compensation Order 1957, Amendment No. 1, 1958*

This order amends the Workers' Compensation Order, 1957, by prescribing the payment, by way of allowable medical expenses, of mileage fees in the case where a doctor attends an injured worker away from his surgery or residence and outside a borough. In addition, there is an amendment to clarify the maximum amount payable to a worker in respect of expenses occasioned in securing X-ray diagnostic services, and to provide for a special maximum allowable amount for medical attendance on workers who are hospital in patients.

III. INTERNATIONAL INSTRUMENTS

1. Abolition of Penal Sanctions (Indigenous Workers) Convention, adopted by the International Labour Conference at Geneva on 21 June 1955 (No. 104)[1]

Did not require signature. Instrument of ratification deposited on 28 June 1956. This instrument applied the Convention to the Cook Islands (including Niue) and the Tokelau Islands. The application of the Convention was extended to the Trust Territory of Western Samoa by a declaration registered on 25 March 1958. In force for New Zealand, the Cook Islands (including Niue), the Tokelau Islands and the Trust Territory of Western Samoa on 7 June 1958.

2. Convention on the Nationality of Married Women, done at New York on 20 February 1957[2]

Signed on behalf of New Zealand on 7 July 1958. Instrument of Ratification deposited on 17 December 1958. In force for New Zealand, the Cook Islands (including Niue), the Tokelau Islands and the Trust Territory of Western Samoa on 17 March 1959.

[1] See *Yearbook on Human Rights for 1955*, pp. 325-7.
[2] See *Yearbook on Human Rights for 1957*, pp. 301-2.

NICARAGUA

DECREE No. 291 ON FREEDOM OF THOUGHT of 18 January 1958 [1]

Art. 1. Legislative decree No. 209 of 19 October 1956, approved by the Executive and published in *La Gaceta* No. 242, of 25 October 1956,[2] is hereby repealed.

Art. 2. This decree is to enter into force upon its publication in the official journal, *La Gaceta.*

[1] Text published in *La Gaceta*, year LXII, No. 25, of 30 January 1958. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1956*, pp. 167-8.

ACT CONCERNING THE RIGHT OF CLARIFICATION AND CORRECTION Decree No. 378, of 10 December 1958 [1]

Art. 1. Any individual or body corporate, and any official or private association, against whom or which damaging statements or allegations are made by publications reproducing the spoken or written word shall have the right to reply refuting the charges or disproving the allegations made. The same right may be exercised, where appropriate, once only, by any one blood relation to the fourth degree or relation by marriage to the second degree if the person to whom the reference is made is unable to exercise the right or is deceased.

The written correction or clarification shall not contain insults or offensive statements concerning the journalist, or attacks against third persons who have no connexion with the published reference to which the reply or clarification is made.

Art. 2. The owners and directors, co-directors or assistant directors of publishing enterprises of any kind shall be required to print, free of charge, any clarifications, corrections or refutations submitted to them in connexion with any published matter which the person concerned or referred to wishes to clarify, correct or refute, in accordance with the provisions of this Act.

If the publication in question is not in the nature of a daily newspaper, the reply shall be printed in the edition next published, in which case the person concerned shall submit his statement at least three days in advance of the issue.

Art. 3. The written replies, clarifications, corrections or refutations mentioned in the preceding article shall be published in full, within forty-eight hours of their submission, in a single issue or broadcast, as the case may be, in the same communications medium, without the addition of any comments or views, with the headlines submitted by the individual concerned and in the same position and the same format and type in the case of a written publication, or in the same radio time in the case of a broadcast. The length of the clarification, correction or refutation may not be more than double that of the article or passage which has given rise to it. If the headlines submitted are not acceptable, the newspaper may insert before them the words: "clarification by", "correction by", or "refutation by", followed by the name of the person concerned.

If more than one person is referred to in the same publication, their separate replies shall be published, in the order in which they are submitted, in the same issue or broadcast, or in successive issues and broadcasts; however, if they submit identical clarifications, corrections or refutations in respect of the same statement or of a collective charge, only one reply need be inserted or made public, with an added note or explanation to the effect that the other persons concerned have replied in the same terms, except where material submitted in support of the disclaimer requires additional space.

The provisions of this article shall not affect the right separately to make such comments or express such views as are deemed relevant.

Art. 4. The provisions of the foregoing articles shall likewise apply to comments made or views expressed concerning the clarification, correction or refutation submitted if they contain damaging statements or allusions, making further allegations against the person in question.

Art. 5. Owners of radio stations or their legal representatives shall ensure that all scripts pertaining to radio magazines, news bulletins, talks, interviews, round-table discussions or commentaries are read faithfully. In the case of improvised broadcasts concerning questions which may affect the good name

[1] Published in *La Gaceta*, year LXII, No. 290, of 17 December 1958. Translation by the United Nations Secretariat.

or reputation of individuals, or of broadcasts containing serious allegations or charges, the programme shall be recorded. Scripts and recordings shall be kept for two months in the files of the broadcasting station or of the radio magazine. These requirements shall not apply to short commentaries and regular announcements.

Art. 6. In order to exercise the right of reply as provided in this Act, the person concerned shall submit two typewritten copies of his clarification, correction or refutation to the competent political chief, together with the original publication or evidence that it was published, in order that the aforesaid official may enter a note on the original of the statement, certifying that it corresponds to the other copy, which he shall keep in his possession, and authenticate both with his signature and the seal of the Department. After having complied with this requirement the person concerned shall consign the original, through a secretary of the office of the political chief or a notary, to the director, co-director, assistant director or owner of the publishing enterprise or, in his absence, to any employee in the editorial office or studio. If there is no one able or willing to receive the written statement, the secretary or notary shall post it in the premises in a prominent position with a footnote stating the day, hour and date of consignment and bearing his signature and rank. The secretary or notary shall forthwith notify the political chief of the action, informing him of the date and time at which it was taken.

Art. 7. The right referred to in the foregoing article must be exercised within ten days of the date of publication of the offending article or of the broadcast or of the date on which the person concerned ceased to be prevented from exercising it, through ignorance of the material published or broadcast, serious illness, absence or similar causes. The right shall lapse two months after the date of publication or of the broadcast, whether or not the person concerned has been able to exercise it. Similarly, the right of reply, clarification, correction or refutation referred in this Act shall lapse if the person concerned makes previous use of another communications medium in order to make public his clarification, correction or defence.

Art. 8. If the publishing enterprise considers the statement submitted to be too long or not in keeping with the published material which it is intended to clarify, correct or refute, or to conflict with the provisions of this Act, it shall report to the political chief who signed the statements within twenty-four hours of receiving it and explain the circumstances in writing; the latter official shall decide what action shall be taken. If he decides in favour of the enterprise, he shall inform the person concerned that he must submit, within the general time-limit referred to in article 7 of this Act, a further statement in accordance with the relevant provisions; alternatively, he shall order publication of the statement.

Art. 9. If the clarification, correction or refutation is not published within the prescribed time-limit, or if it is not published in accordance with the requirements of the law, the person concerned shall again report to the political chief who, after hearing the parties, shall proceed in accordance with articles 551 *et seq.* of the current Police Regulations and, if the enterprise is found guilty, he shall impose and exact a fine of 250 to 1,500 córdobas for the benefit of the local board of assistance and social welfare for the district of residence of the person concerned.

Art. 10. If, notwithstanding the fine, the clarification, correction, refutation or reply is not published within three days of the notification of the imposition of the fine, the offender shall be liable to a further fine, of double the amount of the first fine, a portion of which shall be used to enable the person concerned to pay for the insertion of his correction in another newspaper or radio programme. If the publication is not in the form of a daily newspaper, the further fine may be exacted only if the reply is not published in the next issue.

Art. 11. The decisions of the political chief shall be subject to appeal to the Minister of the Interior within forty-eight hours of notification thereof. For the appeal to be allowed, the appellant must deposit in advance, within twenty-four hours, the amount of the fine in a special account for the Ministry of the Interior at the National Bank of Nicaragua.

If the Minister decides in favour of the enterprise, he shall order the deposit referred to in the foregoing paragraph to be returned to it; if the decision is unfavourable, the aforesaid official shall instruct the Bank to pay the amount deposited in the special account by the appellant to the appropriate Local Board of Assistance and Social Welfare.

Art. 12. The director, co-director, general manager, editor, business manager and lessee shall be jointly liable for the fines provided for in this Act. The owner of the enterprise shall also be liable if the aforesaid persons lack the means of payment. In no circumstances may the fine be commuted into arrest or any other penalty affecting the person of the offender.

Art. 13. Even if the publication does not mention the name of the person or association, but it none the less becomes known, through implication or otherwise, to whom allusion is made, those referred to or, where appropriate, the relatives mentioned in article 1 shall be entitled to clarify, correct or refute the material published.

Art. 14. For the purposes of this Act the term "publishing enterprises" shall mean enterprises engaged in the production of printed publications in general, and radio, television, relaying and similar enterprises.

Art. 15. Only the political chief whose area of jurisdiction comprises the premises of the printing enterprise, broadcasting station or communications medium responsible for the publication of the material

to be clarified, corrected or refuted, shall be competent to conduct the relevant proceedings.

Art. 16. The provisions of this Act shall apply to all types of publication or printed matter, whether produced on a regular or occasional basis, whatever their form, whether signed or not signed and whatever their place of origin.

Art. 17. Decisions taken under this Act may not involve restrictions on freedom of expression as guaranteed by the Political Constitution, without prejudice to liabilities arising out of offences against and abuses of the exercise of that freedom, in the form and in the circumstances laid down by law.

Art. 18. This Act shall enter into force on the day following its publication in *La Gaceta*, the official gazette.

NORWAY

NOTE[1]

I. BASIC PROVISIONS AND STATUTES

No constitutional provisions have been adopted in Norway during 1958.

Of *statutes*, the following may be mentioned:

1. By the Act of 11 April 1958 (No. 2), the Act of 22 April 1927 relating to *Guardianship of Minors* has been amended. The guardianship of a minor is, by this amendment, vested in the parents jointly, if they have parental authority together. If one of the parents is dead or has disappeared or is incapable of managing his own affairs, the other is sole guardian. The same applies if one of the parents has no parental authority. If the parents have joint guardianship and they are not agreed on a decision, the chief guardian is to decide the matter. Either of the parents may give the other authority to act as guardian alone. The authority may be restricted to specific matters and may at any time be revoked. The earlier statutory provisions were based on the principle that only one person could have the guardianship of a minor. The birth of the child in or outside of marriage was determinative for which of the parents should be guardian. The general rule was that the father was guardian of children born in marriage, whilst the mother was the guardian of children outside marriage. The amending statute entered into force on 1 August 1958. It is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 134–135.

2. The Act of 5 December 1958 (No. 1) relating to *Disabled Persons* takes the place of the former Disabled Persons Act of 19 June 1936. Unlike the earlier statute, the Act gives a definition of "disabled". By "disabled" is meant any person whose health is permanently and substantially lowered by the fact that congenital defects or diseases have led to functional disturbances in the supporting and motility organs. By the Act the care of the disabled has been still further developed. Disabled persons between the ages of 7 and 20, who are unable to take part in the instruction in the ordinary primary schools have the right to instruction and necessary residence at special schools for the disabled. Disabled persons between the ages of 15 and 20 who have not reached the standards of the primary school have the right, according to the determination of the Ministry in the particular case, to instruction at home or the necessary transport to and from school. Besides primary school education the disabled person has the right to occupational training and further education. Disabled persons who cannot get occupational training in the usual way, and who after medical and occupational tests are deemed fitted, have the right to training and necessary residence at an institution approved by the authorities. Disabled persons who get their education and training in the usual way may be given a grant according to detailed rules. The provision in the earlier statute that a disabled person has the right to necessary and suitable prosthesis is supplemented by the provision of a right also to a wheel chair and other technical aids. Disabled persons who cannot get the necessary nursing in their homes can be given the right to be placed in a nursing home. Disabled persons are entitled to free transport to and from the schools and institutions mentioned in the Act or in regulations issued by virtue of it. The expenses involved in the care of the disabled are borne by the authorities, partly by the home municipality and partly by the State, unless they are covered by a statutory insurance system. The Act entered into force on 1 July 1959 and is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 642–645.

3. Act of 12 December 1958 (No. 10) relating to *Occupational Injury Insurance*. Norway has had a series of different statutes relating to accident and occupational injury insurance, for instance the Act of 10 December 1920 relating to Accident Insurance for Fishermen and Acts of 24 June 1931 relating to Accident Insurance for Industrial Workers and for Seamen, respectively. The new statute, which enters into force on 1 January 1960, represents a codification of most of the current laws, in this sphere, while at the same time a number of new groups of persons are brought within the provisions for compulsory insurance. The right to take out voluntary insurance is considerably widened. Compulsorily insured under the new statute are, in the first place, normally all who in Norway work in another person's service for wages or other consideration which entirely or partly consists of money. The work relationship must be of such a kind that it can have a duration of 6 days, and the income from the work must exceed a stated — very low — minimum income per annum. The compulsory insurance comprises, further, persons who work in another person's service outside the frontiers of Norway, on Norwegian ships, whaling expeditions and whaling stations, etc., or as flying personnel and station employees in Norwegian civil air traffic com-

[1] Note kindly furnished by the Permanent Representative of Norway to the United Nations.

panies, seamen travelling in connexion with the leaving of or entering into service on Norwegian ships, fishermen and whaling men, and pupils and students at schools and teaching institutions conducted by the public authorities, and also certain private schools. Independent business and professional persons, who are not compulsorily insured, may take out voluntary insurance. The same may be done by schools and teaching institutions which are not public, for their pupils. The Act gives the right to compensation for occupational injury which occurs whilst the insured is at work at the place and during the hours of work. In the case of the groups for whom this restriction is not fitting, special provisions are laid down. Among other things the insurance gives monetary support in addition to the support under the National Health Insurance Act and the right to disablement pension in the event of the working capacity being reduced by more than 15%. In case of the death of the insured person, the Act contains provisions concerning widow's and children's pensions. The expenses of the insurance is to be covered entirely by premiums. For ordinary employees the premium is to be paid by the employer; for others, by the party indicated specifically by the Act. The statute is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 680–700.[1]

4. In 1958, increases have been effected in the monetary support granted in a number of *insurance* statutes which have been reported upon earlier in this *Tearbook*, for example, in the Act of 6 July 1957 relating to Old-age Pensions. The amending statutes have, however, little interest in relation to matters of principle.

5. By the Act of 28 November 1958 (No. 1) relating to amendments of the Act of 7 December 1956 relating to the *Protection of Workers*, the normal working hours are reduced from 48 to 45 per week. The limit for the daily working time is at the same time raised from 8 to 9 hours. The opportunity is thereby given to complete a full working week in the course of 5 days. The establishment of the 5-day week postulates, however, agreement between the parties, since the working period is in general to be divided into 6 days of the week. Excepted from the ordinary Workers' Protection Act are, *inter alia*, agriculture, shipping, whaling and fishing. The amending statute entered into force on 1 March 1959 and is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 611–615.[2]

6. The Act of 19 December 1958 (No. 3) relating to *Working Conditions of Agricultural Workers* replaces the earlier protective statute for agricultural workers — Act of 3 December 1948. The Act contains detailed rules concerning measures for protection against accidents, and concerning wages, working hours, overtime and overtime payment. The working period is in general not to exceed 8 hours per day and 48 hours per week. The Act contains also provisions concerning dismissal and dismissal notices. If a worker who has been in service for 2 years after he has turned 20 is dismissed without good reason, he may claim compensation. Special rules are given for the dismissal of a worker who is notified sick. The State's work inspectors are to see that the statute is carried out. The Act entered into force on 1 January 1959. It is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 725–738.

7. The Act of 4 July 1958 (No. 12), amending the *Seamen's Act* of 17 July 1953, extends, *inter alia*, the right of seamen to a free journey home when they sign off after a long period of service. Whereas the rule was formerly that the seaman must have been in consecutive service with the shipowner for 24 months, this limit was now been reduced to 18 months. The seaman is bound to continue in service for up to 3 months, if it may be anticipated that the ship will within that time arrive at a port from which it is considerably cheaper or easier to repatriate him. The rule respecting the right to a free journey home on signing off only applies to seamen with domicile in Norway. The Crown may extend the right to apply also to other seamen, but in the case of foreign seamen only on the presumption of agreement of reciprocity. Of particular interest are the provisions in the amending statute which aim at placing all seamen on an equal footing, irrespective of domicile or nationality. If a seaman dies during service and leaves a wife or children under 18 years, the shipowner is to pay to them a month's wages from the date of death. Formerly the rule only held good for a seaman who was a Norwegian citizen or had domicile in Norway, but now it is extended to apply to all seamen on Norwegian ships. A similar extension has been effected in the rules concerning a free journey with board to the place of residence in the event of sickness or shipwreck, in the rules respecting the right to wages (up to 2 months) in case of unemployment resulting from shipwreck, and in the rules regarding compensation for effects on board in case of shipwreck, fire or other casualty. The Act, which entered into force on 1 September 1958, is printed in *Norsk Lovtidend*, 2nd section 1958, pp. 381–387.

8. The Act of 18 July 1958 (No. 2) relating to *Public Service Disputes* contains provisions respecting wage negotiations between the State and its civil and other servants, and concerning arbitration, mediation, strikes, etc. These relations have formerly been regulated partly by the Act of 15 February 1918 relating to Public Servants, and partly by the Act of 6 July 1933 relating to the Right of Negotiation for State Servants. The new Act, however, contains several new features of great importance in principle according to which

[1] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1958 — Nor. 3.

[2] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1958 — Nor. 2.

the public servant relationship in essential respects follows the same lines for fixing of wages and working conditions as apply in private work relations. Under the new statute public servants may through their organizations request negotiations with the State concerning the framing of a tariff agreement, concerning conditions of pay and work which have not previously been fixed by tariff, concerning disputes about the interpretation of a tariff agreement, etc. It is the Crown (Government) which with the consent of the Storting enters into the tariff agreement on behalf of the State. If the parties do not succeed in reaching agreement by negotiations, they may jointly bring the matter before the state mediator for arbitration. If the arbitration proceedings do not lead to a result, the state mediator may request that the mediation proposals be sent to the members of the public servant organizations for voting. If the parties agree thereto, they can also settle the matter by bringing the dispute before the State Wages Board. The State Wages Board, which was established by Act of 19 December 1952, is an arbitration institution and its findings are binding on both parties. There is, as a matter of fact, nothing to prevent the Storting by a special statute — irrespective of the wishes of the parties — from giving orders that the State Wages Board shall deal with the case. If mediation does not lead to a result within certain time limits, and the matter is not brought before the State Wages Board, the members of the public servant organizations concerned may resign from their posts after the usual notice and, if necessary, initiate a strike. If the resignation would expose an important community interest to danger, the Crown may require the public servants to remain in service for a further 3 months. If the dispute relates to the setting up of a tariff agreement to take the place of the old one, the validity period of the old agreement must in addition have expired. The right to strike is presumed not to belong to the State's civil servants. Sympathetic actions are forbidden. What has been stated above does not apply to disputes regarding the validity of a tariff agreement or regarding the interpretation of one. Such disputes are to be dealt with by the Labour Court, unless private arbitration has been agreed on. The Labour Court is a special tribunal which has been established by Act of 5 May 1927. The Act of 18 July 1958 (No. 2) is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 397–406.

9. Act of 12 December 1958 (No. 7) relating to *Prisons* takes the place of the Act of 12 December 1903 relating to Prisons and relating to Forced Labour. The statute gives directions for a differentiated treatment of prisoners. Thus in the distribution of convicted persons among the various prisons and institutions regard is to be paid to the age of the person in question, and to his criminal past, natural disposition and abilities. In this connexion the rules concerning investigation of a person have been given fixed form in the Act. As soon as possible after apprehension an investigation of the person's personal and social relations must be undertaken. The Statute opens the way for the establishment of institutions without special security arrangements (open institutions). A convicted person who seems fitted for confinement under freer conditions may be placed in an open institution if this is thought to be likely to promote his adaptation to the community. The rules respecting release on probation have also been amended in part. The chief rule now is that a person who has been sentenced to imprisonment may be released on probation if he has, inclusive of a possible period of detention, served two-thirds of the punishment, but at least 4 months. A person who has been sentenced to imprisonment for 3 years or more can be released on probation when he has served one half of the punishment imposed and the release is thought to be particularly well justified. For the rest, the following provisions of the Act may be mentioned: The imprisoned persons are to be given suitable work, which they are obliged to perform. For the work they are entitled to a remuneration according to detailed rules. Prisoners who for reasons of health cannot work may be allowed a small sum as daily pay. Prisoners are to be given facilities for study, reading and other forms of occupation outside working hours. If it is found useful, they may be given training and instruction. They must be given the necessary medical supervision. A prisoner who is ill may be placed in hospital if he cannot get suitable treatment for his ailment in the institution. Imprisoned persons have the right to receive visits from their nearest relatives and other persons with whom it is important for them to have contact. Visits may be refused if there is a particular ground for the belief that the visit may have a detrimental effect. Corresponding rules apply to correspondence. According to detailed rules the prisoner may be allowed a short leave of absence. Loss of freedom may be suspended if it is found advisable on account of the state of health of the prisoner or if other weighty grounds recommend this. The Act entered into force on 1 April 1959. It is printed in *Norsk Lovtidend*, 2nd section, 1958, pp. 666–678.

10. By the Act of 12 December 1958 (No. 8) minor amendments have been effected in the Act of 1 June 1928 relating to *Educative Treatment of Young Lawbreakers*. It is provided that a pupil who is unfitted for treatment in an open division may be given treatment in a closed division. A pupil who displays marked mental defects may be transferred to a safekeeping institution. The ordinary term of detention in reformatory schools is 2 years, with right to release on probation after one and a half years. On the basis of a desire for more individual treatment, the possibility has now been created for release to be granted up to one year before expiry of the two-year limit. The period of detention can otherwise be prolonged up to one year beyond the two-year limit, if the purpose of the treatment does not appear to have been

attained or other weighty grounds are present. Release from the schools is probationary. The probation time is shortened from 3 years to 2. The amending statute entered into force on 1 April 1959 and is printed in *Norsk Lovtidend*, 2nd division, 1958, pp. 678–680.

11. By Act of 12 December 1958 (No. 1), the *punitive provisions concerning slavery and slave-trade* in the general civic penal Act of 22 May 1902 have been somewhat extended. The amendments are not due to any practical need in Norway, but are a consequence of the signing on 7 September 1956 of the Supplementary Convention to the Slavery Convention of 25 September 1926.[1] The Act is printed in *Norsk Lovtidend*, 2nd section, 1958, p. 659.

II. JUDICIAL DECISIONS

The Norwegian authorities are not aware of any court judgements in 1958 which have special interest for the question of human rights.

III. INTERNATIONAL AGREEMENTS[2]

Norway has in 1958 signed the following international agreements which have significance for human rights:

1. Convention of 1 March 1954 relating to Civil Procedure. The Convention was ratified by Norway on 25 April 1958 and entered into force as regards Norway on 21 July 1958.

2. Convention of 25 July 1957 between Great Britain and Norway relating to Social Security. The Convention was ratified by Norway on 7 February 1958 and entered into force on 1 April 1958.

[1] See *Yearbook on Human Rights for 1956*, pp. 289-91.

[2] See also pp. 312-313.

PAKISTAN

NOTE [1]

The Constitution of Pakistan, which came into force on 23 March 1956, has been abrogated by proclamation of the President made on 7 October 1958. The President has, however, promulgated the Laws (Continuance in Force) Order, 1958, by which the laws, other than the former constitution, ordinances, etc., that were in force before the proclamation shall continue to remain in force. The order also lays down that the Government of the country thereafter to be known as Pakistan, and not the Islamic Republic of Pakistan, shall be governed as nearly as may be in accordance with the provisions of the former constitution. The promulgation of this order ensures the rule of law, which is the primary guarantee of human rights.

[1] Note kindly furnished by the Permanent Representative of Pakistan to the United Nations.

PRESIDENT'S ORDER (POST-PROCLAMATION) No. I OF 1958 of 10 October 1958 [1]

(LAWS (CONTINUANCE IN FORCE) ORDER, 1958)

In pursuance of the Proclamation of 7 October 1958,[2] and of all powers enabling him in that behalf the President is pleased to make and promulgate the following order:

1. (1) This order may be called the Laws (Continuance in Force) Order, 1958.

(2) It shall come into force at once and be deemed to have taken effect immediately upon the making of the Proclamation of the seventh day of October 1958, hereinafter referred to as the Proclamation.

(3) It extends to the whole of Pakistan.

2. (1) Notwithstanding the abrogation of the Constitution of 23 March 1956, hereinafter referred to as the late Constitution, by the Proclamation and subject to any order of the President or regulation made by the Chief Administrator of Martial Law, the republic, to be known henceforward as Pakistan, shall be governed as nearly as may be in accordance with the late Constitution.

(2) Subject as aforesaid, all courts in existence immediately before the Proclamation shall continue in being and, subject further to the provisions of this Order, in their powers and jurisdictions.

(3) The law declared by the Supreme Court shall be binding on all courts in Pakistan.

(4) The Supreme Court and the high courts shall have power to issue the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*.

(5) No writ shall be issued against the Chief Administrator of Martial Law, or the Deputy Chief Administrator of Martial Law, or any person exercising powers or jurisdiction under the authority of either.

. . .

4. (1) Notwithstanding the abrogation of the late Constitution, and subject to any order of the President or regulation made by the Chief Administrator of Martial Law, all laws, other than the late Constitution, and all ordinances, orders-in-council, orders other than orders made by the President under the late Constitution, such orders made by the President under the late Constitution as are set out in the schedule to this order, rules, by-laws, regulations, notifications, and other legal instruments in force in Pakistan or in any part thereof, or having extra-territorial validity, immediately before the Proclamation, shall, so far as applicable and with such necessary adaptations as the President may see fit to make, continue in force until altered, repealed or amended by competent authority.

. . .

6. All persons who immediately before the Proclamation were in the service of Pakistan as defined under clause 1 of article 218 of the late Constitution, and those persons who immediately before the Proclamation were in office as governor, judge of the Supreme Court or a high court, Comptroller and Auditor General, Attorney-General or Advocate-General, shall continue in the said service or in the said office on the same terms and conditions and shall enjoy the same privileges, if any.

7. Any provision in any law providing for the reference of a detention order to an advisory board shall be of no effect.

. . .

[1] Published in *The Gazette of Pakistan Extraordinary*, of 10 October 1958.

[2] The Proclamation of 7 October 1958 had the effect, among others, of abrogating the Constitution of 23 March 1956 (See *Yearbook on Human Rights for 1956*, pp. 177-83), dissolving the National and Provincial Assemblies, and abolishing all political parties.

PANAMA

ACT No. 60 OF 18 DECEMBER 1958[1] TO AMEND CERTAIN ARTICLES OF ACT No. 67 OF 11 NOVEMBER 1947

Art. 1. The following articles of the Labour Code are hereby amended to read as follows:

Art. 2. Article 164 shall read as follows:

"*Article 164.* The statutory weekly rest period shall when possible be given on a Sunday. Nevertheless, it may be agreed that workers shall be granted a rest period of twenty-four consecutive hours on another day, in exchange for the Sunday rest, in conformity with the article next following.

"When a national holiday falls on a Sunday, the worker shall be granted the following Monday as compensation.

"When a national holiday falls on a day other than Sunday and that day is a rest day for a worker, the worker shall be entitled to be given another day in the same week as compensation."

Art. 3. Article 166 shall read as follows:

"*Article 166.* Work on a Sunday shall be paid at a rate 50 per cent higher than the rate payable for an ordinary working day — i.e., the ordinary wage plus one-half of that wage.

"Work on a national holiday or day of national mourning decreed by the Executive as provided for in article 169 shall be payable at a rate 150 per cent higher than the rate payable for an ordinary working day — i.e., the ordinary wage plus one and a half times that wage.

"Paragraph: It shall be understood that the additional payment of 150 per cent includes payment for the day of rest in accordance with the provisions of article 167."

Art. 4. This Act makes an addition to article 164 and amends article 166 of Act. No. 67 of 11 November 1947; it repeals decree No. 139 of 10 May 1949, and shall enter into force as soon as it is approved.

Art. 5. Article 167 shall read as follows:

"*Article 167.* Wages shall be paid for a national holiday or day of national mourning decreed by the Executive as provided for in article 169 in the same manner as if it were an ordinary working day."

. . .

[1] Text published in *Gaceta Oficial* No. 13733, of 12 January 1959. Translation by the United Nations Secretariat.

PHILIPPINES

NOTE[1]

A. LEGISLATION

Right to share in Scientific Advancement and its Benefits

(*a*) Republic Act No. 2067, approved on 13 June 1958, was enacted "to integrate, co-ordinate, and intensify scientific and technological research and development and to foster invention". Pertinent provisions of the Act read as follows:

"In consonance with the provisions of section four, article XIV of the Constitution, it is hereby declared to be the policy of the state to promote scientific and technological research and development, foster invention, and utilize scientific knowledge as an effective instrument for the promotion of national progress." (Sec. 2.)

"In the implementation of the foregoing policy, the Government shall, in accordance with the provisions of this Act:

"(1) Stimulate and guide scientific, engineering and technological efforts towards filling the basic and immediate needs of the people;

"(2) Survey the scientific, engineering and technological resources of the country and formulate a comprehensive programme for the development and maximum utilization of such resources in the solution of the country's problems;

"(3) Strengthen the education system of the country so that the same will provide a steady source of competent scientific and technological manpower;

"(4) Furnish incentives to private and individual initiative in scientific work, as a fundamental basis for the advancement of science;

"(5) Promote and encourage the dissemination of the results of scientific and technological research and the general application thereof;

"(6) Encourage and facilitate the active participation of domestic and foreign sectors in furnishing financial, technical and other forms of assistance for scientific and technological activities;

"(7) Promote co-ordination and co-operation in research in order to secure concentration of effort, minimize duplication and thereby achieve maximum progress;

"(8) Initiate and bring about the establishment of standards, quality control measures and documentation facilities; and

"(9) Encourage studies in the pure and fundamental sciences." (Sec. 3.)

To carry out the provisions of section 3, the Act created a National Science Development Board, and, under the supervision of the Board, a National Institute of Science and Technology and the Philippine Atomic Energy Commission.

B. JUDICIAL DECISIONS

1. *Right to Fair Hearing before an Impartial Tribunal*

(*a*) People *v.* Magbanua, 54 O.G. (15) 4500. *Facts:* Appellant Virgilio Masiga was charged with the crime of homicide. Upon the case being called for trial, he moved for the dismissal thereof, on the ground that no preliminary investigation of the case had been conducted as regards him. His motion was denied, and a trial of the case was held. After the trial, the lower court found him guilty of the crime charged, and he was sentenced accordingly. He appealed.

Held: Appellant had been denied a fundamental right — that to preliminary investigation — which was part of the due process of law. The preliminary investigation held by the Acting Provincial Fiscal was without authority of law, and the amended information upon which the appellant was tried and convicted was a nullity. Hence, the trial court, in denying appellant's motion, which was presented in due time, that the case be dismissed and that he be accorded another preliminary investigation, committed a reversible error. A preliminary investigation by the proper court or official in cases in which the statutes provide therefor was part of the due process of law and denial thereof was reversible error.

(*b*) Lunor *v.* Luna, 54 O.G. (38) 8649. *Facts:* Appellants filed a petition for mandamus to compel appellees to reinstate them to their positions of clerk-janitor and clerk-registrar respectively, abolished when appellees approved the budget for the fiscal year 1952/53. Mandamus was denied by the lower court, hence this appeal.

Held: Before their dismissal appellants were at least entitled to a hearing, to a reasonable opportunity to show that they were "capable" and that they had done nothing to make them lose the confidence of the municipal council. It had been generally held that the power to create carries with it the power to destroy. In the very nature of things, however, the power to destroy, to abolish, to reorganize was not an absolute one, nor could it be exercised without

[1] Information kindly furnished by the Secretary of Foreign Affairs of the Philippines.

limitations, capriciously and arbitrarily. It had been held that where the office is of legislative creation, the legislative body that created it may, unless prohibited by the Constitution, control, modify, or abolish it whenever such course, in its opinion, may seem necessary, expedient, or conducive to the public good; that this power may be exercised at any time and even while the office is occupied by a duly elected or appointed incumbent because neither the legislature nor the people is under obligation to continue a useless office simply for the benefit of the incumbent; and that tenure of office and civil service statutes do not prevent a *bona fide* abolition of an office; nevertheless the weight of authority was to the effect that in such cases the office must be abolished in good faith. When the abolition constituted an abuse of power, when behind it were petty, personal, partisan, or other malicious motivations, the courts — if they were to be the last bulwarks of constitutional government — must come to the rescue of the aggrieved party and "make the hammer fall and heavily". This good faith theory had been recognized and applied in the present jurisdiction.

2. *Right to be presumed Innocent until proven Guilty*

(*a*) People *v.* Zaballero, 54 O.G. (28) 6904. *Facts:* The accused was charged with homicide with four other persons. After due hearing, he was found guilty as charged and was sentenced accordingly. He appealed assailing the pronouncement of the lower court that his failure to take the witness stand and his silence were an eloquent proof of guilt.

Held: Appellant was correct. His argument found unqualified support in the law. Section 1 (*c*), rule 111 of the Rules of Court, read: "Section 1. *Rights of defendant at the trial.* — In all criminal prosecutions the defendant shall be entitled: (*c*) To testify as witness in his own behalf. But if a defendant offers himself as a witness he may be cross-examined as any other witness. His neglect or refusal to be a witness shall not in any manner prejudice or be used against him;" This legal precept, otherwise stated, emphasised the rule that a person charged with a crime is not called upon to make any explanation or denial at his trial. To remain silent was a right accorded him by law. As a rule, no unfavourable inference could be drawn from his exercise of that right. Silence could not be interpreted as a confession of guilt, not even a presumption of guilt.

3. *Protection against Double Jeopardy*

(*a*) People *v.* Flores, G.R. No. L-11022, prom. April 28, 1958. *Facts:* Defendant was charged with grave oral defamation. After the prosecution presented its evidence, the defence moved for the dismissal of the case, whereupon decision was rendered acquitting the accused on the ground that, although he had made the slanderous imputations quoted in the information, it had not been established that the action was instituted upon complaint filed by the offended party. Hence, the appeal by the prosecution upon the proposition that a complaint by the offended party is not indispensable to the prosecution of the crime of oral defamation, when the defamatory words uttered by the accused constitute an imputation, either of a crime that may be prosecuted *de officio* or of a vice or defect, not constituting a crime but tending to cast dishonour upon the offended party.

Held: Although there was merit in the appeal, nonetheless the appeal would not prosper because it placed the defendant twice in jeopardy of punishment for the same offence, in violation of the Constitution.

(*b*) People *v.* Cabarles, G.R. No. L-10702, prom. January 29, 1958. *Facts*: The accused was the owner of an unbranded carabao which had been impounded for having destroyed the plants of another person. Because he refused to pay the impounding fees, in violation of an existing ordinance, he was prosecuted in the Justice of the Peace Court of Leon, province of Iloilo. The accused pleaded not guilty. After the prosecution had rested its case, the defendant verbally moved to quash the case for insufficiency of evidence, contending that what was penalized by the municipal ordinance was the act of letting loose any large cattle and not the refusal to pay the impounding fee. This petition was granted and the case was dismissed. The prosecution appealed to the court of first instance which likewise dismissed the case. Hence this appeal to the Supreme Court.

Held: The dismissal of the case by the justice of the peace was an acquittal or discharge of the defendant after the prosecution had presented the evidence, at a proper trial, before a competent court, on a valid information, from which acquittal the fiscal could not certainly appeal without doing violence to the constitutional provision on double jeopardy. It was, therefore, a dismissal upon the merits of the case which could not be appealed from. Where there had been an arraignment, plea of not guilty, and presentation of complete evidence by the prosecution, at which stage the accused could choose either to present his evidence to refute the charges against him or simply to submit the case upon the strength or weakness of the evidence for the government, the dismissal of the information was an adjudication on the merits, and operated as an acquittal, from which the prosecution could not appeal. Appeal overruled.

4. *Redress for the Violation of Legal Right*

(*a*) Buenavista *v.* Ste. Domingo, 54 O.G. (37) 8439. *Facts:* Plaintiffs brought an action for damages against defendants for having included them as accused in a criminal case in the Justice of the Peace court. Defendants claimed that the criminal case was filed after proper investigation had been made and that they were convinced that the essential elements of the crime were present. The lower court dismissed the complaint as the evidence failed to prove that defendants acted with malice in the prosecution of the criminal case.

Held: While courts must look upon the plight of hapless victims of unfounded and malicious prosecution with tolerance and sympathy, sound principles of justice and public policy dictated that persons should have free resort to the court for redress of wrongs and vindication of their rights without fear of later standing trial for damages where, by lack of sufficient evidence, legal technicalities or a different interpretation of the laws on the matter, the case was lost and the defendants acquitted. Proof and motive that the prosecution or institution of the action was prompted by a sinister design to vex and humiliate a person and to cast dishonour and disgrace must be clearly and preponderantly established to entitle the victims to damages and other rights granted by law; otherwise, there would always be a civil action for damages after every prosecution's failure to prove its cause, resulting in the consequent acquittal of the accused.

(*b*) Diaz *v.* Amante, G.R. No. L-9228 prom. December 26, 1958. *Facts:* Petitioners filed a petition for mandamus to compel respondent to reinstate them to their positions as members of the police force. The trial court, after hearing, rendered judgement ordering respondent to reinstate petitioners and to pay them their unpaid salaries from August 16 1951 to the date of their reinstatement, 5,000 pesos as moral damages and 2,000 pesos as exemplary damages; and to pay the costs of the proceedings. Respondent appealed.

Held: Respondent should be made to pay the back salaries of the petitioners. The trial court was correct in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision. As to the exemplary damages awarded to petitioners, this amount was to be imposed if only to curtail the abuses that some public officials were prone to commit upon coming to power in utter disregard of the civil service rules which constituted the only safeguard of the tenure of office guaranteed by the Constitution.

5. *Labourer's right to join Labour Union*

Companía Marítima *v.* United Seamen's Union of the Philippines, G.R. No. L-9923 prom. June 20, 1958. *Facts:* Respondents brought action against petitioner seeking reinstatement to their positions and the payment of their back pay. The lower court found that the discharge and non-employment had been caused by the respondents' refusal to desert the United Seamen's Union and to join the General Maritime Stevedores Union; and that the company was thereby guilty of discrimination in regard to hire or tenure of employees — contrary to the provisions of Republic Act No. 875.

Held: As old hands, respondents could not by the mere pretext of temporarily reducing the personnel on account of drydocking be permanently ousted when the vessel returned to resume its ordinary activities. In fact, the company's practice had been to re-take its laid-off personnel upon return of the vessel from drydocking. What was worse in this case was the fact that it refused to follow that practice because respondents declined to follow its indication to join the General Maritime Services Union and to leave the United Seamen's Union. The terms of the Industrial Peace Act were clear: it is unfair labour practice for an employer "to discriminate in regard to hire or tenure of employment . . . to encourage or discourage membership in any labour organization" (sec. 4(*a*), Rep. Act No. 875) — except when there is a closed shop arrangement, which in this case had not been proven to exist. For such unfair practice the company could be required to reinstate the respondents with back pay.

6. *Labourer's Right to receive Just Compensation*

(*a*) Price Stabilization Corporation *v.* PRISCO Workers' Union G.R. No. L-9288 prom. December 29, 1958. *Facts:* Respondents brought action against petitioners to recover additional compensation for overtime work rendered on Sundays and other legal holidays. Petitioners contended that respondents were not entitled in view of the provisions of executive order No. 350, series of 1950, and section 566 of the Revised Administrative Code.

Held: The contention overlooked the fact that, even if the employees and workers of the PRISCO were subject to the civil service rules and regulations, they might be paid additional compensation for overtime work or work rendered on Sundays and other legal holidays if there was a special legal provision authorizing payment of such additional compensation, and here such a provision existed in the Eight House Labour Law (Com. Act. No. 444). Thus, section 2 of said Act provided: "This Act shall apply to all persons employed in any industry or occupation, whether public or private," and there was no doubt that the PRISCO was engaged in an industry or occupation within the purview of that Act considering the nature of its organization and functions.

(*b*) Madrigal Shipping Company, Inc. *v.* Ogilvie, G.R. No. L-8431 prom. October 30, 1958. *Facts:* Respondents were hired by petitioner to man and fetch a vessel from Japan. Pursuant to a contract, they were flown to Japan and they accordingly manned the vessel out of a port in that country. When the vessel reached Hong Kong, however, respondents were dismissed, and replaced with a crew of Chinese nationality. They brought an action to recover an amount representing their salaries and subsistence allowance.

Held: The services of respondents were engaged by petitioner to man its vessel for a determinate time or voyage, with an express stipulation that "this contract expires on the arrival of this boat at the port of Manila." Article 605 of the Code of Commerce provided: "If the contracts of the captain and members of

the crew with the ship agent should be for a definite period or voyage, they may not be discharged until after the fulfilment of their contracts, except by reason of insubordination in serious matters, robbery, theft, habitual drunkenness, or damage caused to the vessel or its cargo through malice or manifest or proven negligence." Not having been discharged for any of the causes enumerated in the foregoing article, the respondents were entitled to the amounts they respectively sought to collect from the petitioner.

(*c*) Monteadora *v.* Cebu Portland Cement Co., CA G.R. No. 18131-R prom. February 17, 1958. *Facts:* The plaintiffs were employees of CEPOC, a government-owned corporation. They alleged that while in the employ of the defendant they rendered services in excess of eight hours and during Sundays and holidays, but were not paid the overtime and extra compensation prescribed by law. They also alleged that the daily wage given them by their employer was below the minimum wage provided for by law, and that therefore, pursuant to the Minimum Wage Law, they should be entitled to the corresponding differential pay. The defendant argued that the Eight-Hour Labour Law was not applicable to government corporations and that the differential pay claimed by the plaintiffs corresponded to services rendered before the date of applicability of the Minimum Wage Law to government employees. The lower court dismissed the complaint. Hence this appeal.

Held: The failure of an employee to demand overtime and extra compensation every time he signs the payroll to receive his pay does not militate against his claim. The Eight-Hour Labour Law was applicable, because CEPOC was not a corporation invested with the sovereign powers of the Government, but, in the eyes of the law, was nothing more than an ordinary private corporation.

7. *Protection of Employee against Unemployment*

(*a*) Bautista *v.* Ong, 54 O.G. (23) 6075. *Facts:* Petitioner was employed by respondent as gate usher on 23 December 1950. On 20 September 1953, because she became pregnant, she went on maternity leave. She returned to work soon after giving birth. On 21 November 1954, she again went on leave because she became pregnant for a second time. When she reported back for work, she applied for her maternity leave benefits provided by section 7 of Republic Act No. 679. Respondent refused to grant her those benefits. She then brought an action in the court of first instance. After hearing, the lower court required respondent to reinstate petitioner with back pay at 120 pesos a month from December 1954. Respondent appealed.

Held: Republic Act No. 1052 did not give the employer blanket authority to terminate the employment of an employee regardless of the cause or purpose behind such termination. It was true that the employer has the right to refuse to employ whomsoever he may wish, irrespective of his motive, and also to prescribe the terms upon which he will consent to the relationship. Once the relation of labour and capital is established, however, the former has some rights to protect under that relationship which becomes not merely contractual but one impressed with public interest. Under section 14, sub-paragraph (*a*) of Republic Act No. 679, "it shall be unlawful for any employer to discharge any woman employed by him who may be pregnant for the purpose of preventing such woman from enjoying the benefits of section 7 of this Act or to discharge such woman while on leave on account of her pregnancy or confinement."

(*b*) Tolentino *v.* Bachrach Motor Co., Inc., 54 O.G. (33) 7754. *Facts:* Plaintiff sought a court order directing defendant to reinstate him to his former employment and to pay his unpaid wages for his services before separation from service and the accrued leave pay plus the wages from the date of separation until his restoration to his position. The ground for plaintiff's complaint was that he was dismissed from the service by the defendant without justifiable reason. Defendant countered with the averment that plaintiff was discharged from employment for wilful and deliberate abandonment of his work, and because of plaintiff's repeated acts of insubordination and refusal to comply with legitimate orders of his superior.

Held: By section 13 of the Industrial Peace Act (Rep. Act No. 875), the representative of the employees is empowered to enter into collective bargaining with the employer. Included in the term "collective bargaining" is the question of discharge of employees. Such being the case, the agreement reached, in the absence of mistake, fraud, violence, intimidation, or undue influence, must be held to be final. Reason and the law supported this view. What good was a labour union if its commitments would be ineffective as far as the members thereof were concerned? The New Civil Code was authority for the statement that a compromise has upon the parties the effect and authority of *res judicata.* (Art. 2037, Civil Code.) The compromise agreement entered into between the Rural Transit Employees Association and the appellee was final and conclusive as to the right of appellant to reinstatement into the service and as to his demand for back wages from and after the time of his separation.

8. *Right to Security of Property Rights*

Primero *v.* Court of Agrarian Relations, 54 O.G. (20) 5506. *Facts:* Petitioner, owner of a rice land, sought an order from the Court of Agrarian Relations directing respondent tenant to vacate the premises in question so that it could be delivered to a lessee. Respondent contended that under section 49 of Republic Act No. 1199, no tenant could be dispossessed of his holding except for one of the causes enumerated in section 50 of that Act. Petitioner claimed that the Act was unconstitutional.

Held: The provisions of law assailed as unconstitutional did not impair the right of the landowner to

dispose of or alienate his property or forbid him to make such transfer or alienation. They only provided that, in case of transfer or in case of lease, the tenancy relationship between the landowner and his tenant should be preserved in order to insure the well-being of the tenant or protect him from being unjustly dispossessed by the transferee or purchaser of the land. In other words, the purpose of the law in question was to maintain the tenants in peaceful possession and cultivation of the land or afford them protection against unjustified dismissal from their holdings. Republic Act No. 1199 was unquestionably remedial legislation promulgated pursuant to the social justice precepts of the Constitution and in the exercise of the police power of the State to promote the common weal. It was a statute relating to public subjects within the domain of the general legislative powers of the State and involving the public rights and public welfare of the entire community affected by it. Republic Act No. 1199, like the previous tenancy laws enacted by the lawmaking body, was passed by Congress in compliance with the constitutional mandates that "the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State" (Art. II, sec. 5, Const.) and that "the State shall regulate the relations between landlord and tenant . . . in agriculture . . ." (Art. XIV, Sec. 6, *id.*)

POLAND

NOTE[1]

I. Legal Enactments affecting Human Rights published during 1958

1. Act of 13 December 1957 respecting pensions for regular and extended service soldiers and their families (*Dziennik Ustaw* No. 2, item 6)
2. Announcement of 18 April 1958 by the Minister of Labour and Social Welfare concerning publication of the consolidated text of the decree of 25 June 1954 respecting a universal pension scheme for workers and their families (*Dziennik Ustaw* No. 23, item 97)[2]
3. Announcement of 18 April 1958 by the Minister of Labour and Social Welfare concerning publication of the consolidated text of the decree of 14 August 1954 respecting benefits for disabled ex-servicemen and their families (*Dziennik Ustaw* No. 23, item 98)
4. Announcement of 18 April 1958 by the Minister of Labour and Social Welfare concerning publication of the consolidated text of the Act of 28 May 1957 respecting pensions for miners and their families (*Dziennik Ustaw* No. 23, item 99)
5. Announcement of 25 August 1958 by the Minister of Communications concerning publication of the consolidated text of the Decree of 19 January 1957 respecting pensions for railway workers and their families (*Dziennik Ustaw* No. 55, item 273)
6. Act of 2 July 1958 respecting vocational training, training in a specific type of work and the conditions for employment of minors at enterprises, and respecting apprenticeship (*Dziennik Ustaw* No. 45, item 226)[3]
7. Order of 26 September 1958 by the Council of Ministers listing the types of work prohibited for minors (*Dziennik Ustaw* No. 64, item 312)
8. Order of 18 July 1958 by the Minister of Health respecting the principles governing the activity of infants' homes and the conditions governing the use of their services (*Dziennik Ustaw* No. 48, item 238)
9. Order of 17 September 1958 by the Minister of Health respecting the principles governing the provision of benefits by public health institutions to certain extended service officers and non-commissioned officers who have been discharged from the Army (*Dziennik Ustaw* No. 59, item 297)
10. Order of 16 January 1958 by the Minister of Finance and the Government Commissioner for Repatriation respecting the principles and procedure governing the granting of loans to repatriates (*Monitor Polski* No. 7, items 40 and 252)

II. Decisions affecting Human Rights rendered by the Supreme Court during 1958

1. Supreme Court decision of 20 January 1958 (2 CR. 36/58) concerning stabilization of the employment of disabled ex-servicemen

According to the decision, a disabled person is not required to disclose his disability at the time he is hired in order to benefit from the privilege specified in article 28, paragraph 3, of the Decree of 14 August 1954 respecting benefits for disabled ex-servicemen, which provides that a disabled person may be dismissed from his employment only for grave reasons and with the prior consent of the people's council; this protection is extended to all disabled persons, irrespective of whether the document assigning them to employment in the enterprise in question made reference to their disability and even if they were employed on the basis of a contract concluded with the enterprise without any action by the presidium of the people's council (*Państwo i Prawo*, 1958, No. 11, p. 872).

2. Decision of 7 May 1958 (2 CR. 700/57)

The Supreme Court ruled that the employment of a pregnant woman may be terminated as a result of her having given notice of resignation only if it has been ascertained that she is deliberately waiving her statutory rights protecting her against termination of the work contract at any time during pregnancy (*Orzecznictwo Sądów Polskich i Komisji Arbitrażowych*, 1958, item 308).

3. Decision of 10 April 1958 (3 CR. 894/57)

The Supreme Court ruled that any engagement of a worker by an employer which involves a violation of the regulations governing hours of work and jeopardizes the worker's life and health — e.g., where he

[1] Note kindly furnished by the Permanent Mission of Poland to the United Nations. Translation by the United Nations Secretariat.

[2] Translations of this text into English and French have appeared as International Labour Office: *Legislative Series* 1958 — Pol. 1.

[3] Translations of this text into English and French have appeared as International Labour Office: *Legislative Series* 1958 — Pol. 2.

has no opportunity to rest — constitutes a violation of the regulations concerning protection of the life and health of workers and renders the employer responsible (*Orzecznictwo Sądów Polskich i Komisji Arbitrażowych*, 2/59, item 40).

4. Decision of 28 March 1958 (4 CR. 910/57)

The Supreme Court ruled that an enterprise does not have to violate a specific legal provision in order to be remiss in its obligations relating to protection of the life and health of workers; it is sufficient if the enterprise is found to be disregarding its obligations arising out of the general principles established by universal practice (not yet published).

5. Ruling of 17 October 1958 by seven justices of the Supreme Court (1 CO 18/55), according to which a person whose paternity has been acknowledged has the right to institute proceedings to establish that the man who acknowledged him is not his father; no time limitation applies to the institution of such proceedings (not yet published).

PORTUGAL

MEASURES TAKEN BY PORTUGAL IN 1958 IN THE SPHERE OF HUMAN RIGHTS [1]

During 1958 the under-mentioned new measures were enacted in the sphere of labour and social welfare:

Act No. 2091 provides for a reform of the labour courts.

Act No. 2092 sets forth the basis on which the welfare institutions, the village councils (Casas do Povo) and federations thereof are to co-operate with regard to housing development.

Legislative decree No. 41595 provides that hospitalization for general surgical treatment is to be included under the normal health insurance coverage of the Trades Union Welfare Funds and the Pension Funds.

[1] Note kindly furnished by the Permanent Representative of Portugal to the United Nations. Translation by the United Nations Secretariat.

REPUBLIC OF KOREA

HUMAN RIGHTS IN KOREA IN 1958[1]

I. Introductory Note

This summary is confined to the legislative activities of the Government in the year 1958, and it should be noted that there was much other activity on the part of the Korean people and Government for the protection of human rights and justice.

II. Promulgation of the Juvenile Law

The Juvenile Law promulgated on 24 July 1958 by Act No. 489 replaced the Korean Juvenile Decree. The Juvenile Law is intended to protect and correct juveniles of an anti-social character mainly by the following measures:

1. Juveniles (persons under 20 years of age) who violate the criminal law Acts or decrees, are to be brought under the jurisdiction of the Juvenile Department of the District Court or an agency of the Juvenile Department, and tried as protection cases. A judge of the Juvenile Department may place juvenile delinquents under the custody of some institution or individual, such as a juvenile reformatory or guardian, so that those protective measures which may assure the correction of the anti-social character of the juveniles may be taken.

2. Juveniles transferred by a director of a police bureau to the Juvenile Department as having a tendency to commit crimes are also to be protected in accordance with this provision.

3. In the trial of juvenile cases, sentence for a limited term of imprisonment or penal servitude is to be given for crimes which are punishable by death or life imprisonment in accordance with the provisions of the criminal laws.

Extracts from the Juvenile Law follow:

Art. 1. (Purpose)

The purpose of this Law is to encourage the sound growth of juveniles by means of protective measures against juvenile delinquents of anti-social character and by taking special measures different from those taken against ordinary criminals.

Art. 3. (Jurisdiction and Functions)

(2) Juvenile protection cases shall be brought under the jurisdiction of the Juvenile Department of a district court (hereafter referred to as the Juvenile Department).

(3) Trial and decision on juvenile protection cases shall be conducted and delivered by a single judge of the Juvenile Department.

Art. 4. (Objects of the protective measures)

Juveniles falling under one of the following categories shall be tried as protection cases of the Juvenile Department:

1. Juveniles transferred to the Juvenile Department by a judge or a public prosecutor;

2. Juveniles whose ages are above 12 and under 14, and who have been transferred to the Juvenile Department by a director of a police bureau or by a chief of a police station because of their violation of criminal enactments.

3. Juveniles, above the age of 12, transferred by a director of a police bureau to the Juvenile Department as having a tendency to commit crimes because of their family circumstances and their character.

Art. 12. (Summons, Warrant)

(1) When it is deemed necessary for the investigation of a case, a judge of the Juvenile Department may issue a summons to a juvenile suspect or his guardian requesting them to report to the court at a specified date.

Art. 13. (Emergency Warrant)

When it is deemed necessary to take an emergency measure in order to protect a juvenile, a judge of the Juvenile Department shall issue the emergency warrant without issuing the summons as provided in the preceding article.

Art. 16. (Designation of Assistant)

(1) A juvenile concerned or his guardian may designate an assistant with the approval of the judge of the Juvenile Department.

(2) If the guardian of the juvenile or a lawyer is to be designated as an assistant, the approval provided for in the preceding paragraph shall not be necessary.

Art. 17. (Provisional Measures)

(1) When it is deemed necessary for the investigation of a case, the judge of the Juvenile Department may take, by means of a ruling, one of the following measures with regard to care and custody of the juvenile concerned:

1. To place the juvenile under the custody of his guardian or the principal of his school.

[1] Note kindly furnished by the Minister of Foreign Affairs of the Republic of Korea.

2. To place the juvenile under the custody of a hospital.

3. To place the juvenile under the custody of a Juvenile Reformatory.

4. To place the juvenile under the custody of some other institution or individual deemed appropriate for the care and custody of the juvenile.

(2) One of the measures itemized in the preceding paragraph shall be imposed, within 24 hours, upon a juvenile whose person and whose case have been transferred to the Juvenile Department.

(3) The duration of the custody under the provision of paragraph (1)3 shall not exceed a month. But if further custody is required, the period may be renewed once only by means of a ruling of the judge.

(4) Any one of the measures as itemized in paragraph 1 may be cancelled or revised at any time by means of a ruling of the judge.

Art. 23. (Methods of Trial)

(1) Trials shall be conducted in a spirit of kindness and with a gentle attitude towards the juveniles.

(2) Trials shall not be made public; however the judge may permit some persons to attend the trial when deemed necessary.

Art. 24. (Statement of Opinion)

(1) The juvenile, his guardian and his assistant may state their opinion on the trial of the juvenile.

(2) If an opinion is to be stated in accordance with the preceding paragraph, the judge may order the juvenile concerned to withdraw from the court when deemed necessary.

Art. 30. (Ruling on Protective Measures)

When it is deemed necessary to take a protective measure as a result of the trial, the judge of the Juvenile Department shall take, by means of a ruling, one of the following measures:

1. To place the juvenile under the care and custody of his guardian or some other appropriate person.

2. To place the juvenile under the care and custody of a temple, a church or other appropriate charity organization.

3. To accommodate the juvenile in a hospital or other appropriate sanatorium.

4. To place the juvenile in a reform school.

5. To transfer the juvenile to a juvenile reformatory.

Art. 39. (Appeal)

(1) If a ruling on protective measures is regarded as conflicting with the relevant Acts or decrees, the guardian, assistant or legal representative may appeal to the competent appelate court.

(3) The appeal shall be lodged within seven days.

Art. 43. (Re-appeal)

(1) If the appeal is dismissed, re-appeal may be lodged with the Supreme Court only when the ruling against the appeal is deemed to be contrary to the provisions of the relevant Acts or decrees.

(2) The provision of Article 39, paragraph 3, shall be applied, *mutatis mutandis*, to a re-appeal lodged in accordance with the preceding paragraph.

Art. 45. (Transfer by Public Prosecutor)

When it is deemed, as a result of the investigation of a juvenile suspect case, that there remains suspicion of a crime punishable by a penalty less than a fine, or when there are reasons to subject a juvenile to protective measures, the public prosecutor shall transfer the case to the competent Juvenile Department.

Art. 46. (Transfer by Judge)

When a crime punishable by a penalty less than a fine, or reasons to subject a juvenile to protective measures are established as a result of the trial of a juvenile, the judge shall transfer the case to the competent Juvenile Department.

Art. 49. (Warrants of Detention)

(1) Warrants of detention shall not be issued to juveniles except in unavoidable cases.

(2) In case of detention, juveniles shall be accommodated separately from other suspects or defendants unless there exist special conditions.

Art. 51. (Separation of Trial)

Even if juveniles are involved in a crime with adults, the juveniles shall be tried separately from the adults unless there exist obstacles.

Art. 52. (Principles for Trial)

(1) Trials of juvenile criminal cases shall be conducted in a spirit of kindness and with a gentle attitude toward the juveniles.

(2) In the trial of juvenile cases, particular emphasis shall be placed upon the investigation of the physical and mental conditions, the character, the career, the family conditions and other circumstances of the juvenile.

Art. 53. (Mitigation of Death and Life Sentence)

When a crime punishable by death or life imprisonment is committed by a juvenile under 16 years of age, penal servitude for a 15-year term shall be given for the crime.

Art. 54. (Sentence of Indefinite Term)

(1) If a juvenile commits a crime punishable according to the Criminal Code by penal servitude or imprisonment for more than 2 years as a maximum term, a sentence shall be given specifying the maximum and minimum terms within the provisions of the Criminal Code.

In this case, the maximum and minimum terms shall not exceed 10 and 5 years respectively.

(2) If suspension of execution of sentence or sus-

pension of announcement of sentence is decided on, the provisions of the preceding paragraph shall not be applied.

Art. 55. (Prohibition of Converted Detention)

The sentence of detention provided for in article 70 of the Criminal Code shall not be imposed upon juvenile delinquents.

Art. 56. (Execution of Penal Servitude or Imprisonment)

Juveniles who have received the sentence of penal servitude or imprisonment shall be accommodated in prisons or partitioned places particularly established for them.

However, if a juvenile reaches the age of 25 during penal servitude, he may be transferred to an ordinary prison.

Art. 58. (Parole)

A juvenile who has served the following period of penal servitude, may be provisionally released:

1. Five years in the case of life sentence.

2. Three years in the case of servitude for a definite term of 15 years.

3. One-third of the minimum term in case of the sentence of indefinite term.

Art. 59. (Termination of Parole)

If a juvenile who has served a part of his term is granted parole, the execution of the punishment shall be regarded as having been completed if an amount of time equal to his served term has elapsed without cancellation of the parole.

Art. 60. (Application of Status Laws or Decrees)

In applying status laws to a juvenile against whom a sentence has been executed or remitted, he shall be regarded as having not received such a sentence.

Art. 61. (Prohibition of Publicity)

Names, ages, occupations, appearances, photographs or other details which may identify juveniles under investigation or trial in accordance with this law shall not be carried in newspapers or other publications or broadcast.

III. Promulgation of the Juvenile Reformatory Law

The Juvenile Reformatory Law promulgated on 8 August 1958 by Act No. 493 replaced the Korean Reformatory Ordinance.

The purpose of this Law is to accommodate the juveniles transferred from the court to the Reformatory as a protective measure, and to guide them by education together with vocational guidance.

This new law stresses correctional education, by which the accommodated juveniles may acquire knowledge like ordinary schoolboys. Another characteristic of this law is contained in the provisions on release and provisional release: the director of a juvenile reformatory may grant release or provisional release to the accommodated juveniles with the approval of the Minister of Justice.

Extracts from this law follow:

Art. 1. (Function of Juvenile Reformatory)

The function of the juvenile reformatory is to provide correctional education for juveniles transferred as protection cases from the Juvenile Department.

Art. 2. (Management)

The reformatory shall be brought under the management of the Minister of Justice.

Art. 3. (Correctional Education)

(1) Correctional education in the reformatory shall be conducted by means of vocational guidance and medical care as well as by giving fundamental education and training as citizens under strict discipline.

(2) The primary- or middle-school courses may be provided in the reformatories to which the presidential decree has delegated authority.

(3) In the cases envisaged in the preceding paragraph, curricula, courses of study and admission (which applies only to the middle school course) shall be in accordance with the provisions of the Education Law and the qualifications of teachers in the reformatory shall be decided by the provisions of the Teachers' Law.

(4) When it is deemed necessary, the Minister of Education may make recommendations to the Minister of Justice on matters relating to the Education Law.

(5) Those who finish the school courses in accordance with the preceding three paragraphs shall be recognized as having the same qualifications as those who finish the corresponding school courses provided for in the Education Law.

Art. 12. (Release and Provisional Release)

(1) When it is deemed that the objectives of the accommodation of juveniles have been attained, the director of the reformatory shall release them from the reformatory with the approval of the Minister of Justice.

(2) If a juvenile accommodated has established a good record while undergoing correctional education, the director of the reformatory may release him, with the approval of the Minister of Justice, on a provisional basis, specifying the requirements to be observed together with the appropriate period of the provisional release, which must be less than a year.

(3) If a juvenile provisionally released violates the requirements, the Director may, with approval of the Minister of Justice, cancel the provisional release and re-accommodate the juvenile in the reformatory.

(4) When the period of the provisional release has elapsed without being cancelled, the protective

measure shall be regarded as having been completed by the juvenile.

IV. Promulgation of the Criminal Compensation Law

The Criminal Compensation Law was promulgated on 13 August 1958 by Act No. 494 and came into effect on 1 January 1959.

The purpose of this Law is to compensate for losses incurred by detained persons found not guilty as a result of an ordinary trial, a re-trial or an extraordinary appeal procedure for criminal cases in accordance with the Criminal Code of Procedure.

Article 24, paragraph 2, of the Constitution[1] is supplemented by this Law, which replaces the Korean Criminal Ordinance. The old ordinance was far from sufficient to protect civil rights from the point of view of the amount of compensation and of the procedure for the compensation of the losses incurred through the criminal mistakes of the authorities.

Extracts relating to human rights follow:

Art. 1. (Requisites for Compensation)

(1) A defendant who has been detained and found not guilty in an ordinary trial, a re-trial or an extraordinary appeal procedure for criminal cases in accordance with the Criminal Code of Procedure shall have the right to claim compensation against the Government for the losses caused by the detention, in accordance with the provisions of this Law.

(2) When a defendant who is found not guilty through the appeal . . . re-trial or extraordinary appeal procedure has been detained or has served his servitude under the previous judgement, he may claim compensation for the losses incurred by the detention or servitude.

(3) Detention under the provisions of article 470, paragraph 3, and custody under the provisions of article 475, paragraph 3, of the Criminal Code of Procedure shall be regarded as detention or execution of a sentence in applying the preceding paragraphs.

[1] See *Yearbook on Human Rights for 1954*, p. 182.

Art. 4. (Contents of Compensation)

(1) Compensation for detention shall be estimated at the rate of 500 to 1,000 hwan per day of detention.

(2) The character and length of the detention, loss of property and loss of expected advantages, mental pain, physical injuries, intention or fault of the police, public prosecutor, court or other related agencies, and all other circumstances shall be taken into account by the court in calculating the amount of compensation in accordance with the preceding paragraph.

(4) Compensation for the execution of a fine or minor fine shall be calculated at the amount of 5 per cent interest per year . . . together with the amount of the fine or minor fine.

(5) The provisions of paragraph 1 shall be applied, *mutatis mutandis*, to the execution of detention in a workhouse.

(6) Compensation for the execution of confiscation shall be carried out by the return of the confiscated articles; if the articles have already been disposed of, however, the price of the articles at the time of the compensation judgement shall be paid; . . .

Art. 5. (Relationship with Compensation for Damages)

(1) This Law does not prohibit persons who are to receive compensation as provided in this Law from claiming compensation for their losses in accordance with the provisions of any other laws.

Art. 6. (Competent Court)

The claim for compensation shall be lodged in the court which passed the judgement of not guilty.

Art. 7. (Period of Claim for Compensation)

The claim for compensation shall be made within one year from the date when the judgement of not guilty became final.

Art. 19. (Appeal)

(1) No appeal shall be lodged against the ruling to admit the claim for compensation.

(2) An immediate appeal shall be lodged against the ruling to dismiss the claim for compensation.

ELECTION LAW FOR THE PRESIDENT AND VICE-PRESIDENT
Promulgated by Act No. 247, of 18 July 1952[1]

Chapter I
Franchise and Eligibility

Art. 1. Citizens twenty-one full years of age or more shall have franchise.

Art. 2. Citizens who have lived in the country for three full years or more and who are forty full years of age or more shall be eligible for election.

Art. 3. The age of the voter shall be computed as of the date on which the voters' list is officially confirmed, and that of those eligible for election, as of the election day.

Art. 4. Any person coming under any of the following categories shall have neither franchise nor eligibility for election:

(1) One who has been adjudicated as an incompetent or partially incompetent,

[1] English translation in the Appendix to *Selected Laws and Regulations pertaining to the National Assembly, Republic of Korea (Revised)*, 31 December 1958, published by the secretariat of the House of Representatives of the Republic of Korea. The same appendix contains the English text of the Enforcement Decree of the Election Law for the President and Vice-President, promulgated on 18 July 1952 as presidential decree No. 659. The Act and the presidential decree both became effective upon promulgation.

(2) One who has been adjudicated as a bankrupt and not yet been rehabilitated,

(3) One who has been sentenced to a punishment not lighter than confinement and who is serving a sentence, or whose sentence not to be served has not yet been confirmed,

(4) One whose citizenship has been suspended in accordance with the decision of a court.

Art. 5. One who was sentenced to a punishment not lighter than confinement shall not be eligible for election unless three years have elapsed since completion of his term of punishment.

Art. 6. Military personnel, unless relieved of active service, shall not be eligible for election.

[Other provisions of the law concern, *inter alia*, election campaigns and secrecy of voting.]

ELECTION LAW FOR THE MEMBERS OF THE HOUSE OF REPRESENTATIVES

As promulgated by Act No. 470, of 25 January 1958 and amended by Act No. 475, of 11 March 1958 [1]

Chapter I

GENERAL PROVISIONS

Art. 1. (Purpose)

The purpose of this law is to ensure the development of democratic government through electing the Members of the House of Representatives (hereinafter referred to as Members of the H.R.) fairly by the free will of the people.

Art. 2. (Definition of Voters)

Voters as mentioned in this law shall refer to those who have the right to vote and whose names are listed in [the] voters' list.

. . .

Chapter II

FRANCHISE AND ELIGIBILITY

Art. 10. (Franchise)

Those persons who are twenty-one full years or more of age shall have the right to vote.

Art. 11. (Eligibility)

Those persons who are twenty-five full years or more of age shall have the right to be elected.[2]

Art. 12. (Basis for Computing Age)

The age of voters shall be computed as of the date on which the voters' list under Article 23 is confirmed; and the age of a candidate, as of the election day.

Art. 13. (Those who have No Franchise)

Those persons falling under one of the following categories shall have no right to vote:

(1) Persons adjudged incompetent or quasi-incompetent,

(2) Persons who were sentenced to punishment not lighter than confinement and are serving their sentence; or those persons whose sentences are to be executed, but whose sentences have not yet been determined,

(3) Those who were sentenced to punishment of

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[1] English translation taken from *Selected Laws and Regulations pertaining to the National Assembly, Republic of Korea (Revised)*, 31 December 1958, published by the Secretariat of the House of Representatives of the Republic of Korea. The Act and the amendment became effective upon promulgation; the Act repealed Act No. 121 concerning the Election of Members of the National Assembly (See *Yearbook on Human Rights for 1951*, p. 218).

The House of Representatives is one of the two Houses of the National Assembly of the Republic of Korea, the other being the House of Councillors (see *Yearbook on Human Rights for 1954*, p. 182). Separate provisions for the election of members of the House of Councillors were made by the Election Law for the Members of the House of Councillors, promulgated by Act No. 469 of 25 January 1958 and amended by Act No. 476 of 11 March 1958; the Act and the amendment became effective upon promulgation. An English translation of this election law also appears in the above-mentioned publication of the Secretariat of the House of Representatives. Except as indicated in footnotes to articles 11, 49 (2), 51 (1) and (3), 64 (4) and 66 of the extracts quoted above from the English translation of the Election Law for the Members of the House of Representatives, and subject to the substitution where necessary of reference to the House of Councillors for reference to the House of Representatives, the English translations of articles 1-2, 10-14, 33-35 (1), 39 (1) and (2), 40-42, 44-48, 54-66, 71-72, 74, 102 (1), 110, 149 and 157 of the Election Law for the Members of the House of Councillors, as amended are substantially identical with the above-quoted translations of Articles 1-2, 10-14, 43-45 (1), 49 (1) and (2), 50-52, 54-58, 64-76, 81-82, 84, 112 (1), 120, 159 and 167, respectively, of the Election Law for the Members of the House of Representatives, as amended.

Various of the provisions quoted above from chapter VII (Election Campaigns) of the Election Law for the Members of the House of Representatives envisage the further regulation of certain matters by a presidential decree. This further regulation was effected by the enforcement decree of the Election Law for the Members of the House of Representatives, promulgated on 25 January 1958 as presidential decree No. 1336. An equivalent regulation of certain matters dealt with in chapter VII (Election Campaigns) of the Election Law for the Members of the House of Councillors was effected by the enforcement decree of the Election Law for the Members of the House of Councillors, promulgated on 25 January 1958 as presidential decree No. 1335.

English translations of both presidential decrees also appear in the above-mentioned publication of the secretariat of the House of Representatives.

[2] In article 11 of the Election Law for the Members of the House of Councillors the age of thirty-five years appears, instead of the age of twenty-five years.

fine for violation of election law if one year has not elapsed since the sentence; or those who were sentenced to punishment not lighter than confinement if two years have not elapsed since the time when suspension of execution of sentence was determined, since the completion of the term of the punishment or since the punishment was remitted, and

(4) Those who have their qualification suspended in accordance with the judgement of [a] court.

Art. 14. (Those who have No Eligibility)

Those persons falling under one of the following categories shall have no eligibility:

(1) Those persons falling under one of numbers 1 and 4 of the preceding article;

(2) Those who were sentenced to punishment not lighter than confinement if two years have not elapsed since the completion of [the] term of punishment or since the time when suspension of execution of sentence was determined; and

(3) Those who were sentenced to punishment of fine for violation of election law if two years have not elapsed since the sentence; or those who were sentenced to punishment not lighter than confinement if three years have not passed since the time when suspension of execution of sentence was determined, since the completion of the term of punishment, or since the punishment was remitted.

. . .

Chapter VII

ELECTION CAMPAIGNS

Art. 43. (Definition)

(1) Election campaigns as mentioned in this law shall refer to those acts taken in order to be elected, to have other persons be elected, or not to have other persons be elected.

(2) Simple expression of one's own opinion concerning the election shall not be considered as election campaigning.

Art. 44. (Period of Election Campaigns)

Election campaigns shall be held during the period from the completion of registration of candidacy to the day before the election day.

Art. 45. (Ban on Campaigns)

(1) Those persons other than candidates, campaign managers, or election campaigners under this law shall not conduct election campaigns.

. . .

Art. 49. (Campaign Manager and Election Campaigners)

(1) A candidate shall appoint one of the eligible voters in the election district concerned as his or her campaign manager. . . .

(2) A candidate or campaign manager may appoint one election campaigner for every 1,500 citizens of the election district concerned.[1]

. . .

Art. 50. (Ban on Election Campaigns by Students and Minors)

(1) No person shall conduct election campaigns by taking advantage of any special relations with the pupils, students of primary and middle schools and minors.

(2) The pupils, students or minors shall not become election campaigners.

Art. 51. (Wall-posters)

(1) Wall-posters to be used for election campaigns shall be drafted and posted by the election district election committee, in proportion to one wall-poster for every fifty citizens of the respective district.[2]

(2) Matters concerning standards, draft, mentioned items, posting and other necessary items of the wall-posters under the preceding paragraph shall be determined by a presidential decree.

(3) Wall-posters to be used for informing individual speech meetings under the provisions of Article 64 shall be made by the election district election committee, and shall be issued by the request of the candidate.[3]

(4) The number of wall-posters to be issued under the preceding paragraph shall be fifty for every individual speech meeting, and the standard thereof shall be determined by a presidential decree.

Art. 52. (Manuscript of Wall-posters)

(1) A manuscript for a wall-poster under paragraph 1 of the preceding article shall not be carried unless it has been submitted within three days after the deadline for the registration of candidate. Once a manuscript has been submitted, it shall be neither retracted nor modified.

(2) In case a successful candidate is to be decided without a vote, a wall-poster shall not be drafted or posted.

. . .

Art. 54. (Small-size Printed Matter)

(1) A candidate may prepare printed matter describing his or her name and mark, and have election

[1] In article 39 (2) of the Election Law for the Members of the House of Councillors, which is the equivalent of this paragraph, the words "5,000 citizens" appear, instead of "1,500 citizens".

[2] In article 41 (1) of the Election Law for the Members of the House of Councillors the words "five hundred citizens" appear, instead of "fifty citizens".

[3] In article 41 (3) of the Election Law for the Members of the House of Councillors cross-reference is made to article 54 of that law, due to a difference in the numbering of articles. Instead of the reference to the election district election committee, the reference is to the ballot-opening district election committee, which in that law is distinct from the election district election committee.

campaigners or labourers distribute them until the election day.

(2) Standards concerning the printed matter under the preceding paragraph shall be determined by a presidential decree.

Art. 55. (Publicity Bills)

(1) A candidate may have his or her election campaigners or labourers distribute bills carrying his or her personal records, political views, greetings, etc., besides the printed matter under the preceding paragraph, into each household twice and have them explain the bills briefly.

(2) The bills under the preceding paragraph may be mailed [once] by free mail.

(3) Matters concerning the standards of the bills under the preceding two paragraphs and free mails shall be determined by a presidential decree.

Art. 56. (Other Facilities for Publicity)

(1) Candidates or those persons engaging in [an] election campaign may make and instal sign-boards, banners and other marks for election campaigns.

(2) Matters concerning the standards and quantities of the facilities under the preceding paragraph shall be determined by a Presidential Decree.

Art. 57. (Ban on Papers and Pictures in Violation of Provisions)

(1) No person shall make, instal or distribute papers, pictures and other facilities for publicity purposes, other than those prescribed in the provisions of this law, for the purpose of conducting election campaigns during the election campaign period.

(2) In case the election district election committee finds those papers, pictures and other publicity facilities in violation of the provisions of the preceding paragraph, the committee shall without delay order to have them suspended or withdrawn, and take the necessary action.

(3) The election district election committee shall confirm the quantity of papers, pictures and other publicity facilities for election campaigns under the provisions of this law.

Art. 58. (Ban on Papers and Pictures . . .evading Law)

No person shall distribute, perform or post those works, dramas, movies, advertisements and other similar [items] which carry contents of supporting, recommending or opposing candidates, political parties, and other political organizations during the election campaign period.

. . .

Art. 64. (Individual Speech Meetings)

(1) Candidates, campaign managers or election campaigners may freely hold meetings to express individual political views or speech meetings.

(2) The individual speech meetings under the preceding paragraph shall refer to those speech meetings, round-table talks, debate meetings, etc., whose date and place are in advance determined, so that many people may assemble in the meetings.

(3) Anyone desirous of holding [a] speech meeting under the preceding paragraph shall report it to the election district election committee concerned three hours prior to the commencement of the meeting in accordance with a presidential decree.

(4) In case there are two or more persons desiring to hold the meetings under the preceding paragraph at the same place, the election district election committee shall fix turns according to the order by which the reports have been submitted; provided that hours for each meeting shall be fixed on a fair basis.[1]

Art. 65. (Number of Individual Speech Meetings)

The total number of the individual speech meetings under the preceding article shall not exceed double the number of voting districts in the respective election district.

Art. 66. (Utilization of Public Facilities)

(1) Schools and other public facilities under the provision of Article 67, No. 1, proviso, may be used as the places of joint speech meetings or individual speech meetings in accordance with the provisions of a presidential decree.[2]

(2) The heads of the schools and other public facilities shall authorize the use of those facilities when so requested.

Art. 67. (Ban on Places for delivering Speeches)

No persons shall express their political views or deliver speeches for election campaigns at the places falling under one of the following categories:

(1) Buildings and facilities owned or managed by the central government, local public organizations or government-operated enterprises; provided, however, that schools, public halls, theatres, parks, stadiums, markets and other buildings and facilities as stipulated by a presidential decree shall be excluded,

(2) Station compounds of trains, street-cars, airplanes, ships or omnibuses,

(3) Hospitals, health centres, libraries, research institutions, laboratories, and other medical or cultural research facilities.

Art. 68. (Restrictions on Use of Loud-speakers, Automobiles, etc.)

(1) Loud-speakers, tape-recorders, etc., shall not

[1] In article 54 (4) of the Election Law for the Members of the House of Councillors the reference is to the ballot-opening district election committee instead of to the election district election committee.

[2] In article 56 of the Election Law for the Members of the House of Councillors cross-reference is made to article 57 of that law, due to a difference in the numbering of articles.

be used for [the] election campaign, except for the joint and individual speech meetings.

(2) Each candidate shall not use more than one loud-speaker and two automobiles.

(3) The loud-speaker and automobiles under the preceding paragraph shall be marked in accordance with the provisions of a presidential decree during the election campaign period, and the automobiles shall not be subject to any restriction on [use and routes].

Art. 69. (Prohibition on False Broadcasting)

Those who run broadcasting enterprises shall not harm the fairness of the election through broadcasting false facts or broadcasting distortedly concerning candidates or the election.

Art. 70. (Fairness in Broadcasting Personal Records)

(1) Those who manage broadcasting stations may broadcast names and personal records of candidates in accordance with the provisions of [a] presidential decree.

(2) The number and contents of the broadcasts under the preceding paragraph shall be determined for all the candidates on a fair basis.

Art. 71. (Ban on Utilization of Broadcasts)

No person shall utilize the broadcasting facilities for election campaigns except as stipulated in the provisions of this law.

Art. 72. (Restrictions on Illegal Use of Newspapers, Magazines, etc.)

(1) No person shall, for the purpose of having certain candidates be elected or not be elected, induce persons in charge of running or editing newspapers (including news agencies), magazines or other periodicals to carry news reports or other comments concerning the election, through presenting, promising or proposing to offer the managers or editors money, articles, entertainment or other profits.

(2) Those persons in charge of running or editing newspapers, magazines or other periodicals shall not carry news reports or other comments concerning the election, indicating certain candidates, after receiving, being promised or proposed to receive the profits under the preceding paragraph.

(3) The provisions concerning the restrictions on election campaigns under the preceding two paragraphs are not intended to interfere with the freedom of carrying news reports and comments in newspapers and magazines.

(4) No person shall distribute newspapers, magazines, etc., through methods other than usual ones.

Art. 73. (Ban on False Information)

Those persons in charge of running or editing newspapers, magazines or other periodicals shall not report false facts in order to have certain candidates elected or not elected.

Art. 74. (Newspaper Advertisements)

Candidates may have advertisements concerning the election carried [once] only in newspapers, according to the standard [laid down in] a presidential decree.

Art. 75. (Newspaper Advertisements by Political Parties)

(1) Political parties and other political organizations may, for the interest of the candidates affiliating with the parties or organizations, have advertisements concerning the election inserted in the newspapers only [once] in accordance with the provisions of a presidential decree . . . provided, however, that announcement concerning platforms, policies and general opinions of political parties and other political organizations shall be excluded.

(2) In case there are candidates affiliating with two or more organizations, only one organization which is described in the application for the registration of the candidates may insert the advertisements under the preceding paragraph.

(3) When anyone is desirous of inserting the advertisement under the preceding paragraph, he shall report it to the Central Election Committee.

Art. 76. (Prohibition on House-to-house Visit)

(1) No one shall visit the voters from door to door in order to conduct election campaigns.

(2) No one shall visit the voters from door to door in order to inform them of individual speech meetings.

. . .

Art. 81. (Prohibition on Disturbance)

No person shall march in ranks on streets, calling [the] name of any candidate repeatedly for the purpose of [the] election campaign.

Art. 82. (Prohibition on Speech Meetings during Night)

No one shall hold individual speech meetings on streets from 10 p.m. through 6 a.m.

. . .

Art. 84. (Prohibition on Spreading False Facts)

No one shall state or spread false facts concerning the status, personal records, [or] character of any candidate, or political parties or groups with which the candidates affiliate in order to exert influence over the election.

. . .

Chapter IX

Election Day and Voting

. . .

Art. 112. (Procedure of Marking)

(1) Each voter shall have an isolated place where in absolute privacy he is able to put a mark choosing

a candidate on the ballot, and put the ballot into the ballot-box in the presence of the members of the voting district election committee.

. . .

Art. 120. (Guarantee of Secrecy of Voting)

(1) The secrecy of [the] vote shall be guaranteed.

(2) No voter shall have an obligation to state to any person the name of candidate for whom he voted, and [a] government or other agency shall not question or demand it.

. . .

Chapter XIV

PENAL PROVISIONS

. . .

Art. 159. (Crimes of Impairing Secrecy of Vote)

(1) Anyone who has impaired the secrecy of [the] vote or asked a voter to indicate the name of a candidate for whom the voter intends to vote, or of a candidate for whom he has voted, shall be punished with imprisonment at hard labour or confinement not exceeding two years.

(2) In case any member or employee of an election committee, policeman or other public official has committed the crime under the preceding paragraph, he shall be punished with imprisonment at hard labour or confinement not exceeding five years.

. . .

Art. 167. (Crimes of Making Public of False Matters)

Anyone who has made public or caused any other person to make public, by means of speeches, newspapers, magazines, wall-posters, publicity bills or any other methods, any false fact regarding the personality, occupation or personal records of a candidate for the purpose of being elected, [or] having [any] other person be elected or not be elected, shall be punished with imprisonment at hard labour or confinement not exceeding three years or fined not more than 300,000 hwan.

. . .

REPUBLIC OF VIET-NAM

NOTE [1]

Juvenile Courts

Act No. 11/58, of 3 July 1958, provides for the establishment and organization of juvenile courts. Article 1 and article 14 of the Act read as follows:

"*Art. 1.* The organization of and the proceedings in juvenile courts shall be governed by the provisions of this Act.

"Juvenile courts shall be set up by decree wherever they may be deemed necessary.

"Where there are no juvenile courts, the ordinary courts shall be competent to try delinquent minors, in accordance with the provisions of this Act.

". . .

"*Art. 14.* Every case involving delinquent minors shall be tried separately and no other accused persons shall be present.

"Only the witnesses, the next of kin of the minor, defence counsel, the representatives of establishments or institutions dealing with children and any other person whose evidence is considered necessary shall be admitted to the proceedings.

"The publication of reports of the proceedings of juvenile courts through any media, including books, the press, pictures, the radio and films shall be prohibited. The publication of any portraits of delinquent minors shall likewise be prohibited. Infringements of this provision shall be punishable by a fine of from $50 to $500. In the event of a repetition of the offence, the penalty shall be seven days' to two years' imprisonment, in addition to the fine.

"The sentence of a juvenile court is pronounced at a public hearing. It may be published, but the name of the minor may not be given, even in the form of initials. Infringement of this provision shall be punishable by a fine of from $300 to $2,000."

Annual Leave and Night Work

Decree No. 294-LD, of 6 June 1958, establishing procedures for the application of articles 172 and 208 of the Labour Code, promulgated by ordinance No. 15, of 8 July 1952,[2] contains the following provisions: (1) in the case of workers under sixteen years of age: (*a*) the prohibition of night work, even in cases of urgent work, and (*b*) the prohibition of carrying over of all or part of the annual holiday with pay from one year to another; and (2) with regard to other workers: (*a*) the obligation to take each year at least six days of the holiday with pay to which they are entitled and (*b*) the limitation to three years of the period during which the remainder of the holiday with pay can be carried forward.

Order No. 116-BLD/LD/ND, of 5 November 1958, supplementing order No. 23 LDTN-LD-ND, of 24 February 1955, adds to the provisions of that order establishing procedures for annual leave in private undertakings a provision that the following non-working periods must not be computed as part of that leave: statutory or traditional public holidays; authorized sick leave; leave taken as a result of an accident during work; maternity leave; absence from work due to reasons beyond the control of the wage-earner; periods of military service; periods of notice in cases where the contract has been terminated at the wish of the employer.

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[1] Text and information received through the courtesy of the Department of State for Foreign Affairs of the Republic of Viet-Nam. Translation by the United Nations Secretariat. The Department of State has informed the Secretariat that no constitutional changes or judicial decisions suitable for inclusion in the *Yearbook of Human Rights* occurred during the year 1958.

[2] See *Yearbook on Human Rights for 1954*, p. 297.

FEDERATION OF RHODESIA AND NYASALAND

NOTE[1]

I. Application of the Universal Declaration of Human Rights within the Colony of Southern Rhodesia, 1954–1958

1. In October 1953, the Federation of Rhodesia and Nyasaland came into being,[2] and the colony of Southern Rhodesia became one of the territories within the federation. During the years 1954 to 1958, the Federal Government and the three territorial governments were engaged in the task of acquainting themselves with the new pattern of government, involving a separation of legislative powers, and of passing the legislation necessary for the smooth functioning of the business of government.

2. In the field of human rights contemplated by the Universal Declaration, the only legislation passed by the Parliament of the colony of Southern Rhodesia was the Inter-Territorial Movement of Persons (Control) Act, 1954. This measure, which was enacted by each of the territorial legislatures, was in a sense consequential upon the enactment by the federal legislature of a new law governing immigration and deportation in relation to the Federation as a whole. The territorial legislation merely provided for a control of the movement of persons between the three territories which had been exercised prior to federation. The principal object was security and to give effect to the understanding between the territories that persons convicted of certain offences would be contained and rehabilitated within the territory to which they belonged.

3. Apart from this legislation, there is little to report on the developments and progress achieved during the period in the field of human rights and measures taken to safeguard human liberty in the colony. The aboriginal natives of the colony constitute by far the biggest racial group in the colony. Of this group only about thirty per cent is literate. The vast majority of these natives still live after the manner of uncivilized persons, governed by their customary law and institutions. This condition of the people and their economy limit the application of the doctrine of human rights in such matters as (*a*) the position of native women in relation to marriage, as a native woman is regarded in native customary law as being under perpetual guardianship; (*b*) the ownership of property — tribal property is owned on a communal basis; (*c*) universal adult suffrage.

Moreover, in the interests of the natives themselves, it has been found necessary to provide by legislation that male natives should possess and carry documents of identity.

4. It is less than seventy years since western civilization was brought to the colony and, although tremendous strides have been made in this short time in providing health services, educational facilities, and training in agriculture for natives, the government of the colony, on grounds of economics alone, has been unable to provide for such matters as (*a*) protection against unemployment; (*b*) security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood; (*c*) universal free education.

Adequate provision exists, however, for the payment by employers of compensation to workmen on accepted principles, and there is limited provision for the payment of old age pensions. The traditional African community has also certain forms of social security which are very effective in operation.

5. Subject to these limitations, it can fairly be said that the standard of human rights enunciated in the Universal Declaration has already been achieved in the colony, and in regard to the special study [being made by the United Nations Commission on Human Rights] of article 9, it can emphatically be stated that no person is subject to arbitrary arrest, detention or exile.

II. Factories and Works Amendment Act (Southern Rhodesia)

The Factories and Works Amendment Act (No. 30 of 1957, read together with the Factories and Works Act, No. 20 of 1948) is administered by the Chief Inspector of Factories of the Southern Rhodesia Department of Labour and his staff, which consists of fourteen technically qualified inspectors. The Act seeks, *inter alia*, to provide for the registration and control of factories, the regulation of conditions of work in factories, supervision of the use of machinery, and precautions against accident to persons employed on structural work, and for matters incidental to the foregoing including the health, safety and welfare of workers and the public at large.

Any person who fails to comply with the provisions of the Factories and Works Act as amended or the

[1] Information kindly furnished by the Ministry of External Affairs of the Federation of Rhodesia and Nyasaland.

[2] See *Yearbook on Human Rights for 1953*, pp. 236-9.

regulations framed thereunder and having the force of law is guilty of an offence and is liable to a fine, depending on the nature of the offence, of up to but not exceeding £300 or to imprisonment for a period of up to but not exceeding two years or to both such fine and imprisonment.

THE ELECTORAL ACT, 1958

No. 6 of 1958 [1]

3. In this Act, unless inconsistent with the context

. . .

"British protected person" means a person who is a member of a class of persons which Her Majesty has declared by order in council made under the British Nationality Act, 1948, of the United Kingdom in relation to Northern Rhodesia or Nyasaland, to be British protected persons by virtue of their connexion with Northern Rhodesia or Nyasaland;

"Chief" means

(*a*) An African appointed a chief in Southern Rhodesia by the Governor of Southern Rhodesia;

(*b*) An African who is recognized as a chief in Nyasaland by the Governor of Nyasaland or who is certified by a provincial commissioner to be a sub-chief in Nyasaland;

(*c*) The Paramount Chief of the Barotse;

(*d*) An African who is recognized as a chief in the Barotseland Protectorate by the Governor of Northern Rhodesia or who is certified by the resident commissioner in the Barotseland Protectorate to be in that protectorate a president of a district Kuta, a president of a Sikalo Kuta, a district judge, a member of the Saa Sikalo or a district councillor (other than a departmental councillor);

(*e*) An African who is recognized as a paramount chief or chief by the Governor of Northern Rhodesia in any part of Northern Rhodesia other than the Barotseland Protectorate;

. . .

"Elected African member" means an elected African member referred to in sub-paragraph (*b*) of paragraph 1 of article 9 of the Constitution; [2]

"Elected member" means an elected member of the Federal Assembly referred to in sub-paragraph (*a*) of paragraph 1 of article 9 of the Constitution;

"Election" means the election of an elected member or an elected African member or the specially elected European member;

. . .

"General electoral district" means an electoral district for the election of an elected member proclaimed by the Governor-General under section ten;

"General roll" means the roll of general voters for a general electoral district;

"General voter" means a person whose name is enrolled on a general roll;

. . .

"Her Majesty's dominions" means the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Ghana and the Federation of Malaya; any territory administered by the government of any of the aforesaid countries in accordance with a mandate from the League of Nations or under the trusteeship system of the United Nations; any British colony; any territory under the protection of Her Majesty or in which Her Majesty for the time being has jurisdiction;

. . .

"Member" means an elected member or elected African member or the specially elected European member;

. . .

"Prescribed standard" means

(*a*) In relation to primary education, the standard of education which would ordinarily be attained by a pupil who has completed a full course of primary education provided in a government school or in any other school in the Federation which is recognized by the Minister by regulation;

[1] This federal Act has been printed as a separate publication, on the authority of the Government Printer of the Federation of Rhodesia and Nyasaland. The full title of the Act described it as one "to provide for the election of elected members and elected African members and the specially elected European member; the qualifications and disqualifications for election of such members; the circumstances in which such members shall vacate their seats in the Federal Assembly; the registration of voters; the qualifications and disqualifications for registration as a voter or for voting at the election of such members; the holding of the elections of such members; the delimitation of electoral districts for the purpose of returning such members to the Federal Assembly and the allocation to those districts of seats in the Federal Assembly; the definition of offences relating to elections and the imposition of penalties therefor, including the disqualification for election of any person concerned in such an offence; the trial of election petitions; the recognition of certain persons as voters within the meaning of that term in the Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957; and for matters incidental to the foregoing." The Ministry of External Affairs of the Federation of Rhodesia and Nyasaland has written that: "Prior to the enactment of this Act, matters affecting the election of Ordinary Members of the Federal Assembly were governed in Southern and Northern Rhodesia by the electoral laws of those territories, modified for the purpose of federal elections, and in Nyasaland by regulations made by the Governor-General of the Federation with the agreement of the Governor of Nyasaland. The provisions of these laws were not identical and the desirability of legislative uniformity on these matters (achieved by the Electoral Act) is self evident."

[2] See *Yearbook on Human Rights for 1957*, p. 214.

(*b*) In relation to a specified period of secondary education, the standard of education which would ordinarily be attained by a pupil who has completed a full course of secondary education provided in a government school for that period;

(*c*) Any standard of education determined by the Educational Qualifications Board as being a standard of education which is at least equivalent to a standard mentioned in paragraph (*a*) or (*b*) of this definition;

. . .

"Public office" means any office in the service or appointment of the Crown in right of the Federation, other than that of a judge of the Federal Supreme Court, and includes membership of a board or commission appointed by the Governor-General or a minister of the Federal Government;

. . .

"Special electoral district" means an electoral district mentioned in subsection 2 or 3 of section seven for the election of an elected African member or the specially elected European member or an electoral district for the election of an elected African member proclaimed by the Governor-General under section ten;

"Special roll" means the roll of special voters for a sub-electoral district;

"Special voter" means a person whose name is enrolled on a special roll;

. . .

Part II

QUALIFICATION AND REGISTRATION OF VOTERS

. . .

Qualification and Disqualification of Voters

15. (1) Every person who —

(*a*) Is a citizen of Rhodesia and Nyasaland or a British protected person;

(*b*) Is twenty-one years of age or over;

(*c*) Has or is deemed to have the requisite residence qualification;

(*d*) Has the requisite educational qualifications and has or is deemed to have the requisite means qualifications;

(*e*) Has made the declaration [of allegiance] prescribed in the schedule; and

(*f*) Is not disqualified under this Act,

shall be entitled to be registered as a general voter or a special voter, as the case may be.

(2) Notwithstanding the provisions of paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of subsection 1, but subject to the provisions of paragraph (*f*) of that subsection, every person referred to in subsection 5, 6 or 7 of section thirteen[1] shall be entitled to be registered as a general voter.

(3) No person shall be entitled to be registered as a general voter in more than one general electoral district or as a special voter in more than one sub-electoral district and no person registered as a general voter shall be entitled to be registered as a special voter.

(4) No person whose name is not on an existing roll shall be entitled to vote at an election.

(5) No person who has the qualifications required for registration as a general voter shall be registered as a special voter.

(6) A special voter who obtains the qualifications of a general voter shall be entitled to be registered as a general voter.

(7) If by reason of the provisions of paragraph 2 of article 9 of the Constitution in any territory there are no elected African members and additionally in the case of Southern Rhodesia there is no specially elected European member, no person shall be entitled to be registered as a special voter in that territory and any claim form to be registered as a special voter shall be rejected and the provisions of section thirty-seven shall not apply in relation to such rejection.

16. (1) In order to have the requisite residence qualification to be registered as a voter a claimant must —

(*a*) Be resident in a general electoral district or a sub-electoral district, as the case may be, at the date of his application for registration as a voter and have been so resident for a continuous period of three months immediately preceding that date; and

(*b*) Have been resident in the Federation for any continuous period of two years.

(2) For the purposes of subsection 1, a claimant shall be deemed to be residing or have resided in the Federation or in his general electoral district or sub-electoral district while he is absent therefrom for a temporary purpose.

(3) A claimant shall not be treated as resident in a general electoral district or sub-electoral district at the date of his application for registration as a voter if at that date he is so resident by virtue of a permit permitting temporary residence.

(4) In determining for the purposes of paragraph (*a*) or (*b*) of subsection 1 whether a claimant has been resident for the requisite period, residence in the Federation or in a general electoral district or sub-electoral district in terms of any permit permitting temporary residence shall be treated as residence therein.

17. (1) Subject to the provisions of sections twenty and thirty-two,[2] in order to have the requisite means and educational qualifications to be registered as a general voter a claimant must have an adequate knowledge of the English language and be able, in his own handwriting, to complete and sign the claim

[1] These subsections safeguard the right to vote of certain persons entitled to vote under enactments previously in force.

[2] Section 32 concerns procedure for registration as a voter.

form in accordance with the provisions of this Act and in addition —

(*a*) Must have been in the *bona fide* receipt of income, salary or wages of not less than seven hundred and twenty pounds during each of the two years immediately preceding the date of his claim for registration as a voter or must be at such date the owner of immovable property in the Federation valued at not less than one thousand five hundred pounds; or

(*b*) (i) Must have been in the *bona fide* receipt of income, salary or wages of not less than four hundred and eighty pounds during each of the two years immediately preceding the date of his claim for registration as a voter or must be at such date the owner of immovable property in the Federation valued at not less than one thousand pounds; and (ii) must have completed a course of primary education of a prescribed standard; or

(*c*) (i) Must have been in the *bona fide* receipt of income, salary or wages of not less than three hundred pounds during each of the two years immediately preceding the date of his claim for registration as a voter or must be at such date the owner of immovable property in the Federation valued at not less than five hundred pounds; and (ii) must have completed a course of not less than four years of secondary education of a prescribed standard.

(2) For the purpose of this section and section eighteen, "owner" in relation to immovable property means —

(*a*) In the case of immovable property situated in Southern Rhodesia — (i) the person in whose name such property is registered in the Deeds Office or in the Native Lands Office; or (ii) the holder of such property on a lease registered in the Deeds Office or in the Native Lands Office the unexpired period of which at the date of his claim for registration as a voter is not less than ten years (hereinafter in this section referred to as a registered lease);

(*b*) In the case of immovable property situated in Northern Rhodesia or Nyasaland — (i) the holder of such property in fee simple the deed or document of title to which is registered under any territorial law relating to the registration of deeds in the territory in which such property is situated; or (ii) the holder of such property on a lease registered under any territorial law relating to the registration of leases or deeds in the territory in which such property is situated the unexpired period of which at the date of his claim for registration as a voter is not less than ten years (hereinafter in this section referred to as a registered lease):

Provided that —

(i) The owner or holder of immovable property as a trustee shall be deemed not to be the owner of such property;

(ii) In the case of immovable property situated in Northern Rhodesia or Nyasaland which is mortgaged, the mortgagor shall be deemed to be the owner or holder of the property.

(3) For the purpose of subsection 1, the value of immovable property shall be deemed to be —

(*a*) In relation to an owner as defined in sub-paragraph (i) of paragraph (*a*) of subsection 2 of immovable property situated in Southern Rhodesia and the holder in fee simple of immovable property situated in Northern Rhodesia or Nyasaland, the amount which such property free of all encumbrances might have been expected to realize if it had been sold in the open market by a willing seller to a willing buyer on the date of the claim for registration as a voter by such owner or holder, as the case may be;

(*b*) In relation to the holder on a registered lease of immovable property situated in Southern Rhodesia, the amount which such immovable property might have been expected to realize if it had been sold free of all encumbrances in the open market by a willing seller to a willing buyer on the date of the holder's claim for registration as a voter or, for each year of the lease unexpired on that date, one hundredth part of that amount, whichever is the less;

(*c*) In relation to the holder on a registered lease of immovable property situated in Northern Rhodesia or Nyasaland, the amount which such immovable property might have been expected to realize if it had been sold as a fee simple free of all encumbrances in the open market by a willing seller to a willing buyer on the date of the holder's claim for registration as a voter or, for each year of the lease unexpired on that date, one hundredth part of that amount, whichever is the less.

(4) Where immovable property is owned or held by two or more persons the value of the property determined in accordance with subsection 3 shall be apportioned between such persons in proportion to their separate interests therein.

18. Subject to the provisions of sections twenty and thirty-two,[1] in order to have the requisite means and educational qualifications to be registered as a special voter a claimant must have an adequate knowledge of the English language and be able, in his own handwriting, to complete and sign the claim form in accordance with the provisions of this Act and in addition —

(*a*) Must have been in the *bona fide* receipt of income, salary or wages of not less than one hundred and fifty pounds during each of the two years immediately preceding the date of his claim for registration as a voter or must be at such date the owner of immovable property in the Federation valued at not less than five hundred pounds; or

(*b*) (i) Must have been in the *bona fide* receipt of income, salary or wages of not less than one hundred and twenty pounds during each of the two years immediately preceding the date of his claim for registra-

[1] Section 32 concerns procedure for registration as a voter.

tion as a voter; and (ii) must have completed a course of not less than two years of secondary education of a prescribed standard.

19. (1) In the computation of income, salary or wages for the purposes of sections seventeen and eighteen, the value of board and lodging or any money received for both or either of these items may be included.

(2) In the computation of income derived from any trade, business, undertaking, profession or calling regard shall be had only to the net gain resulting therefrom.

[Section 20 provides for the possibility of varying the means qualification in the light of changes in the purchasing power of money.]

21. (1) Every married woman, other than a woman married under any system permitting of polygamy, who in her own right has no means qualification or a lower means qualification than that of her husband, shall be deemed to have the same means qualification as her husband.

(2) If a man married under any system permitting of polygamy has only one wife, and she in her own right has no means qualification or a lower means qualification than that of her husband, she shall be deemed to have the same means qualification as her husband.

(3) In the case of a man married under any system permitting of polygamy who has more than one wife, the wife to whom he has been married for the longest period shall be deemed to have the same means qualification as that of her husband, if she in her own right has no means qualification or a lower means qualification than that of her husband.

22. (1) Every person shall be deemed to have the means qualifications specified in paragraph (*a*) of subsection 1 of section seventeen who —

(*a*) Has obtained a university degree in divinity; or

(*b*) Has undergone a period of not less than five years' full-time training in divinity in a theological college or seminary; or

(*c*) Has undergone a period of not less than two years' full-time training in divinity in a theological college or seminary followed by a period of service as a minister of religion, if the aggregate of such training and service was not less than five years;

and is ordained or appointed as a minister of religion and follows no profession, trade or calling other than that of a minister of religion and receives no earned income other than that received by him directly as a minister of religion.

(2) A chief shall be deemed to have the means qualifications specified in paragraph (*a*) of subsection 1 of section seventeen.

23. (1) A claimant for registration as a voter shall not be considered to have an adequate knowledge of the English language unless he is able to speak, read, write in and comprehend the English language.

(2) A claimant who has an adequate knowledge of the English language but is unable, solely by reason of some physical defect, to speak, read or write in the English language shall be deemed to have an adequate knowledge of the English language.

. . .

[Section 24 concerns the composition and functions of the Educational Qualifications Board.]

25. Every person shall be disqualified from being registered as a voter who —

(*a*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any enactment in force in the Federation or in any part thereof;

(*b*) Not having received a free pardon in respect of the offence for which he was sentenced — (i) is under sentence of death; or (ii) is serving or has within five years immediately preceding the date upon which he makes application for registration as a voter completed the serving of a sentence of imprisonment (by whatever name called) of or exceeding six months imposed without the option of a fine in any part of Her Majesty's dominions; or (iii) is under or has within the said five years been awarded such a sentence of imprisonment the execution of which has been suspended;

(*c*) Is disqualified from being registered as a voter or from voting at an election by virtue of a declaration made under the powers conferred by this Act;[1]

(*d*) Is by virtue of his own act under any acknowledgement of allegiance, obedience or adherence to a foreign power or state.

. . .

Part III

Regulation of Elections

. . .

Nominations

. . .

59. (1) Subject to the provisions of this section, any person who has been resident in the Federation for any period of five years before his nomination and who is registered as a general voter shall be eligible for election as an elected member.

(2) Subject to the provisions of this section, any person who has been resident in the Federation for any period of five years before his nomination and who is a European and is registered as a general voter or a special voter shall be eligible for election as the specially elected European member.

(3) Subject to the provisions of this section, any person who has been resident in the Federation for any period of five years before his nomination and who is an African and is registered as a general voter or a special voter shall be eligible for election as an elected African member.

(4) Every person shall be disqualified for election who —

[1] The declaration referred to is that which may be made under section 118 (3) or section 130.

(*a*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any enactment in force in the Federation or in any part thereof;

(*b*) Not having received a free pardon in respect of the offence for which he was sentenced, (i) is under sentence of death; or (ii) is serving or has within five years immediately preceding the date upon which he was nominated completed the serving of a sentence of imprisonment (by whatever name called) of or exceeding six months imposed without the option of a fine in any part of Her Majesty's dominions; or (iii) is under or has within the said five years been awarded such a sentence of imprisonment the execution of which has been suspended;

(*c*) Is disqualified from being registered as a voter or from voting at an election by virtue of a declaration made under the powers conferred by this Act;[1]

(*d*) Is by virtue of his own act under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

(*e*) Is disqualified from election by virtue of any provision relating to offences connected with elections contained in this Act or any declaration made under the powers conferred by this Act;[1]

(*f*) Has been adjudged or otherwise declared bankrupt or insolvent under any enactment in force in any part of Her Majesty's dominions and has not been discharged or rehabilitated;

(*g*) Has, within the period of twelve months immediately preceding the date of his nomination received any benefit of whatever nature by way of social welfare assistance from any public funds whatsoever, whether within or outside the Federation, other than any pension or monetary benefit of a like nature including an old-age pension received from the Crown;

(*h*) Holds or is acting in any paid office in the service or appointment of the Crown whether in right of the Federation or otherwise.

For the purposes of this paragraph, a person shall not be deemed to hold a paid office in the service or appointment of the Crown by reason of — (i) being in receipt of any remuneration or allowance as a minister of the Federal Government or of the Southern Rhodesia Government or as the chairman or deputy chairman of the African Affairs Board; (ii) being in receipt of any remuneration or allowance as an unofficial member of the Executive Council of Northern Rhodesia or as a nominated member of the Executive Council of Nyasaland; (iii) being in receipt from the Crown of a pension or other monetary benefit of a like nature including an old-age pension; (iv) being an officer of Her Majesty's Forces on retired or half pay; (v) being an officer or member of the Defence Forces of the Federation if his services are not wholly employed by the Federation; (vi) being an officer or member of any police force established within the Federation if his services are not wholly employed by the Crown; or (vii) by reason of the holding of any office in the service or appointment of the Crown or the performance of any functions on behalf of the Crown, being an office or functions in respect of which he receives payment by way only of travelling or subsistence allowances or a refund of out-of-pocket expenses.

. . .

[Sections 71, 91, 97, 101 and 168, which fall under various headings of the Act, concern secrecy of voting.]

. . .

Part IV

VACATION OF SEATS

103. A member shall vacate his seat in the Federal Assembly —

(*a*) On a dissolution of the Federal Assembly;

(*b*) If he resigns his seat by notice in writing under his hand addressed to the Speaker of the Federal Assembly;

(*c*) If he is absent from twenty-one consecutive sittings of the Federal Assembly and, at the expiration of one month after the last of those sittings, the Speaker of the Federal Assembly has not by writing under his hand excused that absence;

(*d*) If he becomes a member of the legislature of a territory; or

(*e*) If any circumstances arise which, if he were not a member of the Federal Assembly, would cause him to be disqualified for election under section fifty-nine.

. . .

Part VI

CORRUPT AND ILLEGAL PRACTICES AND OTHER OFFENCES RELATING TO ELECTIONS

Corrupt Practices

. . .

118. . . .

(3) A person convicted of any corrupt practice whatsoever by a High Court may, in addition to any other punishment, be declared by the High Court incapable during a period not exceeding five years from the date of his conviction —

(*a*) Of being elected as a member; or

(*b*) Of being registered as a voter or of voting at any election; . . .

Illegal Practices

. . .

125. (1) Every bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof.

(2) Any person who prints, publishes or posts or causes to be printed, published or posted any such printed matter which fails to bear upon the face thereof the name and address of the printer and pub-

[1] The declarations referred to are those which may be made under section 118 (3) or section 130.

lisher shall be guilty of an illegal practice unless he proves that such failure was due to inadvertence.

(3) The proprietor and publisher of every newspaper shall cause the word "advertisement" to be printed as a headline to each article or paragraph in his newspaper containing electoral matter, the insertion of which is or is to be paid for or for which any reward or compensation or promise of reward or compensation is or is to be made.

In this subsection "electoral matter" includes all matters which, on the face of them, are intended or calculated to affect the result of an election, and any report of the speech of a candidate if the insertion of the report is or is to be paid for.

. . .

(5) No candidate shall issue or distribute any document (which term includes any bill, placard, poster, pamphlet, circular or card) which contains any facsimile or imitation of a ballot paper and advises or purports to advise any person as to the manner in which such person should record his vote, unless such candidate has first obtained from a returning officer of the electoral district or sub-electoral district a certificate, in duplicate, stating that in his opinion, such document contains no representation likely to mislead a voter as to his rights.

(6) No person shall print any document referred to in subsection 5 unless he has been furnished with the original or duplicate of the certificate referred to in that subsection.

. . .

130. Where under this Act no penalty is expressly provided for an illegal practice, a person guilty of an illegal practice shall be liable to a fine not exceeding two hundred pounds or, in default of payment, to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine, or to both such fine and such imprisonment and if he is convicted by a high court may, where no incapacity is specially provided for any particular class of person under this Act, further be declared by the high court incapable during a period not exceeding five years from the date of his conviction (*a*) of being elected as a member; or (*b*) of being registered as a voter or of voting at an election; . . .

Further Consequences of Corrupt Practices and Illegal Practices and Exemptions from Consequences

. . .

134. Every person guilty of a corrupt or illegal practice at an election shall be disqualified from voting at that election, and, if any such person votes, his vote shall be void.

. . .

ROMANIA

NOTE[1]

I. LEGISLATION

A. The Right to Work

Decree No. 256 of 2 June 1958 concerning the Work Book

According to the provisions of this decree, the work book is the only official document which provides evidence of professional activity for the purpose of establishing the rights proceeding from such activity, including pension rights. The work book is issued to all persons working in socialist organizations, to wage-earners in the private sector and to domestic workers. (*Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 25, of 5 June 1958).

B. Medical Assistance and Social Insurance

Decree No. 246 of 29 May 1958 regulating the Granting of Medical Assistance and Medicines

This decree provides that medical assistance, medicines and all the medical supplies necessary for preventive medical care shall be furnished to the whole population free of charge.

The decree also defines the categories of patients for whom medical assistance, medicines and all necessary medical supplies are to be furnished free of charge during the patients' stay at the hospital or in sanatoria with medicinal bathing facilities.

Medicines and medical supplies are also furnished free of charge for medical kits to be used in: (1) health centres, crèches, day nurseries; (2) visiting medical services (of polyclinics and dispensaries) treating the patient at home; (3) school health services; (4) first-aid posts.

In all kinds of production units medicines and the necessary medical supplies for emergency treatment are furnished free of charge (*ibid.*, No. 24, of 2 June 1958).

The decree provides that social security benefits shall be granted to the members of all craftsmen's and disabled persons' co-operatives, to the apprentices of these co-operatives and to individually registered craftsmen who are not members of co-operatives. The purpose of the scheme is to assure the maintenance of the beneficiaries in the event of old age, sickness, temporary loss of capacity for work or maternity leave, to provide them with convalescent care and preventive medical care in medical institutions and sanatoria, to make rest homes available to them, to organize vacation camps for students and apprentices, to establish a mutual aid fund to see that the necessary industrial safety measures are introduced and applied, and to take all other steps conducive to the permanent improvement of working conditions and to the increase in the material well-being of the insured.

The insured have the right to a pension, and receive assistance in the event of temporary loss of capacity for work as a consequence of sickness or accident. Mothers have the right to maternity benefits. The aid granted under the Decree covers the fields of prevention of diseases, recovery and improvement of health, and medical assistance. Medicines and medical supplies are provided free of charge during the time spent in the hospital. The insured and members of their families are entitled to medical assistance at home. The Decree also provides for a contribution to funeral expenses in the event of the death of the breadwinner.

C. Education and Culture

1. *Decision No. 905 of the Council of Ministers, of 1 July 1958, establishing the Regulations concerning Practical Work by Students in Undertakings*

These regulations state that practical work in undertakings will give the student a first-hand knowledge of the profession for which he is preparing. During these training periods, the students should become accustomed to the work, familiarize themselves with the machines and equipment of the undertakings and with the organization and the development of the production process and see how the knowledge acquired in their courses is applied in this process. The regulations specify that practical work in undertakings forms an integral part of education.

2. *Decree No. 333, of 25 July 1958, amending Decree No. 294/1954 on the Organization and Operation of the Plastic Arts Fund of the Romanian People's Republic*

According to article 2, as amended, of this decree, the objective of the Plastic Arts Fund of the Romanian People's Republic is to assure the circumstances necessary for creative work, to improve the material living conditions of the members of the Plastic Arts Union and to aid the members of the Plastic Arts Fund in organizing their work. Under article 3, as

[1] Information kindly furnished, in French, by the Permanent Representative of the Romanian People's Republic to the United Nations. Translation by the United Nations Secretariat.

amended, the Plastic Arts Fund, *inter alia*, grants loans and allowances "for creative work", arranges for and finances artists' journeys for documentation purposes, sets up "creative centres" and libraries, grants allowances and pensions to aged or disabled members, provides for medical assistance and visits to health resorts, etc.

3. *Decision No. 1035 of the Council of Ministers, of 22 July 1958, concerning the Extension of Compulsory Seven-year Elementary Education to Rural Districts having Seven-grade Elementary Schools*

The decision provides that, from the beginning of the school year 1958-1959, seven-year elementary education shall become compulsory also in rural districts — communes and villages — which have seven-grade elementary schools.

D. Other Social Measures

Decree No. 320, of 17 July 1958, establishing "judicial councils" in undertakings and institutions

The function of the "judicial councils" established by this Decree is to investigate and punish certain anti-social acts committed by wage-earners in socialist undertakings, such as demonstrations tending to weaken respect for discipline which are characterized as petty offences, theft of public property, negligence or misconduct connected with their work and harmful to public property, negligent destruction or damage of public property, and thefts committed as a first offence by workers or employees if the amount of the damage caused does not exceed the sum of 200 lei. The "judicial councils" also judge and punish insults and assaults that do not entail bodily harm.

The sanctions that the "judicial council" may apply are of a disciplinary nature (censure with warning, downgrading for three months, dismissal, fines of 50 to 300 lei).

Thus, certain acts which, before the Decree entered into force, constituted criminal offences, are no longer judged and punished by the courts.

II. COMMUNICATION FROM THE CENTRAL STATISTICAL BOARD ON THE FULFILMENT OF THE STATE PLAN OF THE ROMANIAN PEOPLE'S REPUBLIC FOR 1958

Chapter VI

Improvement of the Living Conditions of the Workers

In 1958 the total number of persons employed in the socialist sector of the national economy was 2.9 million, and the number of workers exceeded 2 million.

Wages increased by 6.7 per cent in 1958 as against 1957.

According to the data established by the survey of the family budgets of wage-earners and peasants, in 1958 consumption by workers' families increased in relation to 1957 by 9.1 per cent for meat, 7.1 per cent for milk, 18.1 per cent for eggs, 4.9 per cent for sugar; with respect to farm workers' families, the increase was 13 per cent for meat and fats, 18.4 per cent for wheat and rye flour, 11.3 per cent for eggs, 5 per cent for milk, 23.2 per cent for sugar.

Because of the economic strengthening of the collective farms, the improvement in their organization and the increase in the collective farmers' income in cash and in kind, consumption by collective farmers was greater in 1958 than consumption by peasants working individually (22 per cent for meat and fats, 36.3 per cent for wheat and rye flour, 43.7 per cent for sugar, 40.3 per cent for cheese, 4.9 per cent for eggs).

The savings fund deposits by the population were 34 per cent greater than in 1957, and the number of deposit accounts was 30 per cent greater.

In 1958 social and cultural expenditures financed from the State budget were 11,200 million lei (3.9 per cent more than in 1957) and represented 25 per cent of the total budgetary expenditures. 2,800 million lei (an increase of 2.3 per cent) was spent for education, 3,400 million lei (an increase of 14.3 per cent) for health protection, physical culture, sports and social insurance, 1,500 million lei (an increase of 4.2 per cent) for family allowances, and 900 million lei (an increase of 7.4 per cent) for cultural purposes.

In 1958 the workers entered into possession of more than 13,500 apartments representing approximately 950,000 square metres of living space.

During the school year 1958-1959, more than 2.2 million pupils and students, or 8 per cent more than during the school year 1957-1958, attended day-time courses in schools and universities.

The number of spectators at theatres, cinemas, concert halls and circuses was about 131 million, or 2.4 per cent more than in 1957.

In 1958 twenty-nine short and feature-length artistic films were produced, and 2,544 books and pamphlets were published, with a total printing of almost 30 million copies. Over 260 libraries were established in the villages, which brought the number for the entire country to nearly 1,300.

At the close of the year, the total number of hospital beds exceeded the target figure of 94,000 established by the plan.

The number of medical and public health districts increased by more than 200, or by 7.5 per cent as against 1957, while the number of maternity hospitals increased by 53 per cent, attaining a total of 1,621.

During the year more than 500,000 persons benefited from medicinal bathing and rest care.

As a consequence of the improvement of living conditions and the measures taken in the field of public health, the infant mortality rate was under 7 per cent

in 1958, the lowest percentage so far attained in Romania.

During the month of May 1958 the population of the Romanian People's Republic passed the 18 million mark.

The results obtained by the workers in 1958 are but the tokens of the successes to come as socialism is built in the Romanian People's Republic according to the programme laid down by the Central Committee of the Romanian Workers' Party at its plenary session in November 1958.

III. INTERNATIONAL AGREEMENTS APPROVED OR RATIFIED IN 1958[1]

1. The following conventions of the International Labour Organisation have been ratified by decree No. 213/1957, of 18 January 1958:

Convention No. 29 of 1930 concerning Forced or Compulsory Labour;

Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize;

Convention No. 89 concerning Night Work of Women Employed in Industry (Revised 1948);

Convention No. 100 of 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

2. The agreement between the Government of the Romanian People's Republic and the Government of the German Democratic Republic on collaboration in the field of social insurance policy was approved by Decision No. 57 of the Council of Ministers of 27 January 1958.

3. The convention between the Government of the Romanian People's Republic and the Government of the Hungarian People's Republic on collaboration in the field of public health was ratified by decree No. 168, of 10 April 1958.

4. The convention between the Government of the Romanian People's Republic and the Government of the Czechoslovak Republic on collaboration in the field of health protection was approved by decision No. 1062 of the Council of Ministers of 26 July 1958.

5. The treaty between the Romanian People's Republic and the Union of Soviet Socialist Republics concerning the provision of legal assistance in civil, family and criminal cases was ratified by decree No. 334 of 26 July 1958.

6. Convention No. 98 adopted in 1949 by the International Labour Organisation, concerning the application of the principles of the right to organize and to bargain collectively, was ratified by decree No. 352 of 5 August 1958.

7. The agreement between the Government of the Romanian People's Republic and the Government of the German Democratic Republic concerning cultural and scientific co-operation was approved by Decision No. 1543 of the Council of Ministers of 11 November 1958.

8. The agreement between the Government of the Romanian People's Republic and the Government of the Czechoslovak Republic concerning cultural co-operation was approved by decision No. 1680 of the Council of Ministers of 11 December 1958.

9. The treaty between the Romanian People's Republic and the German Democratic Republic concerning legal assistance in civil, family and criminal cases was ratified by decree No. 496 of 12 December 1958.

[1] See also p. 313.

SAN MARINO

ELECTORAL ACT

ACT NO. 36 OF 23 DECEMBER 1958 [1]

Chapter I

VOTING QUALIFICATIONS

Art. 1. All citizens of San Marino of full age, including naturalized citizens, are entitled to vote, provided that they are not disqualified in accordance with the provisions of article 2.

Art. 2. The following persons shall be disqualified from voting:

(*a*) Persons placed under legal disabilities or incapacitated by reason of infirmity of mind;

(*b*) Persons permanently or temporarily deprived of full legal capacity by sentence of a court or sentenced to criminal penalties for corrupt electoral practices or offences;

(*c*) Persons permanently or temporarily deprived of political rights by sentence of a court.

. . .

Chapter V

COUNCILLORS

Art. 18. In addition to the general qualifications for voters set out in articles 1 and 2, all persons seeking election must:

(*a*) Be able to read and write;

(*b*) Have completed twenty-five years of age on the day of the elections;

(*c*) Not possess ecclesiastical status;

(*d*) Be domiciled in the Republic;

(*e*) Be of the male sex.

Art. 19. The following persons may not hold office as Councillors:

(*a*) Persons holding posts, including honorary posts, in the diplomatic or consular service of foreign States;

(*b*) Persons belonging to the gendarmerie or the municipal police force.

Art. 20. A father and his son may not hold office as Councillors at the same time.

If both are elected at the same time the office shall be held by the one receiving the greater number of votes.

. . .

Chapter VII

TRANSITIONAL PROVISIONS

. . .

Art. 59. The date on which the extension of voting rights to women shall become effective shall be determined by legislation to be enacted before 30 April 1959.[2]

Chapter VIII

FINAL PROVISIONS

. . .

Art. 62. This Act shall enter into force on the day after its publication.

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[1] Text published in *Bollettino Ufficiale* 1958, No. 5 of 27 December 1958. Translation by the United Nations Secretariat. The Act included special provisions concerning voting by citizens residing outside San Marino.

[2] An Act of 29 April 1959 (*Bollettino Ufficiale* No. 3 of 25 August 1959) confirmed the extension of voting rights to women and provided that these rights should become effective on 1 January 1960.

SPAIN

BASIC LAW PROCLAIMING THE PRINCIPLES OF THE NATIONAL MOVEMENT of 17 May 1958 [1]

I, Francisco Franco Bahamonde, leader of Spain, conscious of my responsibility before God and before history, proclaim the following principles in the presence of the Cortes of the Kingdom as principles of the National Movement, which represents the unity of all Spaniards in upholding the ideals that gave birth to the crusade:

. . .

V

The national community is founded on man as bearer of eternal values and on the family as the foundation of social life, but individual and collective interests must always be subordinated to the common good of the Nation as constituted by past, present and future generations. The law provides equal protection for the rights of all Spaniards.

VI

The family, the municipality and the syndicate, as the natural units of social life, are basic structures of the national community. Institutions and corporations of other kinds which satisfy social needs of general interest must be protected so that they can make an effective contribution to achieving the aims of the national community.

VII

The Spanish people, united under the rule of law and inspired by the principles of authority, liberty and service, constitute the national State. Its political form, in accordance with the immutable principles of the National Movement and with what is laid down by the Law of Succession and other basic laws, is a traditional, Catholic, social and representative monarchy.

VIII

The representative character of the political order is a basic principle of our public institutions. The people shall participate in the work of legislation and in other functions of general interest through the family, the municipality, the syndicate and other corporate representative bodies recognized for that purpose by law. Any political organization of whatever kind outside this representative system shall be regarded as illegal.

All Spaniards shall have access to public office and functions according to their merits and capacity.

IX

All Spaniards have a right to independent justice, which shall be free for those who lack the means to pay for it; to general and vocational education, of which no one shall be deprived through lack of material resources; to the benefits of social security and social assistance; and to an equitable distribution of the national income and of taxes. The Christian ideal of social justice, as reflected in the Labour Charter, shall be the mainspring of politics and law.

X

Work is recognized as the foundation of the social order and as a duty and honour for all Spaniards; private property, in all its forms, is recognized as a right conditioned by its social function. Private enterprise, which is the basis of economic activity, shall be encouraged, guided and, if necessary, supplemented, by the State.

XI

The undertaking, as an association of men and resources directed towards production, constitutes a community of interests with a unity of purpose. The relationship between the constituent elements of the undertaking shall be based on justice and mutual loyalty, and economic values shall be subordinated to human and social values.

XII

The State shall use all means within its power to improve the physical and moral health of Spaniards and to ensure for them the most dignified conditions of work; to stimulate the economic advancement of the nation by improving agriculture, extending irrigation and introducing rural social reforms; to arrange for the most equitable use and distribution of public funds; to safeguard and encourage the prospecting and utilization of mineral resources; to accelerate the process of industrialization; to encourage scientific research; and to promote maritime activities in accordance with the size of our sea-going population and our naval strength.

Wherefore, I decree as follows:

[1] Published in *Boletín Oficial del Estado*, year XXIII, No. 119, of 19 May 1958. Translation by the United Nations Secretariat.

Article 1. The principles contained in the present law, which constitute the foundation of the basic laws approved by the nation on 27 July 1947, are, by their very nature, permanent and unalterable.

Article 2. All bodies and authorities shall be obliged to observe these principles strictly. The oath required of those who take up public office shall refer to the text of these basic principles.

Article 3. All laws and regulations of whatever kind that violate or impair the principles proclaimed in the present basic law of the kingdom shall be null and void.

ACT OF 24 APRIL 1958 AMENDING CERTAIN ARTICLES OF THE CIVIL CODE

NOTE

The Act of 24 April 1958 amending certain articles of the Civil Code (*Boletín Oficial del Estado*, year XXIII, No. 99, of 25 April 1958) is of importance in relation to the status of women.

The Act granted married women certain rights to control their own property and permitted women to be witnesses to wills and to exercise the guardianship of minors and incompetents; if a woman is married, however, she must receive her husband's consent in order to be a guardian.

With respect to property acquired during the marriage, the wife's consent was made necessary before the husband could dispose of real property or of business enterprises. As far as other property is concerned, the wife was accorded the right to initiate legal action if her husband acts improvidently.

The rights of the wife in cases of annulment and separation received added protection; while action is pending in such cases, temporary provision could be made for separate domicile, custody of children and alimony.

The proportion of the husband's estate to which the widow is entitled by law was also increased.

SUDAN

CONSTITUTIONAL ORDER No. 3
of 17 November 1958[1]

1. The Sudan Transitional Constitution shall be suspended.

2. The existing Sudanese Parliament constituted by the provisions of the Transitional Constitution shall be dissolved.

3. All existing political parties shall be dissolved and the formation of any new political party shall be unlawful.

4. All laws in force before the suspension of the Sudan Transitional Constitution shall continue in force until repealed or amended by any appropriate authority.

. . .

[1] Published in *Special Legislative Supplement to the Republic of the Sudan Gazette No. 927*, of 6 December 1958.

DEFENCE OF THE SUDAN ACT, 1958
(1958 Act No. 38)[1]

4. (1) Any person who takes any hostile action against the Government shall be guilty of an offence.

Explanation: Such hostile action shall include any of the following acts:

(*a*) Any act the object of which is to incite opposition to or bring discredit upon the Government, and in particular:

(i) The organization of, or participation in, any meeting or procession with such object;

(ii) The production, publication or distribution of any news sheet, pamphlet, circular or similar document with such object;

(iii) The broadcasting by radio of any programme or item with such object.

(*b*) Any act the object of which is to establish political parties.

(*c*) The receipt payment or transfer of money securities or valuables for any political purposes.

(*d*) Any act the object of which is to sabotage or disrupt the economic system or economic stability of the Sudan, or to damage its productivity, or cause financial or economic loss, for the purpose of inflicting hardship upon any part of the community or exerting unlawful pressure upon the Government.

(*e*) Any act the object of which is to overthrow or disrupt the basic social order of the Sudan, or to provoke hostility between different social, racial or economic classes in the Sudan.

. . .

[1] Published in *Special Legislative Supplement to the Republic of the Sudan Gazette No. 927, dated 10 December, 1958. Supplement No. 1: General Legislations.*

THE DEFENCE OF THE SUDAN (GENERAL) REGULATIONS, 1958
(1958 L.R.O. No. 28)[1]

1. These regulations may be cited as the Defence of the Sudan (General) Regulations 1958, and shall come into force on 18 November 1958.

2. All persons shall be bound to furnish to the best of their ability and knowledge all information requested by or on behalf of the competent authority, being information which the authority or person making the request considers to be necessary or expedient in the interest of public safety.

3. No person required to furnish information under any regulation or order made under the Defence of the Sudan Ordinance shall make any statement which he knows to be false in a material particular, or recklessly make any statement which is false in a material particular.

4. No person shall send from or bring into the Sudan any letter or other like document otherwise than [through] the post.

For the purpose of this regulation the expression "letter or other like document" means any letter,

[1] Published in *Special Legislative Supplement to the Republic of the Sudan Gazette No. 927, dated 10 December 1958. Supplement No. 1: General Legislations.* Corrigendum in *Special Legislative Supplement to the Republic of the Sudan Gazette No. 928, dated 31 December 1958. Supplement No. 1: General Legislations.*

document, paper or other object intended to communicate information to some person other than the person who has such a letter or other like document in his possession;

Provided that this provision shall not apply to letters or documents which relate exclusively to the working of any ship, train or other means of transport or to the ownership or disposition of the cargo of such ship, train, or other means of transport, and which are, in accordance with ordinary shipping, railway or commercial practice or local customs, carried upon the ship, train or other means of transport itself;

Provided also that in any place where censorship has been instituted under these regulations the censor may at his discretion allow to be sent out of or brought into the Sudan otherwise than through the post any letter or other like document which may be submitted to him where such letter or other like document is destined for or coming from any place between which and the Sudan there is no regular postal service.

5. A competent authority may by order require every person within any area specified in the order other than a person who is in possession of a permit in writing from such competent authority to remain within doors between such hours as may be specified in the order.

. . .

9. Where a competent authority or any person duly authorized by him has reason to suspect that any person who is about to leave the Sudan is attempting to do so for the purpose of doing something which may be prejudicial to the security of the Sudan, he may prevent such person leaving the Sudan.

Where such person has been so prevented from leaving the Sudan the case shall be reported to the Minister of the Interior, and the Minister of the Interior may, if he thinks fit, by order prohibit that person at any time subsequently from leaving the Sudan so long as the order is in force.

10. (1) Any person holding, taking out or participating in any procession or meeting in any public place shall be guilty of an offence against these regulations.

(2) Any such procession or meeting shall for the purposes of section 115 to 126 of the Penal Code, and sections 93 to 98 of the Code of Criminal Procedure be deemed to be an unlawful assembly.

11. (1) Trade Unions and Associations named and described in this Section to be suspended and stop their activities.

(2) This section applies to the following Trade Unions and Associations: (*a*) trade unions; (*b*) trade union federations.

12. If he shall deem it necessary so to do in the interests of the public safety the Minister of the Interior may establish a censorship and may make such orders and regulations as may be necessary for that purpose and to ensure that no such newspaper, periodical, book, circular or other printed publication as may be specified in such orders or regulations shall be printed or published without the permission of the censor and without the prior approval by the censor either of the whole or of any specified part or parts thereof.

13. No person shall by word of mouth or in writing or in any newspaper, periodical, book, circular or other printed publication or by any other means

(*a*) Spread false rumours or make false statements, or

(*b*) Spread rumours or make statements intended or likely (i) to provoke hostility to the Government, or (ii) to prejudice the operations, administration or discipline of the military or police forces of the Sudan, or (iii) to undermine public confidence in Sudanese currency, or (iv) to prejudice the success of any financial measures taken by the Government, or (v) to prejudice the relations of the Government with foreign powers.

14. Where the Minister of the Interior is satisfied that any newspaper, periodical, book, circular or other printed publication or any film, gramophone record, contains or records reports or statements which are in his opinion prejudicial to public safety, he may prohibit the importation thereof, including, in the case of a newspaper or periodical, any subsequent issue thereof; and any such matter which is sent or conveyed to the Sudan in contravention of such an order may be detained or destroyed.

15. The Minister of the Interior may after consultation with the Minister of Communications appoint one or more persons to censor postal correspondence, and the persons so appointed may examine any letter, document or other matter sent through the post or by telegraph and detain and confiscate any such letter, document or matter if in his opinion the transmission of the contents or any part thereof would or might be prejudicial to the public safety or he may render illegible any such part.

. . .

26. A competent authority or any person duly authorized by him or any police or special police officer or man may, if he has reason to suspect that any house, building, land, vehicle, vessel, aircraft or other premises or any things therein are being or have been constructed, used or kept for any purpose or in any way prejudicial to the public safety or that an offence against these regulations is being or has been committed thereon or therein, enter, if need be by force, the house, building, land, vehicle, vessel, aircraft or premises at any time of the day or night, and examine, search and inspect the same or any part thereof, and may seize anything found therein which he has reason to suspect is being used or intended to be used for any such purpose as aforesaid or is being used or kept in contravention of these regulations, and a magistrate of the first class may order anything so seized to be destroyed or otherwise disposed of.

27. Whenever a magistrate of the first class is satisfied on receiving a police report or other information that any house, land, building, or other premises is being used for any purpose or in any way prejudicial to the public safety, the magistrate may by order require the premises either to be closed altogether or not to be used except in accordance with conditions and restrictions imposed by the order, and if the owner or occupier of the premises or any other person contravenes or fails to comply with the order or with any of the provisions of the order or with any conditions or restrictions imposed thereby, the magistrate may cause such steps to be taken as may be necessary to enforce compliance with the order.

28. Any commissioned officer or any soldier, sailor or airman engaged on sentry patrol or other similar duty, and any police or special police officer or man, may stop any vehicle travelling along any public highway, and if he has reason to suspect that the vehicle is being used for any purpose or in any way prejudicial to the public safety may search and seize the vehicle and seize anything found therein which he has reason to suspect is being used or intended to be used for any such purpose as aforesaid.

29. It shall be the duty of any person, if so required by a commissioned officer, or by any soldier, sailor or airman on sentry patrol or other similar duty, or by a police or special police officer or man, or any other person duly authorized in that behalf by the competent authority to stop and answer to the best of his ability and knowledge any questions which may be reasonably addressed to him.

. . .

34. (1) Any policeman, any member of the armed force of the Sudan acting in his duty as such, and any other person authorized by a competent authority may arrest without warrant any person whom he has reasonable ground for suspecting to have committed an offence under these regulations.

(2) Any person so arrested shall be forwarded as soon as practicable to the magistrate competent to take cognizance of the offence.

SWEDEN

NOTE[1]

I. LEGISLATION

1. Parliament adopted, on 17 October 1958, an Act on the right of women to hold ministries within the established Church of Sweden. According to this Act, women were to have the same right as men to serve as ministers within the state church of Sweden; hence, when appointing ministers to serve in the church, the Government must base their decision exclusively on merits and competence of the candidates.

2. On 25 April 1958, Parliament adopted an Act on the treatment of arrested and apprehended persons, etc. The principal aim of this legislation was to bring about a considerable improvement of the condition and equipment of the premises used for detention. Thus, certain minimum requirements have been prescribed and the supervision of the observance of these rules has been made more effective.

3. A new Code on Inheritance, Wills and Administration of Estates, adopted by Parliament in 1958, was to enter into force on 1 July 1959. Most of the earlier legislation on inheritance, wills, contracts of inheritance, administration and distribution of estates, etc., has been incorporated into the new Code without material change. On some points, however, amendments have been adopted. Thus, certain modifications have been introduced into the rules of inheritance with regard to relations based on adoption. In this particular field, the aim has been to strengthen the legal attachment of the child to its adoptive parent and the adoptive family, while the legal relations between the child and its natural family have been correspondingly reduced. According to the new rules, the effect of adoption was to be that the adopted child and its descendants would inherit from the adoptive parents, and the latter from them, as if the adopted child were a legitimate child. The adopted child's equality with the adoptive parent's own child also means that several other provisions of inheritance law, setting forth the rights to, and the share in, an estate that are accorded to the issue of the deceased were made applicable to adopted children as well. In matters of inheritance, the new code provided that the adoption was to lead to the discontinuance of the relationship between the adopted child and the child's natural family, subject to only a few exceptions.

Simultaneously with the promulgation of the Code on Inheritance, Wills and Administration of Estates, some amendments to the Code of Parentage were to go into force. For example, certain provisions concerning adoption have been amended so as to fall into line with the above-mentioned rules of inheritance. The new principle whereby the adoption leads to discontinuance of the relations between the adopted child and its natural parents is reflected in the provision that the subsidiary duty of maintenance, which has hitherto been incumbent on the natural parents in relation to the child as well as on the child in relation to its natural parents, ceases through the adoption. Furthermore, rescission of the adoption was not, as had been the case, to mean that the child automatically re-establishes legal relations with its natural parents. To what extent the legal relations between the child and its natural parents were to be revived was to be determined by the court in connexion with the order for rescission of the adoption.

Among amendments to the Code of Parentage which have no connexion with the new features of the rules on adoption, the following should be noted. The obligation of a father of an illegitimate child to pay maintenance allowances to the child's mother during the period immediately before and after the child's birth may, at the court's discretion, be extended to cover also cases where the child is stillborn or an abortion has been undertaken. This obligation, which, in case of abortion, arises regardless of whether the incision is lawful or carried out illegally, shall, if it is deemed proper, be placed upon a male who has had sexual intercourse with the woman at such time as the child may have been conceived, provided that it does not otherwise seem unlikely that he is the child's father.

II. INTERNATIONAL AGREEMENTS[2]

1. On 10 February 1958, Sweden signed the Agreement of The Hague of 23 November 1957, relating to Refugee Seamen.

2. On 30 April 1958, the European Convention of 29 April 1957, on the peaceful settlement of disputes was ratified.

3. On 30 April 1958, the Convention of 12 July 1957, between Sweden, Denmark, Finland and Norway, concerning the waiver of passport control at the intra-nordic frontiers was ratified.

4. On 31 October 1958, Sweden signed at Lisbon

[1] Note kindly furnished by the Permanent Representative of Sweden to the United Nations.

[2] See also pp. 312-313.

the International Convention of Paris of 20 March 1883, for the protection of industrial property, as revised at Brussels, Washington, The Hague and London.

5. On 31 October 1958, Sweden signed at Lisbon the Agreement of Madrid of 14 April 1891, for the prevention of false indications of origin on goods, as revised at Washington, The Hague and London.

6. On 29 November 1958, Sweden notified the Netherlands Government of its denunciation of the Convention of 12 June 1902 of The Hague, relating to the settlement of the conflict of laws concerning marriage. The denunciation was to take effect on 1 June 1959.

7. On 29 November 1958, Sweden notified the Netherlands Government of its denunciation of the Convention of 12 June 1902 of The Hague, relating to the settlement of guardianship of minors. The denunciation was to take effect on 1 June 1959.

8. On 23 December 1958, Sweden signed the Convention of 10 June 1958, on the recognition and enforcement of foreign arbitral awards.

SWITZERLAND

NOTE [1]

I. CONFEDERATION

A. Legislation

Responsibility of Federal Authorities

Extracts from the Federal Liability Act of 14 March 1958 (*Recueil officiel*, 1958, p. 1483) and from the Ordinance implementing the Act (*ibid.*, p. 1492) appear below.

The Cinema

Article 27 *ter* of the Federal Constitution, which was added thereto by a Federal Order of 3 October 1958 (*ibid.*, p. 798) included the following paragraph 1:

"1. The Confederation has the right to legislate in the form of laws or decrees of general application:

"(*a*) To promote Swiss film production and the cultural activities connected with the film industry;

"(*b*) To regulate the importation and distribution of films and the establishment and conversion of enterprises engaged in the exhibition of films; for this purpose it may, if necessary, derogate from the principle of freedom of trade and industry in the general interests of culture or of the State."

Housing

A federal order of 31 January 1958 (*ibid.*, p. 433) laid down ways whereby the Confederation was to encourage the provision of new housing to lower income families at rents within their means.

Preservation of Historic Monuments

A federal order of 14 March 1958 (*ibid.*, p. 393) and an ordinance of 26 August 1958 (*ibid.*, p. 619) concerned the encouragement by the Federal authorities of the preservation of historic monuments.

B. INTERNATIONAL AGREEMENTS

By a federal order of 18 June 1958 (*ibid.*, p. 505) the Federal Assembly approved Convention No. 105, concerning the Abolition of Forced Labour, adopted by the International Labour Conference on 25 June 1957.[2]

By a federal order of 1 October 1958 (*ibid.*, p. 1059) the Federal Assembly approved the Agreement concerning Social Insurance, signed by Switzerland and the Netherlands on 28 March 1958.

II. CANTONS

Political Rights of Women

The decree of 19 May 1958, amending the Constitution of Vaud of 1 March 1885 with a view to conferring political rights on women, made the following amendments thereto:

"*Art. 23.* All Swiss *men and women* who have completed their twentieth year, have been established or residing in the canton for three months and do not exercise their political rights in any other state of the Confederation, are active citizens. This provision is without prejudice to the exceptions specified in the following article.

"*Art. 24.* Persons under a judicial disability and persons debarred from the exercise of their civic rights under a judgement based on criminal law shall not be deemed to be active citizens."

"*Art. 25 bis.* For the purposes of referenda and elections governed by the Constitution and federal laws, the communal assemblies shall be composed of those citizens who are entitled to vote in federal matters."

"*Art. 32.* Spouses, blood relations and relations by marriage in the direct line and the collateral line, blood relations and relations by marriage up to and including the third degree, may not sit at the same time, one in the Council of State and the other in the cantonal court."

Conditions of Work

A federal Act of 28 September 1956 permitted the cantons to extend the scope of collective agreements.[3] Acting under this enactment, Vaud adopted in 1958 two orders, one of 18 April affecting dental mechanics and the other of 19 September concerning garment workers.

Health, Social Security and Education

Among other cantonal legislation adopted in 1958, mention may be made of the decree of 13 May concerning vaccination against poliomyelitis, of Aargau, the Act of 25 March concerning sickness insurance, of Neuchâtel, and the ordinance of 11 April concerning training in domestic science, of Berne.

[1] This note is based upon texts received through the courtesy of the Permanent Observer of Switzerland to the United Nations.

[2] See *Yearbook on Human Rights for 1957*, p. 303.

[3] See *Yearbook on Human Rights for 1956*, p. 211.

FEDERAL ACT REGARDING THE LIABILITY OF THE CONFEDERATION, THE MEMBERS OF THE FEDERAL AUTHORITIES AND FEDERAL OFFICIALS (LIABILITY ACT)

of 14 March 1958 [1]

Chapter I

FIELD OF APPLICATION

Art. 1. (1) The provisions of this Act shall apply to all persons holding public office under the Confederation — namely:

(*a*) The members of the National Council and Council of States;

(*b*) The members of the Federal Council and the Chancellor of the Confederation;

(*c*) The members and alternate members of the Federal Tribunal and Federal Insurance Tribunal;

(*d*) The members and alternate members of the independent federal authorities and commissions of the federal tribunals and federal administration;

(*e*) Officials and other agents of the Confederation;

(*f*) All other persons directly entrusted by the Confederation with duties under public law.

(2) Persons attached to the armed forces are excepted so far as their military status and service duties are concerned.

Art. 2. (1) The provisions relating to officials shall be applicable to all the persons mentioned in article 1, in so far as this Act does not contain special provisions.

(2) Legal action may not be taken against members of the National Council, the Council of States or the Federal Council for the opinions they express in the Federal Assembly or in its committees.

(3) Moreover, the provisions of the Act of 26 March 1934 relating to political and police guarantees in favour of the Confederation shall be reserved.

Chapter II

LIABILITY FOR DAMAGE

Art. 3. (1) The Confederation shall be liable for damage caused unlawfully to a third party by an official in the exercise of his functions, irrespective of the official's culpability.

(2) Where liability for specific acts is covered by special legislation, the liability of the Confederation shall be governed by the relevant provisions.

(3) No action may be brought against the offending official by the injured party.

(4) Where a third party claims damages from the Confederation, the latter shall immediately notify the official against whom it may have a claim.

Art. 4. Where the wronged party has assented to the wrong or where acts for which he is responsible have helped to bring about or aggravate the injury, the judge may reduce the amount of damages or even disallow them.

Art. 5. (1) In the event of loss of life, the damages shall cover all the expenses, including burial costs. Where death is not immediate, they shall cover such items as the cost of medical treatment and the loss incurred through incapacitation. Where as a result of the death other persons are left without support, such persons shall also be compensated for their loss.

(2) In the event of bodily injury, the person suffering such injury shall be entitled to reimbursement of his expenses and to damages for his total or partial incapacitation as well as for any detrimental effect on his economic future.

(3) If at the time of the judgement it is not possible to assess the after-effects of the bodily injury with sufficient certainty, the judge may arrange for reconsideration of the award within a period not exceeding two years from the date on which it was made.

Art. 6. (1) If the official has committed a wrongful act, the judge may, if the particular circumstances warrant it, award to a person suffering bodily injury or, in the event of loss of life, to his family, a fair indemnity by way of moral reparation.

(2) Persons suffering injury to their personal interests may claim damages and, in addition, an indemnity by way of moral reparation where this is justified by the gravity of the wrong suffered and of the official's culpability.

Art. 7. Where the Confederation makes good an injury it may bring an action against the official who caused it, whether intentionally or through gross negligence, even after the termination of his employment.

Art. 8. Officials are accountable to the Confederation for any injury caused to it directly by the dereliction of their official duties, whether intentional or through gross negligence.

Art. 9. (1) Furthermore, the provisions of the Code of obligations regarding obligations resulting from illegal acts shall be applicable by analogy to the claims of the Confederation under articles 7 and 8.

(2) Where several officials have caused damage jointly they are accountable to the Confederation, notwithstanding article 50 of the Code of obligations, only in proportion to the wrongs they have committed.

Art. 10. (1) The Federal Tribunal shall pronounce

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[1] Text published in the *Recueil Officiel*, 1958, p. 1483, and received through the courtesy of the Permanent Observer of Switzerland to the United Nations.

judgement, which shall not be subject to appeal, in accordance with articles 110 *et seq.* of the Judicial Organization Act, on claims by the Confederation which are contested or on claims made against the Confederation.

(2) Action may be brought against the Confederation in the Federal Tribunal if the department concerned has permitted three months to elapse from the date of the claim without contesting it or stating its position.

Art. 11. (1) In so far as the Confederation acts under private law, its liability shall be governed by the provisions of private law.

(2) In such cases the injured party is likewise barred from bringing an action against the offending official.

(3) Counter-claim by the Confederation is governed by articles 7 and 9.

Art. 12. The legality of decisions, orders and judgements at law may not be reviewed in proceedings concerning liability.

[Chapter III (arts. 13-16) deals with criminal liability, and chapter IV (arts. 17-18) with disciplinary liability. Chapter V (art. 19) concerns the liability of special organizations acting on behalf of the Confederation, and the staff of such organizations.]

Chapter VI

TIME LIMITATION AND EXTINCTION

Art. 20. (1) The liability of the Confederation (arts. 3 *et seq.*) is extinguished if the injured party does not submit his claim for damages or for indemnity by way of moral reparation within one year of the date on which he became cognizant of the damage and in any event within ten years of the official's wrongful act.

(2) The claim must be submitted to the Department of Finance and Customs.

(3) Where the Confederation contests the claim or where it does not state its position within three months, the injured party must institute proceedings within a new time-limit of six months, failing which his claim shall lapse (art. 10).

. . .

ORDINANCE TO CARRY INTO EFFECT THE LIABILITY ACT of 30 December 1958 [1]

I. LIABILITY FOR DAMAGE

Art. 1. (1) Claims for damages or for indemnity by way of a moral reparation, lodged against the Confederation under the Liability Act, shall be addressed to the Federal Department of Finance and Customs in writing and in at least two copies, and shall be accompanied by a statement of reasons.

(2) If such claims do not fall within its jurisdiction, the Department of Finance and Customs shall transmit them to the organs competent to admit or contest them.

(3) Each organ must without delay transmit claims not falling within its jurisdiction to the organ competent to deal with them.

[1] Text published in *Recueil officiel*, 1958, p. 1492, and communicated through the courtesy of the Permanent Observer of Switzerland to the United Nations.

[Article 2 specifies the organs competent to take a final decision upon such claims.]

Art. 3. (1) The competent organs must state their decision upon the claim in writing within three months from the date of its submission. If they admit the claim only in part, they must specify exactly to what extent it is so admitted.

(2) An applicant whose claim is rejected in whole or in part shall be informed that unless an action is instituted before the Federal Tribunal within six months of receipt of the opinion concerning the attitude taken up with regard to his claim, the claim shall lapse (art. 20, para. 3, of the Act).

III. FINAL PROVISIONS

Art. 8. (1) The present ordinance shall enter into force on 1 January 1959.

THAILAND

HUMAN RIGHTS IN 1958 [1]

Historical events have vested power in the Revolutionary Party which assumed its responsibilities by an announcement dated 20 October B.E. 2501 (1958); this seizure of power had as an immediate consequence the abrogation of the Constitution of B.E. 2475, amended in B.E. 2495.[2]

Those events resulted also in the promulgation of an Interim Constitution prepared by a Constituent Assembly. Purely political activities have as a result been reduced, this being in the spirit of the revolution, which tried to suppress excessive political interference detrimental to a policy of continuous and steady progress.

The reforms of the new government, with the collaboration of the Revolutionary Party, concerned more especially the political life of the nation. Human rights appear to have been little affected by the revolution. In fact it has been the declared policy of the new government to reiterate their adhesion to the Universal Declaration of Human Rights and to promise solemnly that human rights would continue to be respected and protected.

In that spirit, as soon as the Revolutionary Party seized the power, it issued announcement No. 4, dated 20 October, in which it proclaimed that its policy was to "respect human rights as set forth in the Declaration of Human Rights. It shall refrain from any action which may be regarded as a violation of such rights unless in the interest of national security."

Of the provisions of the interim Constitution, special attention should be drawn to article 20, which reads as follows:

"In the case where no specific provisions of the present Constitution are applicable, decision shall be based on Thai constitutional practices.

"In the case where a decision on matters pertaining to the affairs of the National Assembly becomes controversial or where the Council of Ministers refers to the National Assembly for decision, the National Assembly shall decide the question."

In application of this text, all other detailed provisions of the former constitution (several of which concern human rights) which have been mentioned in the *Yearbook on Human Rights* are clearly still likely to apply when cases arise of interest to the protection of human rights. Unless special amendments have been made, the Civil and Commercial Codes, the Codes of Civil and Criminal Procedure, the Penal Code, etc., also apply, subject to their time honoured interpretation. The Revolutionary Party during 1958 made known legal provisions or amendments to existing provisions by means of "Announcements" which have legal and binding value.

In order to fulfil the programme of the revolution, the announcements have repealed some laws such as the Act on Political Parties, B.E. 2498, and the Labour Act, B.E. 2499. But care has been taken to replace those parts of the national policy which were in favour of the welfare of the people. The following are typical instances of its policy:

(i) In order not to concentrate all power in one place and to secure the constant collaboration of citizens, announcement No. 11, dated 22 October, set up immediately a Constituent Assembly comprising competent officials having the duty to make fiscal, administrative, educational and other regulations;

(ii) Announcement No. 19 (dated 31 October 2501) which abrogated the Labour Act replaced it by new provisions essential to the welfare of the worker (see below);

(iii) Interest for the welfare of poor citizens prompted the promulgation of announcement No. 18 (dated 29 October) concerning the care of poor patients in hospitals of the Bangkok Municipality. As a complement, announcement No. 37 (dated 9 December) contained welcome measures for the abolition of opium smoking.

Finally, one of the most important innovations made by the transitional legislation was announcement No. 21 (dated 2 November) issued in order to stop the nefarious activities of persons who earn their living by illegal means or pestering honest people. A special procedure has been organized in order to detain such person for enquiry; but the detention cannot exceed 30 days without a decision having been reached by a special committee having the legal power to send incorrigible characters to vocational training reformatories.

Otherwise, in the course of the year 1958:

(*a*) No international treaties have been signed or ratified which have affected human rights principles;

[1] Information kindly furnished by the Ministry of Foreign Affairs of Thailand.

[2] See *Yearbook on Human Rights for 1952*, pp. 268-70.

(*b*) Of judgements of interest to human rights, the following may be quoted:

A Chinese living in Thailand contracted to purchase land from a Thai subject, but no legal transfer of ownership was made at that time. Later, the owner of the land sold the same land to another person, claiming that the contract with the Chinese was not valid because in Thai law acquisition of land by an alien requires the permission of the proper authority and that in this case permission had never been requested. The Supreme Court decided, however, that the right acquired through the contract by the (Chinese) alien was not lost and that he could still exercise his right to claim permission to register the property as his own. The rights of the alien appear to be effectively protected by this judgement (Supreme Court, No. 23, 30 January 2501).

ANNOUNCEMENT No. 19 OF THE REVOLUTIONARY PARTY of 31 October, B.E. 2501 [1]

Whereas the Labour Act, B.E. 2499, contains provisions which have been exploited for the purpose of inducing dissension between the employer and the employee, neutralizing the sympathy and spirit of conciliation between them and inciting employees to take highly undesirable courses of action in accordance with the Communist strategy having as the final goal utter disintegration of the national industry and commerce, the Revolutionary Party has thought fit to repeal the Act and, at the same time, to substitute appropriate measures to protect the welfare and interest of employees.

The leader of the Revolutionary Party hereby issues the following orders accordingly:

1. The Labour Act, B.E. 2499, shall be repealed and all the labour federations and unions shall terminate accordingly.

2. The Ministry of the Interior is empowered to determine working hours and holidays of employees, conditions of women and child labour, payment of wages, and welfare services.

3. In case of accident resulting in injury, disability, or death, occurring during employment, or illness consequent upon the conditions or character of employment whether resulting in death or not, the employer shall be held responsible and shall pay appropriate compensation regardless of whether the illness or death occurs during the enforcement of the Labour Act, B.E. 2499, or on or after the day of announcement of this order.

The Ministry of the Interior is empowered to determine the diseases consequent upon the character or conditions of employment, and the modality and procedure of payment of compensation.

4. In case of conflict between the employer and employee relating to employment, wages, and suspension of employment, the competent authorities appointed by the Ministry of the Interior are empowered to settle the conflict and to make known the decision to the parties to the conflict as soon as possible. The parties have the right to appeal against the decision to the Director-General of the Public Welfare Department within fifteen days from the day of the receipt of the decision. The Director-General of the Public Welfare Department shall pronounce on the appeal and make his decision known to the parties as soon as possible. The decision of the Director-General of the Public Welfare Department shall be final.

5. Those receiving compensation from their employers in accordance with the Labour Act, B.E. 2499, before the announcement of this order shall continue to receive the compensation.

6. The Director-General of the Public Welfare Department and the competent authorities appointed by the Ministry of the Interior are empowered to enter the premises of employment during working hours for inspection or fact-finding purposes, to question anyone and order submission of evidence or the necessary documents. Those who resist shall be held in custody for questioning on the count of obstruction of the operation or resistance to the order of the competent authorities as the case may be.

7. Employers who disregard the instructions of the Ministry of the Interior in paragraph 2 shall be ordered by the Director-General of the Public Welfare Department or the competent authorities appointed by the Ministry of the Interior to carry out the foregoing instructions within a period of time fixed by the competent authorities. Defaulters shall be arrested for questioning on the count of resistance to the order of the competent authorities.

8. The Director-General of the Public Welfare Department is empowered to appoint liquidators to the labour federations and unions which are discontinued by virtue of paragraph 1.

After the appointment of liquidators, the provisions of the Civil and Commercial Code relating to liquidation of ordinary partnership shall be applied with appropriate adaptations.

These orders shall take effect as from now on.

[1] English text kindly furnished by the Ministry of Foreign Affairs of Thailand.

TUNISIA

NOTE[1]

I. LEGISLATION

Protection of Agricultural Workers

The interests of agricultural workers are protected by law. Provisions have been made to regulate employment and guarantee adequate wages. Severance pay has been introduced.

Text: Decree of 30 April 1956 establishing general wage rates and employment conditions for agricultural workers.

Protection of Wages

The following measures have been taken to protect the wage-earner: payment in cash; regularity of wage payments; obligation on the part of the employer to keep a payroll record and to furnish pay slips; and control of labour inspection. Since wages have to provide food, only a small proportion of a man's wages can be seized by creditors.

Texts: Decree of 7 February 1940 regulating the payment of wages of workmen and employees, amended and supplemented by the Decrees of 15 May 1941, 28 May 1942, 29 June 1944 and 15 August 1946.

Decree of 20 July 1950 respecting attachment and assignment of sums due as remuneration for work done for an employer and sums due to labour or works contractors, amended by the Decrees of 13 November 1952 and 4 June 1953.

Decree of 27 January 1955 introducing a special privilege in respect of wages.

Decree of 25 February 1954 regulating the payment of wages in agriculture.

Act No. 56-46 of 2 April 1958 ratifying International Labour Convention No. 95 concerning the protection of wages.

Entitlement to Time Off

Workers are entitled to leave with pay at the rate of one working day per month of employment, or fifteen days a year including twelve working days. Workers under eighteen years of age are entitled to thirty days' leave a year including twenty-four working days. Workers between the ages of eighteen and twenty-one are entitled to one and a half days' leave for every month of employment or twenty-two days a year including eighteen working days. If there is a birth in the family, a worker is entitled to an additional three days' leave with pay.

All workers are entitled to a twenty-four-hour rest break each week.

Texts: Decree of 9 March 1944 providing for holidays with pay in agriculture amended by the decree of 25 February 1954.

Decree of 25 July 1946 revising the legislation on holidays with pay in commercial, industrial and professional employment, amended and supplemented by the decree of 19 July 1948.

Decree of 27 May 1948 granting to wage-earning heads of families additional leave for the birth of each child in the household.

Decree of 20 January 1949 prescribing additional leave for young employees in commerce, industry and the professions, amended by the decree of 4 June 1951.

Decree of 20 April 1921 respecting weekly rest, amended by the decrees of 27 September 1939 and 3 August 1950.

Health Protection. Entitlement to Medical Care

The decree of 20 September 1955 respecting industrial medicine, amended by the Act of 9 January 1959, made it compulsory for heads of undertakings employing fifty persons or more to establish a medical service to supervise the health of workers at their place of employment and ascertain their physical fitness for the work required of them.

The decree of 6 April 1950 respecting hygiene and safety, and the employment of women and children in commercial, industrial and professional establishments made provision for ensuring hygiene and safety at work and regulating the employment of children to avoid jeopardizing their health. It prohibited the employment of women and children on night work and placed the responsibility for maintaining good conduct and morals on the head of the establishment.

Act No. 58-67 of 26 June 1958 providing for the organization of outside consultations and treatment by mobile units of Tunisian hospitals and health services limited such services to needy patients, regardless of nationality. The same act made provision for a free medical treatment card, to be issued to the heads of families, covering all dependants.

[1] Information kindly furnished by the Ministry of Foreign Affairs of Tunisia. Translation by the United Nations Secretariat.

Social Security

1. *Industrial Accidents and Occupational Diseases*

Wage-earners in all branches of the economy except domestic workers are entitled to compensation in case of industrial accidents and occupational diseases contracted in the course of or in connexion with employment (accidents while travelling to and from work).

The injured person receives compensation equal to half the daily remuneration received before the accident, until the injury has stabilized. He is further entitled to a pension in the case of permanent incapacity, the pension being equal to the annual remuneration previously received, multiplied by a co-efficient corresponding to half the percentage of permanent incapacity, provided the latter does not exceed 50 per cent.

If the percentage exceeds 50 per cent the portion in excess of that figure is applied directly to the annual remuneration. The remuneration is divided into a series of brackets which are given consideration in inverse proportion as the amount increases. In the event of the injured party's death his wife and children receive pensions.

2. *Family Allowances*

Workers employed in industry, trade, the professions, unions and associations are entitled to family allowances.

Persons in the employ of the Government, municipalities and public service undertakings are also entitled to such allowances.

Allowances are payable in respect of all dependent children up to the age of fourteen and in certain circumstances up to the age of twenty-one. They are equal to 15 per cent of wages or salary, but may not exceed a certain maximum. Payment is continued even when the employment on which the allowance is based has ceased; thus in the case of industrial accident, sickness or death of the person employed the allowances are paid for by employers' contributions.

The family allowance equalization funds have been consolidated in a central social benefits fund; this is a first step towards the extension of social benefits with a view to the establishment of a complete system of social security.

Texts: Act of 11 December 1957 respecting the system of compensation for industrial accidents and occupational diseases.

Decree of 8 June 1944 establishing in Tunisia a system of family allowances, amended by the Decrees of 12 October 1944, 9 July 1945, 10 April 1947, 18 September 1947, 29 July 1948, 9 February 1950, 15 November 1951, 18 February 1954 and 15 September 1955, and by Act No. 59/5 of 13 January 1959.

Act of 22 November 1958 unifying the administration of the system of family allowances in Tunisia.

Child Welfare. Care of Abandoned Children and Regulations for Adoption

Until 1958 no legislative provision had been made for public care of foundlings or children abandoned by their parents. Nor were there any regulations governing adoption. In practice adoption was a common occurrence, but it was done haphazard and could give rise to serious abuse.

Act No. 58-27 of 4 March 1958 on public guardianship, unofficial guardianship and adoption made up for this serious omission by regulating public and private guardianship and adoption, and by defining the respective rights and obligations of the adoptive parents and the child.

II. INTERNATIONAL INSTRUMENTS

The decree of 11 June 1957 ratifies and promulgates International Labour Convention No. 87 concerning freedom of association and protection of the right to organize.

Act No. 58-46 of 2 April 1958 ratifies International Labour Convention No. 95 concerning the protection of wages.

Act No. 58-39 of 2 April 1958 ratifies International Labour Convention No. 106 concerning weekly rest in commerce and offices.

A decree of 27 April 1957 ratifies and publishes International Labour Conventions Nos. 4, 11, 12, 14, 17, 26, 45, 52, 81, 89 and 98.

The Act of 23 December 1958 ratifies International Labour Conventions Nos. 6, 18, 62, 99 and 105.

NOTE ON THE CODE OF PERSONAL STATUS

This code, promulgated by the decree of 13 August 1956,[1] applies to all Tunisian nationals, regardless of their faith, by virtue of Act No. 57-40, of 27 September 1957 (2 rabia I 1377) abolishing the Rabbinical Court,[2] which repealed articles 3, 4 and 5 of the decree of 13 August 1956.

[1] See *Yearbook on Human Rights for 1956*, p. 219.

[2] *Journal officiel* No. 19, of 27 September 1957.

DECREE OF 7 NOVEMBER 1956 (3 RABIA II 1376) AMENDING AND SUPPLEMENTING THE DECREE OF 9 FEBRUARY 1956 (26 DJOUMADA II 1375) RESPECTING PRINTING, BOOKSELLING AND THE PRESS[1]

Art. 1. Article 10 of the above-mentioned decree of 9 February 1956 (26 djoumada II 1375) shall be rescinded and replaced by the following provisions:

Art. 10. On publication of each number or instalment of the newspaper or periodical, two copies signed by the managing editor shall be deposited with the Parquet or, in towns where there is no court of first instance, with the justice of the peace and the cantonal judge.

The managing editor shall at the same time deposit six copies with the office of the Secretary of State for Information under the conditions and in the form required by article 2 above.

The managing editor shall also at the same time deposit four copies with the head office of the National Criminal Investigation Department, under the conditions and in the form required by article 3 above.

Failure to deposit copies as herein prescribed shall render the managing editor liable to a fine of 12,000 francs.

Art. 2. A third paragraph shall be added to article 14 of the above-mentioned decree of 9 February 1956 (26 djoumada II 1375), in the following terms:

Any distributor of a newspaper or other printed matter, whether periodical or not, published outside the kingdom shall, before placing it on sale, deposit six copies with the office of the Secretary of State for Information, under the conditions and in the form required by article 3 above; failure to effect such deposit shall render the newspaper or printed matter concerned liable to administrative seizure and possible suspension, without prejudice to the penalties prescribed in article 10, paragraph 4 above.

Art. 3. Notwithstanding the provisions of the above-mentioned decree of 9 February 1956 (26 djoumada II 1375), the printing, circulation, distribution and sale of any newspaper or other printed matter, whether periodical or not, published in Tunisia and controlled by non-Tunisians may be prohibited by order of our Minister of the Interior if it constitutes a serious offence against public order or decency.

Any violation of the provisions of the preceding paragraph shall be punishable by the penalties prescribed in article 14, paragraph 2, of the above-mentioned decree of 9 February 1956 (26 djoumada II 1375).

. . .

[1] Published in *Journal officiel* No. 90, of 9 November 1956. Translation by the United Nations Secretariat. Extracts from the decree of 9 February 1956 respecting printing, bookselling and the press were published in the *Yearbook on Human Rights for 1956*, p. 223.

ACT No. 58-118 RELATING TO EDUCATION of 4 November 1958 (21 Rabia II 1378)[1]

Title I
General Principles

Art. 1. The essential purposes of education and instruction shall be:

(1) To enable all children of both sexes, without distinction as to race, religion or social condition, to develop their personalities and their natural aptitudes;

(2) To contribute to the growth of scientific progress and at the same time to ensure that such progress shall be to the benefit of all;

(3) To foster the development and flowering of the national culture;

(4) To prepare children for their role as citizens and human beings and to train the cadres necessary for developing the various aspects of the nation's activities.

Art. 2. All children of six years of age and over shall have access to education and instruction.

Art. 3. With a view to ensuring to all children equal circumstances and opportunities in regard to instruction and education, teaching will be provided free of charge at all levels.

Moreover, in a spirit of equal respect for religious beliefs and for philosophical or political convictions, all possible assistance will be provided to pupils and students who distinguish themselves by their aptitude and their work and whose families are of inadequate means.

Art. 6. In all cases where the State deems it necessary, the educational system may be supplemented by cultural or vocational education or further training, provided either by special establishments or by institutions or work of an extra-scholastic or post-scholastic nature.

[1] Extracts received through the courtesy of the Permanent Mission of Tunisia to the United Nations. Translation by the United Nations Secretariat.

UKRAINIAN SOVIET SOCIALIST REPUBLIC[1]

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 1958

(EXTRACTS)

A number of important measures aimed at further increasing the prosperity and raising the cultural level of the Soviet people were adopted in the Ukrainian SSR during 1958.

In 1958 social security pensions, allowances for unmarried mothers and mothers of large families and social insurance grants and benefits for manual and non-manual workers in an amount exceeding 15,000 million roubles were paid out at state expense. As in previous years, the population received free medical care, free or reduced-rate passes to sanatoria and rest homes, free education and advanced training and many other benefits and advantages. In addition, all manual and non-manual workers received paid holidays of at least a fortnight and workers in a number of occupations paid holidays of more than a fortnight.

The yearly average number of manual and non-manual workers employed in the national economy of the Ukrainian SSR in 1958 was over 9.3 million.

The total number of workers in industry, construction, state farms and transport, as also engineering and technical workers and other specialists, increased by almost 300,000 as compared with 1957.

The number of workers in schools, educational establishments, scientific and research institutions, cultural-educational establishments, and curative and health institutions and resorts rose by nearly 90,000 and the number of workers in trade and in community services also increased.

The past year has been marked by further advances in socialist culture.

The number of students in the republic, taking into account all types of training, totalled nearly 9,000,000 in 1958. The number of students in general education schools, including schools for young workers and rural youth and schools for adults, increased by 71,000 in the 1958-1959 school year as compared with the preceding school year. At the beginning of the current school year more than 200 secondary schools were in operation. In the 1958-1959 school year, 78 per cent of the students in primary, seven-year and secondary public schools are on the first daily session.

The network of schools operated by the Ministry of Education includes 5,600 secondary schools where vocational training classes are conducted.

Almost 723,000 persons studied at higher and special secondary educational establishments (including correspondence courses).

In 1958 the number of students attending higher and special secondary educational establishments, general education schools for young workers and rural youth and schools for adults, without separation from production, was 655,000. More than 294,000 of these were in higher and special secondary educational establishments.

Over 167,000 young specialists graduated from higher and special secondary educational establishments in 1958, as against 149,000 in 1957.

Over 69,000 graduating engineers and technicians — 28 per cent more than in 1957 — went into industry, construction, transport and communications.

In addition, 140,000 young skilled workers graduated from the schools of the labour reserve system in 1958. All of them were assigned to industry, construction, transport and agriculture.

In 1958 about 1.5 million manual and non-manual workers improved their qualifications and learned new skills by taking courses and serving individual and group apprenticeship.

Two new higher educational establishments, the Ukrainian Polytechnic Correspondence Institute at Kharkov and the Mining and Metallurgical Institute at Voroshilovsk, Lugansk Region, were opened in 1958.

The total number of scientific workers in the Republic in 1958 increased by 7 per cent as compared with the preceding year, rising to 36,500 (of whom 15,000 had the degree of doctor or candidate of science); the number of scientific workers in technology, physics, mathematics and chemistry also increased.

Cinema installations were further expanded. At the end of 1958 they totalled more than 12,000, an increase of 12 per cent over the preceding year. The

[1] Texts kindly furnished by the Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translations by the United Nations Secretariat.

figure for cinema attendance in 1958 was in excess of 635 million, or about 9 per cent higher than in 1957.

Books were published during the year in editions amounting to over 108 million and newspapers, reviews and other periodicals were published in increased printings.

In 1958 the development of the network of curative and preventive health institutions and the improvement of medical services for the population continued.

The number of hospital beds increased by almost 17,000 as compared with 1957, the number of places in permanent crèches by 8,000 and the number of beds in sanatoria and rest homes by more than 2,000.

The number of children and adolescents staying at country and city pioneer camps and excursion and tourist centres or going to the country with their kindergartens, children's homes or crèches increased by comparison with the preceding year.

Housing construction expanded significantly in 1958.

In carrying out the task, set by the Party and the Government, of eliminating the housing shortage in the next ten to twelve years, Soviet construction workers and the broad masses of the working people of the Ukrainian SSR considerably exceeded the housing construction target for 1958. The target figure of 9.7 million square metres established for 1958 for the construction and bringing into occupancy of housing financed by the State, by individuals and with the aid of state credit in cities, urban settlements, machine and tractor stations, tractor repair stations, state farms and timber industry settlements was exceeded. The actual total of housing brought into occupancy (exclusive of housing built by collective farms and the rural intelligentsia) was more than 11 million square metres.

In addition, members of collective farms and the rural intelligentsia built 158,000 dwelling houses in the past year.

Capital investment in the construction of educational, cultural and health establishments and community facilities also increased during the year. The number of general education schools, hospitals, kindergartens and crèches brought into use in 1958 rose likewise.

(From the newspaper *Pravda Ukrainy* No. 17/5129, 21 January 1959.)

ACT CONCERNING THE STATE BUDGET OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC FOR 1958 (*EXTRACTS*)

Art. 3. A total of 24,190,046,000 roubles shall be appropriated for social and cultural activities in the State budget of the Ukrainian Soviet Socialist Republic for 1958.[1]

Expenditure on the different branches of social and cultural activity shall be apportioned as follows:

(*a*) *Education and culture.* Expenditure on primary, seven-year and secondary general education schools, technical and other specialized secondary education establishments, higher education institutions and scientific and research establishments; workshop and factory apprenticeship schools, courses and other activities designed to raise the qualifications of workers, engineers and technicians; libraries, halls and homes for cultural activities, clubs, theatres, the Press and other educational and cultural activities: a total of 10,991,415,000 roubles;

(*b*) *Health and physical culture.* Expenditure on hospitals, dispensaries, crèches, sanatoria and other establishments for the medical care of the population; sport and physical culture: a total of 6,346,355,000 roubles;

(*c*) *Social security and social insurance.* Expenditure on pensions and allowances; the maintenance of homes for the disabled and other activities: a total of 6,852,276,000 roubles.

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 1, of 31 January 1958, Act No. 9, pp. 23-24.)

[1] Expenditure under the budget of the Ukrainian SSR for 1958 totals 58,661,552,000 roubles. Thus the expenditure of 24,190,046,000 roubles on social and cultural activities constitutes 41.2 per cent of total expenditure under the budget of the Ukrainian SSR for 1958.

ORDERS OF THE GOVERNMENT OF THE UKRAINIAN SSR CONCERNING THE REDUCTION OF THE WORKING DAY OF MANUAL AND NON-MANUAL WORKERS IN CERTAIN BRANCHES OF INDUSTRY IN 1958

Striking proof of the actual exercise of the right to rest of citizens of the Ukrainian SSR, as set forth in article 99 of the Ukrainian Constitution, is to be found in the reduction which took place during 1958 of the working day of manual and non-manual workers in certain branches of industry in the Ukrainian SSR, without reduction in pay, in accordance with the decision of the Twentieth Congress of the Communist Party.

1. By order No. 509 of 29 April 1958, the Council of Ministers of the Ukrainian SSR and the Central Com-

mittee of the Communist Party of the Ukraine provided that during 1958 manual and non-manual workers in certain branches of heavy industry should be switched to a seven- and six-hour working day and their wages adjusted.

(*Compilation of orders, Ukrainian SSR*, 1958, No. 4, p. 70)

2. By order No. 698 of 26 May 1958, the Council of Ministers of the Ukrainian SSR and the Central Committee of the Communist Party of the Ukraine provided that workers in undertakings and operations of the coal and slate industry should be switched to a shorter working day and their wages adjusted.

(*Compilation of orders, Ukrainian SSR*, 1958, No. 6, p. 104)

3. By order No. 817 of 24 June 1958, the Council of Ministers of the Ukrainian Soviet Socialist Republic and the Central Committee of the Communist Party of the Ukraine provided that workers in power stations, power and heating networks, and power repair shops should be switched to a seven-hour working day.

(*Compilation of orders, Ukrainian SSR*, 1958, No. 6, p. 108)

4. By orders No. 1334 of 16 September 1958, No. 1322 of 20 September 1958, No. 1329 of 20 September 1958 and No. 1330 of 20 September 1958, the Council of Ministers of the Ukrainian SSR and the Central Committee of the Communist Party of the Ukraine provided that workers in undertakings producing ferro-concrete and concrete objects and structures should be switched to a seven-hour working day and their wages adjusted and that workers in undertakings engaged in the ferrous metals industry, the chemical industry and the production of ozocerite, graphite and salt should be switched to a seven- and six-hour working day and their wages adjusted.

(*Compilation of orders, Ukrainian SSR*, 1958, No. 9, pp. 168-171)

5. By order No. 1357 of 16 September 1958, the Council of Ministers of the Ukrainian SSR and the Central Committee of the Communist Party of the Ukraine provided that workers in cement factories and undertakings engaged in the production of asbestos-cement objects should be switched to a seven-hour working day and their wages adjusted, and by order No. 1335 of 20 September 1958 provided that workers in the non-ferrous metals industry should be switched to a seven- and six-hour working day in 1958 and 1959.

(*Compilation of orders, Ukrainian SSR*, 1958, pp. 182-183)

DECREES AND ACTS ADOPTED BY THE SUPREME SOVIET OF THE UKRAINIAN SSR IN 1958 PROVIDING FOR ADDITIONS TO AND CHANGES IN THE CONSTITUTION OF THE UKRAINIAN SSR AND IN LAWS IN FORCE

The Labour Code of the Ukrainian SSR has been amended by the Presidium of the Supreme Soviet of the Ukrainian SSR.

The following annotation No. 1 has been added to article 47:

"No manual or non-manual worker may be discharged from an undertaking, institution or organization on the initiative of the management without the approval of a factory, plant or local committee."

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 9, of 30 September 1958, p. 238. Decree No. 99 of 24 September 1954)

The Presidium of the Supreme Soviet of the Ukrainian SSR has also amended section XVI of the Labour Code of the Ukrainian SSR, entitled "Procedure for the consideration of labour disputes", and has laid down the following wording for articles in that section:

"168. Labour disputes shall be considered by the following bodies:

"(*a*) Labour dispute commissions;

"(*b*) Factory, plant or local trade union committees;

"(*c*) People's courts."

"169. The labour dispute commissions in undertakings, institutions and organizations shall be made up of an equal number of permanent representatives of a factory, plant or local committee of a trade union, and of the management of the undertaking, institution or organization.

"The number of representatives of each party shall be determined by agreement between the parties.

"The trade union representatives shall be appointed to the labour dispute commission by decision of the factory, plant or local committee (in the case of shop commissions, by a decision of the shop committee) from among the members of the trade union committee, and the representatives of the management shall be appointed by order of the director of the undertaking (shop), institution or organization.

"169[1]. The labour dispute commissions shall be the first body to consider any labour disputes which occur in undertakings, institutions and organizations between manual and non-manual workers, on the one hand, and the management, on the other, including disputes relating to the following matters:

(*a*) The application of established production and rate standards, and also of working conditions

which ensure fulfilment of the production standards;

(*b*) Dismissal or transfer to other work;

(*c*) Payment for defective work and periods of enforced idleness;

(*d*) Payment for the performance of work requiring different qualifications;

(*e*) Payment for uncompleted work on piece-work detail;

(*f*) Payment for periods of absence from work;

(*g*) Payment for overtime;

(*h*) Entitlement to a bonus under the system of remuneration for labour, and the amount of such bonus;

(*i*) Payment in cases where production standards have not been fulfilled;

(*j*) Amount of payment for trial periods;

(*k*) Cash payments for unused leave;

(*l*) The issue of protective clothing and special food and, where appropriate, reimbursement in cash for such clothing and food;

(*m*) Payment of severance pay.

The commissions shall also be the bodies which shall consider other disputes relating to the application of labour legislation, collective agreements, labour contracts and plant labour regulations."

"169[4]. Decisions of the labour dispute commissions shall not be taken except by agreement between the parties; they shall have binding force and shall not require any approval."

"171. If no agreement between the parties is reached in the consideration of a labour dispute by the commission, the worker concerned shall be entitled, within a period of ten days from the date on which extracts from the record of the commission's meeting are delivered to him, to apply for a settlement of the dispute to the factory, plant or local trade union committee.

"The worker concerned may, within the same period, lodge an appeal with the factory, plant or local trade union committee against a decision of the labour dispute commission.

"If a worker disagrees with a decision given in a labour dispute by a commission comprising a trade union organizer and the director of an undertaking, institution or organization, or if no agreement is reached between the parties in such a commission, he may, within the above-mentioned period, apply for a settlement of the dispute to a people's court."

"172[1]. If a worker disagrees with a ruling given in a labour dispute by a factory, plant or local trade union committee, he may, within a period of ten days from the date on which the ruling of the factory plant or local committee is communicated to him, apply for a review of the dispute to a people's court.

"The management of an undertaking, institution or organization may, if it considers that the ruling given in a labour dispute by a factory, plant or local trade union committee is contrary to the legislation in force, apply within the same period for settlement of the dispute to a people's court."

"173. Decisions of a labour dispute commission and rulings given in labour disputes by a factory, plant or local trade union committee shall be carried out by the management of the undertaking, institution or organization within a period of ten days, unless the decision or ruling provides for a different period."

"173[1]. If the management of an undertaking, institution or organization fails, within the period mentioned in article 173, to carry out the decision of a labour dispute commission or the ruling of a factory, plant or local trade union committee relating to the substance of a labour dispute, the factory, plant or local committee shall issue to the worker concerned a document having the force of a writ."

"173[3]. The worker concerned shall, within a period of three months, present the document issued by the factory, plant or local trade union committee to an officer of the court, who shall enforce the decision of the labour dispute commission or the ruling of the factory, plant or local committee."

"173[4]. In the event of a delay on the part of the management of an undertaking, institution or organization in carrying out the decision of a labour dispute commission or the ruling of a factory, plant or local committee concerning the re-employment of a worker who has been wrongfully dismissed or wrongfully transferred, the factory, plant or local trade union committee shall issue an order for the payment of wages to the wrongfully dismissed worker for the period of his forced idleness or the payment of a wage differential to the wrongfully transferred worker. The wages or the wage differential shall, in such case, be paid to the worker for the entire period between the date of the decision or ruling on the labour dispute and the date on which the decision or ruling was carried out."

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 9, of 30 September 1958, pp. 240-244. Decree No. 99 of 24 September 1958)

By a decree of 25 September 1958, the Presidium of the Supreme Soviet of the Ukrainian SSR ratified the Convention on the Nationality of Married Women,[1] signed by the representative of the Ukrainian SSR on 15 October 1957.

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 9, of 30 September 1958, p. 242. Decree No. 102)

By a decree of 31 October 1958, the Presidium of the Supreme Soviet of the Ukrainian SSR ratified the Supplementary Convention on the Abolition of

[1] See *Tearbook on Human Rights for 1957*, pp. 301-2.

Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,[1] signed on 7 October 1956.

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 11, of 6 November 1958, p. 319. Decree No. 114)

On 30 December 1958, the Supreme Soviet of the Ukrainian SSR passed an act amending article 101 of the Constitution of the Ukrainian SSR to read as follows:

"Article 101. Citizens of the Ukrainian SSR have the right to education.

This right is ensured by universal compulsory education for a period of eight years; by a broad development of general polytechnical education on the secondary level, of vocational and technical education and of specialized secondary education and higher education, such education being directly related to daily life and production; by the fullest development of evening and correspondence courses; by education of all types being free of charge; by the system of State stipends; by instruction in schools being conducted in the native language; and by the organization in the factories, State farms and collective farms of free vocational, technical and agronomic education for the working people."

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 15, of 31 December 1958. Act No. 138, p. 488)

In connexion with the adoption of the Act abolishing deprivation of electoral rights by court decision, the Supreme Soviet of the Ukrainian SSR also amended article 115 of the Constitution of the Ukrainian SSR, deleting the provision that persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights may not vote in the election of deputies.

[1] See *Yearbook on Human Rights for 1956*, pp. 289-91.

Article 115 of the Constitution of the Ukrainian SSR now reads as follows:

"*Art. 115.* Elections of deputies are universal: all citizens of the Ukrainian SSR who have reached the age of eighteen, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, have the right to vote in the election of deputies and to be elected, with the exception of persons who have been duly adjudged insane.

Every citizen of the Ukrainian SSR who has reached the age of twenty-one irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, may be elected as a deputy of the Supreme Soviet of the Ukrainian SSR."

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 15, of 31 December 1958, pp. 488-489. Act No. 138)

In the interest of the further development of Soviet democracy and the enlisting of the working people in still greater numbers in the practical activities of the Soviets, the Presidium of the Supreme Soviet of the Ukrainian SSR, by a decree dated 27 December 1958, also made some additions to and changes in the regulations relating to elections to local soviets of working people's deputies of the Ukrainian SSR, laying down the following new norms as regards elections to these Soviets: 100 to 300 deputies shall be elected to regional Soviets, instead of the minimum number of seventy; forty to eighty deputies to district Soviets, instead of thirty-five to sixty; twenty to fifty deputies to the Soviets of villages and settlements, instead of fifteen to thirty-five; and fifty to 500 deputies to city Soviets, instead of thirty-five to 700. There has been no change in the electoral norms for the cities of Kiev and Kharkov.

(*Gazette of the Supreme Soviet of the Ukrainian SSR* No. 1, of 8 January 1959, pp. 46-49. Decree No. 2 of 27 December 1958)

UNION OF SOUTH AFRICA

NOTE [1]

1. The Criminal Procedure Amendment Act, 1958 (Act No. 9 of 1958, assented to on 14 February 1958) amended section 109 of the Criminal Procedure Act, 1955,[2] by the substitution for the words "or sedition" in the proviso to sub-section 2 of the words "sedition, robbery or any offence, either at common law or under any statute, of housebreaking with intent to commit an offence".

2. With effect from 1 July 1958, the Special Criminal Courts Amendment Act, 1958 (Act No. 18 of 1958, assented to on 22 July 1958) amended section 112 of the Criminal Procedure Act, 1955,[3] as amended by the General Law Amendment Act, 1956,[4] by the substitution in sub-section 1 for the words "if the accused were tried by a jury, the ends of justice are likely to be defeated" of the words "it is in the interest of the administration of justice that the accused be tried by a special criminal court".

3. The Electoral Law Amendment Act, 1958 (Act No. 30 of 1958, assented to on 11 September 1958) amended the Electoral Consolidation Act, 1946, as amended. Among other changes, in section 3[5] the age of 18 was substituted for the age of 21 as the age from which any white person who is a Union national, and who is not subject to any of the disqualifications specified in the Act, may be registered as a voter in elections of members of the House of Assembly and of Provincial Councils.

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[1] The legislation dealt with in this note appears in *Statutes of the Union of South Africa 1958*, published by the authority of the Government of the Union.

[2] See *Yearbook on Human Rights for 1955*, p. 240.

[3] See *Yearbook on Human Rights for 1955*, p. 241.

[4] See *Yearbook on Human Rights for 1956*, p. 238.

[5] See *Yearbook on Human Rights for 1948*, p. 395.

UNION OF SOVIET SOCIALIST REPUBLICS[1]

ACHIEVEMENTS OF THE USSR IN 1958 IN RAISING THE SOVIET PEOPLE'S MATERIAL AND CULTURAL LEVEL OF LIVING

Extracts from the report of the Central Statistical Board of the Council of Ministers of the USSR "on the fulfilment of the State plan for the development of the national economy of the USSR for 1958"[2]

In 1958 various far-reaching measures were applied to effect a further improvement in the Soviet people's material well-being and a further rise in their cultural level. The national income of the USSR showed an increase of 9 per cent over the figure for 1957. The growth of the national income made it possible to increase the incomes of manual and non-manual workers and peasants and to bring about a further expansion of socialist production.

The changeover to the shorter working day for manual and non-manual workers in industry, in pursuance of the decision taken by the Twentieth Party Congress, continued. In 1958 the changeover to the shorter working day was completed for manual and non-manual workers in undertakings of the coal and ferrous metallurgy industries, and also in the majority of undertakings of the cement industry, and of those producing ferro-concrete and concrete manufactures. Manual and non-manual workers in undertakings of the non-ferrous metallurgy, machine tool, chemical, oil and gas industries, and in various undertakings in other branches of industry, are now being put on a shorter working day. In all these branches of industry, the changeover to the shorter working day is being accompanied by an adjustment of the pay of manual and non-manual workers. The introduction of the shorter working day does not involve any reduction in the pay received by these workers.

As in previous years, the population received at the State's expense allowances and lump-sum payments under the manual and non-manual workers' social insurance scheme; social security pensions; allowances for mothers of large families and unmarried mothers; students' grants; free medical aid; vouchers for admission to sanatoria and rest homes free of charge or at reduced rates; free education and further training; and various other payments and privileges. In addition, all manual and non-manual workers received at least two weeks' paid leave, while workers in a number of professions received leave for longer periods.

Under the State Pensions Act, state expenditure on the payment of pensions increased considerably. In 1958, pension payments totalling 64,000 million roubles were made.

The total value of the payments and privileges received by the population in 1958 was over 215,000 million roubles, as compared with 202,000 million roubles in 1957. As a result of the increase in the cash wages and salaries earned by manual and non-manual workers, in the incomes (cash and kind) of collective farm workers, and in the payments and privileges received from the State, the real *per capita* income of the working population rose by 5 per cent in 1958.

There was a considerable rise in the purchase of foodstuffs and other goods by the population at state and co-operative shops.

The sale of particular types of goods at state and co-operative shops developed as follows:

	1958 sales expressed as a percentage of 1957 sales
Meat, sausages and meat products	112
Fish products	108
Animal oil	112
Milk and milk products	116
Cheese	104
Eggs	118
Sugar	110
Confectionery	104
Fruit	111
Woollen fabrics	111
Silk fabrics	104
Linen fabrics	115
Clothing and underwear	108
Knitted goods	112
Stockings and socks	108
Leather footwear	111
Furniture	125
Soap	110
Sewing machines	120
Refrigerators	116
Washing machines	140
Motor-cycles and motor-scooters	120
Wireless sets	103
Television sets	150
Passenger automobiles	135

Further advances were also made in socialist culture during the past year.

The total number of persons in the USSR receiving

[1] The texts here reproduced were kindly furnished by the Permanent Mission of the Union of Soviet Socialist Republics to the United Nations. Translations by the United Nations Secretariat.

[2] Published in *Izvestia Sovetov deputatov trudyashchikhoya S.S.S.R.*, of 16 January 1959.

some type of education exceeded 50 millions in 1958. In the 1958-59 academic year, there was an increase of 880,000 in the number of pupils attending general education schools, including schools for young industrial and agricultural workers and schools for adults, in comparison with the previous academic year. More than 1,100 new secondary schools were opened during this period. In all, 1.6 million persons completed their secondary studies and received a school-leaving certificate in 1958.

Higher and specialized secondary educational establishments (including correspondence schools) had over 4 million students. Of the students admitted to the day departments of higher educational establishments in the autumn of 1958, 45 per cent were persons who had completed a period of practical work after finishing their secondary studies.

In 1958, over 3.6 million persons studied at higher and specialized secondary educational establishments, general education schools for young industrial and agricultural workers and schools for adults, without loss of working time. More than 1.7 million of these were studying at higher and specialized secondary educational establishments.

Eight hundred and forty thousand young specialists graduated from higher and specialized secondary educational establishments in 1958, as against 770,000 in 1957. This figure includes over 350,000 engineers and technicians going into industry, construction, transport and communications, an increase of 23 per cent over the figure for 1957.

The past year saw the opening of ten new higher educational establishments, five of them in the eastern regions. New research institutes were also established in the eastern part of the country.

The number of specialists with higher or specialized secondary education, employed in the national economy, was approximately 7.5 million at the end of 1958, an increase of 10 per cent during the year. The total number of scientific workers in the country exceeded 280,000, showing an increase of almost 9 per cent over the figure for 1957, while the number of scientific workers in technology, physics, mathematics and chemistry increased by 12 per cent.

The cinema industry underwent further expansion. A total of 131 new full-length films, including 108 feature and 23 news-documentary and popular-science films, and over 630 short films (not counting newsreels) were released in the past year.

The number of cinemas was 77,000 at the end of 1958, having increased by 7,000 since the previous year. The number of cinema attendances in 1958 was 3,300 million, an increase of approximately 300 million over the previous year.

Book publication reached 1,100 million copies during the past year; the circulation of newspapers, magazines and other periodicals increased.

The medical care of the population was further improved and developed in 1958. The network of hospitals, maternity homes, dispensaries, crèches and kindergartens was expanded. A broad network of preventive-medicine centres, women's and children's clinics, sanatoria and other public health institutions was developed. The number of beds in hospitals increased by over 90,000 in comparison with 1957, while the number of places in permanent crèches increased by nearly 110,000, and the number of beds at sanatoria by almost 8,000. The number of physicians increased by 16,000.

During the summer of 1958 over 6.5 million children and young people enjoyed holidays at pioneer camps and children's sanatoria or on excursions or tours, or spent the summer in the country at kindergartens, children's homes and crèches.

In 1958 there was a considerable increase in housing. Dwelling houses providing a total of over 68 million square metres of living space (exclusive of buildings erected by collective farm workers and the rural intelligentsia) were brought into use. This is 7 million square metres more than the target figure.

In addition, collective farm workers and the rural intelligentsia constructed over 700,000 dwelling houses in the past year.

In 1958 there was a considerable increase in capital investment in the construction of schools and buildings providing cultural, public health and other community services; and there was a rise in the number of general education schools, hospitals, kindergartens and crèches brought into use.

During the past year the planning of towns, villages and rural district centres was continued; the existing network of communal undertakings was extended and new ones — water mains, drainage systems, public baths and laundries — were built; tramway, trolley bus and motor-bus services were expanded; and heating and gas were installed in dwellings.

ACT CONCERNING THE ESTABLISHMENT OF A CLOSER CORRESPONDENCE BETWEEN EDUCATION AND LIFE AND THE FURTHER DEVELOPMENT OF THE EDUCATIONAL SYSTEM IN THE USSR

Adopted by the Supreme Soviet of the USSR on 24 December 1958 [1]

(EXTRACTS)

In the USSR education has been completely revolutionized . . . As a result of steadfast application of Lenin's policy regarding nationalities, all peoples of the Soviet Union now have schools where instruction is given in their native language, everyone has ready access to education and culture, universal seven-year schooling has been introduced, secondary, vocational and technical, and higher education has been greatly expanded, and science, literature and the arts are developing at an unprecedented rate.

One of the worst shortcomings of the old society was the gulf which yawned between physical and intellectual work. For centuries culture was a forbidden fruit for millions of ordinary people. Under the old society education was organized in such a way that it was virtually beyond the reach of the broad masses of the workers.

In the socialist society, where the substantive differences between physical and intellectual work are gradually being eliminated and ever-increasing emphasis is being placed on the unity of intellectual and physical work, where the development both of material production in all its aspects and of the intellectual activity of the broad working masses is being accelerated at an impressive rate, there is unlimited scope for the comprehensive development of the human personality. Under socialism, all the attainments of world culture belong to the people.

As the establishment of communism progresses, as productive forces increase and the wealth of society grows, so the working day will become shorter and workers will have more free time to devote to widening their horizon and satisfying the needs of the mind. . . .

Future technical and economic development of the Soviet Union will make ever higher demands on all the working members of our society, and all-round education is a vital necessity for them.

The purpose of education, as organized by the Socialist State, is to serve the people, disseminate knowledge to the workers and foster the development of all national talents. . . .

The next seven-year period in the development of the Soviet Union will be marked by a further rise in the level of socialist culture, an increase in the intellectual wealth of Soviet society, and a heightening of the social consciousness of the workers, who are the real builders of communism. Under modern conditions, therefore, the communist education of the workers, particularly of the rising generation, has acquired exceptional importance and a central position has been assigned to it in the work of State and public organizations. . . .

It is essential to reorganize education in such a way that Soviet secondary, vocational, technical and higher educational establishments can participate more actively in all the creative activities of the Soviet people.

The purpose of the Soviet secondary school is to produce educated people with a good general knowledge and at the same time capable of regular physical labour; and to inspire youth with a desire to serve society and to play an active role in the creation of its essential values. Secondary education must be expanded considerably, first and foremost by instituting a broad network of schools for young people working in industry and agriculture. Achievement of this objective is an important prerequisite for a further rise in the cultural and professional level of the workers, a further increase in the productivity of labour and the successful establishment of communism.

Further technical progress in all branches of the national economy is creating an ever-increasing demand for highly skilled labour. . . . For this reason especial importance attaches to the development of vocational and technical training for youth and to improvements in the training of workers. . . .

The function of Soviet higher educational establishments is to produce people with an all-round education and a thorough knowledge of their particular branch of the arts and sciences. Special efforts must be made to achieve further improvements in the training of specialists for industry, agriculture and construction. Present-day production methods, based on the latest scientific and technical discoveries, make it necessary for graduates of higher and specialized secondary educational establishments to have a high level of technical training and good practical knowledge.

Under modern conditions, special importance attaches to the training of specialists in higher and specialized secondary educational establishments by correspondence and evening courses. Correspondence and evening courses provided by higher and specialized secondary educational establishments must be organized in such a way that people engaged on work of value to society may in their free time, if they wish, receive higher or specialized secondary education or acquire additional skills.

. . . The progressive development of productive

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 5.

forces in the process of establishing the communist society, the improvement of social relations under socialism and the continued development of Soviet democracy are all creating favourable conditions for the successful achievement of the new objectives set for educational establishments in the communist upbringing and education of youth.

The Supreme Soviet of the Union of Soviet Socialist Republics *resolves*:

Section I

SECONDARY SCHOOLS

Art. 1. The principal aims of the Soviet school system are to prepare students for life and for work which is of value to society, to promote a further rise in the level of general and polytechnic education, to produce educated people with a good general knowledge, and to foster in the growing generation a deep respect for the principles of the socialist society, and the ideas of communism.

Secondary schools shall maintain, as a guiding principle of education and upbringing, a close relationship between education and work and the practical aspects of communist construction.

Art. 2. Compulsory universal eight-year education shall be introduced in the USSR, in the place of compulsory universal seven-year education.

The eight-year school shall be an incomplete secondary general and technical school for the training of workers, giving its students a solid grounding in general and technical subjects, fostering in them enthusiasm for work and willingness to serve society, and providing children with moral, physical and aesthetic education. . . .

Art. 4. The following main types of educational establishment, giving complete secondary education shall be created:

(*a*) Schools for young industrial and agricultural workers — evening (shift) secondary general schools, in which persons who have completed their eight-year schooling and are working in a branch of the national economy can obtain secondary education and acquire additional skills. The period of training in these schools shall be three years.

With a view to creating suitable conditions for students in evening (shift) secondary general schools, the Council of Ministers of the USSR shall establish a shorter working day or shorter working week for those who successfully pursue the courses concerned without loss of working time;

(*b*) Secondary general and polytechnic workers' schools giving training for industry, in which persons who have completed their eight-year schooling can obtain over a period of three years secondary education and vocational training for work in a branch of the national economy or culture. . . .

(*c*) Technical training schools and other specialized secondary educational establishments, in which persons who have completed their eight-year schooling can obtain secondary general and specialized secondary education.

Art. 5. With a view to extending the responsibilities of society and assisting the family in the upbringing of children, the network of boarding schools and extended day schools and groups shall be enlarged. Boarding schools shall be organized on the same lines as the eight-year schools or secondary general and polytechnic workers' schools giving training for industry.

Section II

VOCATIONAL AND TECHNICAL TRAINING

Art. 12. The future technical and economic development of the Soviet Union will create ever higher demands for the acquisition of additional skills by workers in all branches of the national economy. It is therefore particularly important greatly to expand the vocational and technical training of young people. . . .

Art. 13. Vocational and technical schools shall be established in town and country for vocational and technical training of young people who enter industry after leaving the eight-year school. . . .

Art. 14. Factory schools, handicrafts, railway, mining and construction schools, schools for training the labour reserves in the mechanization of agriculture, vocational and technical schools, factory apprenticeship schools and other vocational training establishments under the supervision of National Economy Councils and government departments shall be reorganized as day and evening town vocational and technical schools, with a training period of one to three years, or as country vocational and technical schools, with a training period of one to two years. . . .

Section III

SPECIALIZED SECONDARY EDUCATION

Art. 21. Technicians and other workers with specialized secondary education are of vital importance both in industry and agriculture, and in cultural, educational and public health establishments, as the direct organizers of productive endeavour.

Present-day production methods, based on the latest scientific and technical discoveries, make it necessary for graduates of technical secondary schools to have a high level of theoretical training and good practical knowledge.

It is, therefore, essential to achieve further improvements in the system of specialized secondary educational establishments and in the training of specialists in these establishments by instituting a close relationship between training and work of value to society and by greatly expanding evening and correspondence courses.

Art. 22. To be trained as a specialist in a specialized secondary educational establishment, a student must

have completed the eight-year course, and in some particular fields, the full course of secondary education. . . .

Art. 23. Students in specialized secondary educational establishments shall be given the necessary theoretical and practical training in their special field in addition to the general education normally provided in secondary schools, while students in technical and agricultural specialized secondary educational establishments shall also acquire a skill and be classed in a certain grade for that line of work. . . .

Section IV

Higher Education

Art. 27. To fulfil the task of establishing communism, higher education must be brought into a closer relationship with life and production and the level of theoretical training for specialists must be raised to take into account the latest scientific and technical discoveries. . . .

Art. 28. To be trained as a specialist in a higher educational establishment, a student shall have completed his secondary education; while undergoing training, he shall simultaneously engage in work of value to society. . . .

Art. 29. Every effort shall be made to improve and expand evening and correspondence courses, by enlarging higher educational establishments offering such courses exclusively, by developing the system of evening and correspondence courses in permanent higher educational establishments, and by arranging evening and correspondence classes for specialists at the main industrial and agricultural undertakings.

Art. 30. In the training of engineers, the combination of study and work shall be so organized that the practical work done by students contributes to a better grasp of the field in which they are to specialize and allows them to make a thorough study of the technical processes of production. The most rational way of combining study with practical work in the majority of technical higher educational establishments is to make the first two courses evening or correspondence courses.

In certain fields, where students begin by studying a series of complicated theoretical subjects and have to spend a considerable time in laboratory work, they should not be required to work in industry for the first two or three years of their training. After that, students should be given practical work for a period of one year as regular employees in factories, laboratories or design shops. . . .

Art. 31. The training of agricultural specialists shall be carried out in establishments based on large State farms and themselves including large model farms, where agricultural work is done by the students themselves. . . .

Art. 32. It is essential to achieve a further development of university education, and in particular, to increase the number of graduates specialized in the new branches of mathematics, biology, physics and chemistry, to provide more intensive theoretical and practical training for students, and to allow the universities to play a considerably larger role in the solution of the most important problems of the natural sciences and the humanities. The composition of the student body and the combination of university education with work shall be such that students, while pursuing a course of study, shall at the same time accustom themselves to work in their particular fields, and specialists in the humanities (economists, philosophers, lawyers, etc.) shall gain a certain experience of work of value to society.

Art. 35. Higher and secondary education for specialists in music, painting and the theatrical and other arts shall be carried out to a greater extent without loss of working time, so that the broad masses of the workers may have an opportunity to receive education of this type, and talented persons may be discovered among the people.

Art. 36. . . . In higher education for specialists, particular efforts shall be made to teach students to adopt scientific methods of seeking knowledge, a creative approach towards learning, a responsible attitude towards study, and independence in their work. . . .

Art. 41. The Council of Ministers of the USSR and the Councils of Ministers of the Union Republics shall formulate and implement measures to develop higher education throughout the country in accordance with this Act, paying special attention to the following:

(*a*) Reorganization of the network of higher educational establishments throughout the country, with a view to increasing the number of such establishments in the new industrial regions, establishing closer relationships between higher educational establishments and industry and amalgamating higher educational establishments of the same type;

(*b*) Expansion and consolidation of the material and technical resources of higher educational establishments; installation in the laboratories of universities and technical higher educational establishments of electronic equipment, accelerators and other up-to-date devices;

(*c*) The granting of extra privileges to senior students in higher educational establishments and vocational and technical training schools who pursue their studies without loss of working time;

(*d*) Consolidation of the material and technical resources of institutions giving higher and specialized secondary education by evening and correspondence courses, so that wider use may be made of cinema, radio, television and other modern facilities.

. . .

The Councils of Ministers of the Union Republics shall submit for consideration by the Supreme Soviets of the Union Republics proposals, in accordance with

this Act, to establish a closer relation between education and life, to introduce compulsory general eight-year schooling and to promote the further development of general secondary, vocational, technical, specialized secondary and higher education in their respective republics.

The Supreme Soviet of the Union of Soviet Socialist Republics considers that the establishment of a closer relation between education and life will create the conditions necessary for a better upbringing of the rising generation, which is to live and work under communism. . . .

ACT TO AMEND ARTICLE 121 OF THE CONSTITUTION (FUNDAMENTAL LAW) OF THE USSR

of 25 December 1958 [1]

In view of the introduction of compulsory universal eight-year education, and of measures taken to establish a closer relation between education and life and to ensure the further development of the national educational system throughout the country, the Supreme Soviet of the Union of Soviet Socialist Republics decides to amend article 121 of the Constitution of the USSR accordingly, to read as follows:

"Art. 121. Citizens of the USSR have the right to education. This right is ensured by universal compulsory education for a period of eight years; by a broad development of general polytechnical education on the secondary level, of vocational and technical education and of specialized secondary education and higher education, such education being directly related to daily life and production; by the fullest development of evening and correspondence courses; by education of all types being free of charge; by the system of state stipends; by instruction in schools being conducted in the native language; and by the organization in factories, State farms and collective farms of free vocational, technical and agronomic education for the working people."

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 17.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR APPROVING THE REGULATIONS CONCERNING THE RIGHTS OF FACTORY, WORKS AND LOCAL TRADE UNION COMMITTEES

of 15 July 1958 [1]

[The Presidium of the Supreme Soviet of the USSR,]

Having in mind the larger role now played by trade unions in the work of the State and in the national economy, and with a view to extending the rights of factory, works and local committees in the organization of work and assigning to these committees additional duties in improving the working and living conditions of manual and non-manual workers, approves the regulations concerning the rights of factory, works and local trade union committees, submitted by the All-Union Central Council of Trade Unions.

[Under the regulations, the factory, works or local trade union committee represents the wage and salary earners of the undertaking, institution or organization in all questions of work, living conditions and culture and is invested with the rights of a body corporate. The functions of the factory, works and local committees include participation in the preparation both of the draft production and capital construction plans and of the draft plans for the construction and repair of housing, cultural services and amenities; the conclusion of collective agreements on behalf of the wage and salary earners, and the maintenance of a check to ensure that the provisions of those agreements are carried out; the direction of production meetings and technical production conferences; the maintenance of a check to ensure that labour legislation and the rules and regulations governing industrial safety and health are enforced; supervision of the introduction of inventions, technical improvements and suggested efficiency schemes; the examination of complaints of wage and salary earners against decisions taken by labour disputes boards; administration of the state social insurance scheme; the maintenance of a check to ensure that plans for the construction of housing, cultural services and amenities are carried out; and the organization of cultural, educational, health-building, athletic and sports activities. The management cannot dismiss wage and salary earners or order the working of overtime without the consent of the factory, works or local committee.

English and French translations of the regulations have been published in the *Legislative Series* of the International Labour Office, 1958, USSR — 3].[2]

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1958, No. 15 (910), p. 282.

[2] Summary kindly furnished by the Permanent Mission of the Union of Soviet Socialist Republics to the United Nations. Translation by the United Nations Secretariat.

PRINCIPLES OF LEGISLATION CONCERNING THE JUDICIAL SYSTEM OF THE USSR AND OF THE UNION AND AUTONOMOUS REPUBLICS

Adopted by the Supreme Soviet of the USSR on 25 December 1958 [1]

(EXTRACTS)

Art. 2. The Purposes of Justice

The purpose of justice in the USSR is to protect from any encroachment:

. . .

(*b*) The political, labour, housing and other personal and property rights and interests of citizens of the USSR guaranteed by the Constitution of the USSR and the Constitutions of the Union and Autonomous Republics.

Art. 5. Equality of Citizens before the Law and before the Courts

In the USSR justice is administered on the principle of the equality of citizens before the law and before the courts, irrespective of their social origin, property or occupational status, nationality, race or religion.

Art. 7. Establishment of all Courts on an Elective Basis

In accordance with articles 105 to 109 of the Constitution of the USSR, all courts in the USSR shall be established on an elective basis.

Art. 8. Hearing of all Cases by a Full Court

In all courts, cases shall be heard by a full court.

In all courts of first instance, cases shall be heard by a judge and two people's assessors. . . .

Art. 9. Independence of Judges, who are subject only to the Law

In the administration of justice, judges and people's assessors shall be independent and subject only to the law.

Art. 10. Language in which Judicial Proceedings are conducted

In accordance with article 110 of the Constitution of the USSR, judicial proceedings shall be conducted in the language of the Union Republic Autonomous Republic or Autonomous Region, or, in cases for which provision is made in the Constitutions of the Union or Autonomous Republics, in the language of the national area or in that spoken by a majority of inhabitants of the district, persons not knowing the language being guaranteed the opportunity of fully acquainting themselves with the material of the case through an interpreter and likewise the right to use their own language in court.

Art. 11. Public Hearings of Cases in all Courts

In accordance with article 111 of the Constitution of the USSR, cases shall be heard in public in all courts of the USSR and the Union Republics, unless otherwise provided for by law.

Art. 12. The Right of the Accused to Defence

In accordance with article 111 of the Constitution of the USSR, the accused shall be guaranteed the right to defence.

Art. 19. Procedure for electing District (city) People's Courts

People's judges in district (city) people's courts shall be elected by the citizens of the districts (cities) on the basis of universal, direct and equal suffrage by secret ballot for a term of five years.

People's assessors in district (city) people's courts shall be elected at general meetings of manual and non-manual workers and peasants at their places of work or residence, and at general meetings of members of the armed forces, in their military units, for a term of two years.

The procedure for electing people's judges and people's assessors shall be defined in the laws of the Union Republics.[2]

Art. 29. Requirements for Election as Judges and People's Assessors

Every citizen of the USSR who possesses electoral rights, and has by the day of the election reached the age of twenty-five years, shall be eligible for the office of judge or people's assessor.

Art. 30. Equal Rights of People's Assessors and Judges in the Administration of Justice

In discharging their duties in court, people's assessors shall enjoy all the rights possessed by the judge.

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 12.

[2] The law also prescribes that regional, district and city courts, and courts in autonomous regions and national districts shall be elected by the Soviet of Workers' Deputies concerned for a term of five years, and that the judiciary of the Supreme Court of the USSR and the Supreme Courts of the Union and Autonomous Republics shall be elected for a term of five years by the Supreme Soviet of the USSR and by the Supreme Soviets of the Union and Autonomous Republics respectively.

ACT CONCERNING CRIMINAL LIABILITY FOR CRIMES AGAINST THE STATE

Adopted by the Supreme Soviet of the USSR on 25 December 1958 [1]

(*EXTRACTS*)

Art. 8. War Propaganda

War propaganda, in whatever form conducted, shall be punishable by imprisonment for a term of three to eight years.

Art. 11. Infringement of Equality of Rights on Grounds of Nationality or Race

Any propaganda or agitation aimed at inciting racial or national enmity or discord, or any direct or indirect restriction of the rights of, or conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality, shall be punishable by deprivation of liberty for a term of six months to three years or by compulsory change of residence for a term of two to five years.

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 8.

ACT ABOLISHING DEPRIVATION OF ELECTORAL RIGHTS BY COURT DECISION

of 25 December 1958 [1]

Recognizing that it is no longer advisable to retain deprivation of electoral rights in the schedule of penalties for crime, the Supreme Soviet of the Union of Soviet Socialist Republics *decides*:

Art. 1. To abolish deprivation of electoral rights by court decision as a penalty for criminal offences.

All persons sentenced to deprivation of electoral rights are herewith reprieved.

Art. 2. To amend article 135 of the Constitution of the USSR, to read as follows:

"Art. 135. Elections of deputies are universal; all citizens of the USSR who have reached the age of eighteen, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities, have the right to vote in the election of deputies, with the exception of persons who have been duly adjudged insane.

"Every citizen of the USSR who has reached the age of twenty-three is eligible for election to the Supreme Soviet of the USSR, irrespective of race, nationality, sex, religion, educational or residential qualifications, social origin, property status or past activities."

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 7.

PRINCIPLES OF THE CRIMINAL LEGISLATION OF THE USSR AND THE UNION REPUBLICS

Adopted by the Supreme Soviet of the USSR on 25 December 1958 [1]

(*EXTRACTS*)

Art. 1. The Purposes of the Soviet Criminal Code

The purpose of the criminal legislation of the USSR and the Union Republics is to protect . . . the person and rights of citizens . . . from criminal encroachment.

To this end the criminal legislation of the USSR and the Union Republics shall define which acts endangering the well-being of society are criminal, and shall establish penalties to be imposed on persons committing those offences.

Art. 3. Grounds of Criminal Responsibility

Only persons guilty of crimes, that is persons having by intent or negligence committed acts described in criminal law as endangering the well-being of society, shall be held criminally responsible and liable to penalty.

A penalty shall be imposed only by sentence of the court.

Art. 6. Effect of Criminal Legislation ratione temporis

The criminal character of an act, and whether it is punishable is determined by the law in force at the time when the offence is committed.

A law abolishing liability to penalty for a given offence, or mitigating the penalty therefor, shall be retroactive, that is, it shall apply also to offences committed before its coming into force.

A law establishing liability to penalty for a given

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 6.

offence, or increasing the penalty therefor, shall not be retroactive.

Art. 7. The Concept of Crime

Any act (of commission or omission) defined in criminal law as endangering the well-being of society, and encroaching upon . . . the person, or the political, labour, property and other rights of citizens . . . shall be deemed to be a crime.

Art. 10. The Responsibility of Minors

Persons who commit a crime after attaining the age of sixteen years shall be held criminally responsible.[1]

Persons who commit a crime between the ages of fourteen[2] and sixteen shall be held criminally responsible only for murder, aggravated assault resulting in damage to health, rape, assault and robbery, theft, vandalism, intentional destruction of, or damage to, State or public property or the private property of individual citizens, where the destruction or damage caused has serious consequences, and for intentional acts which endanger the safety of railway traffic.

If the court finds that a person who, before attaining the age of eighteen, has committed a crime which does not seriously endanger the well-being of society can be reformed without the imposition of a penalty, it may apply in respect of such a person compulsory measures of an educational character, which do not constitute penalty for crime.

Compulsory measures of an educational character and the method of their application shall be defined in the laws of the Union Republics.

Art. 20. The Purposes of Punishment

Punishment is not only retribution for a crime committed, but is intended to reform and re-educate convicted persons so as to instil into them an honest attitude towards work, strict compliance with the laws and respect for the principles of socialist society, and also to prevent the commission of further crimes both by convicted persons and by other persons.

Punishment is not intended to inflict physical suffering or personal humiliation.

Art. 35. Determination of the Penalty in Cases where more than one Crime has been committed

Where a person has been found guilty of two or more crimes to which different articles of criminal law apply, and has not already been sentenced for any of these crimes, the court, having determined the penalty for each crime separately, may then proceed to determine a single penalty for all the crimes committed, either by regarding the less severe penalty as contained in the more severe penalty, or by complete or partial addition of the penalties within the limits laid down in that article of the law which provides for the more severe penalty.[3]

Art. 44. Conditional Reprieve before Completion of Sentence, and Mitigation of Sentence

Where a person sentenced to deprivation of liberty, correctional labour, compulsory change of residence, exclusion from present place of residence, or service with a disciplinary battalion[4] has by exemplary behaviour and an honest attitude towards work given proof that he has been reformed, the court may, after he has served not less than half of his sentence, grant him a conditional reprieve or impose a less severe form of punishment during the uncompleted portion of his sentence. The convicted person may also be granted reprieve from additional penalties such as compulsory change of residence, exclusion from present place of residence, or deprivation of the right to hold certain posts or to engage in certain activities.

Persons convicted for particularly dangerous crimes against the State and for other serious crimes, may, in cases defined in the laws of the Union Republics, be granted conditional reprieve before the completion of their terms, or may have a less severe penalty substituted for the uncompleted portions of their sentence, only after serving not less than two-thirds of their sentence.

Art. 45. Reprieve and Mitigation of Sentence, for Persons committing Crimes before attaining the Age of Eighteen

Where a person sentenced to deprivation of liberty or correctional labour for a crime committed before he had attained the age of eighteen has by exemplary behaviour and an honest attitude towards work and training given proof that he has been reformed, the court may, after the convicted person has served not less than one-third of his sentence:

(1) Grant him a conditional reprieve, in cases where the reprieve is granted after he has already attained the age of eighteen, or

(2) Grant him an unconditional reprieve, in cases where the reprieve is granted before he has attained the age of eighteen, or

(3) Impose a less severe penalty, instead of that originally imposed.

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[1] Under the law previously in force, the minimum age at which a person could be held criminally responsible was fourteen.

[2] Under the law previously in force, responsibility under this paragraph could be assumed from the age of twelve onwards.

[3] Attention is drawn to the fact that the Act quoted reduced the maximum period of deprivation of liberty from twenty-five to ten years, and has established a maximum term of fifteen years only for particularly severe crimes. Further, the act contains a specific provision to the effect that "for a person who had not attained the age of eighteen at the time when the crime was committed, the term of confinement shall in no case exceed ten years" (p. 23).

[4] The penalty of service with a disciplinary battalion may be imposed only on personnel of the regular armed forces.

PRINCIPLES OF CRIMINAL PROCEDURE IN THE USSR AND THE UNION REPUBLICS

Adopted by the Supreme Soviet of the USSR on 25 December 1958 [1]

(*EXTRACTS*)

Article 2. Purposes of Criminal Procedure

The purposes of Soviet criminal procedure are the rapid and complete detection of crime, the conviction of guilty persons and the correct application of the law to ensure that, while all persons who have committed crimes are awarded a just punishment, no innocent person is charged with and convicted for a crime.

Criminal procedure is also designed to promote the consolidation of Socialist law, the prevention and elimination of crime and the education of citizens to induce in them strict compliance with Soviet laws and respect for the principles of community life in a socialist society.

Article 4. Inadmissibility of Preferring Charges against Persons except on the Grounds specified by the Law and in Accordance with the Statutory Procedure

Charges may not be preferred against any person except on the grounds specified by the law and in accordance with the statutory procedure.

Article 6. Inviolability of the Person

No person may be placed under arrest except by decision of a court or with the sanction of a procurator.

The procurator shall without delay release any person who is unlawfully detained, or detained for a period exceeding that prescribed by the law or by sentence of a court.

Article 7. Administration of Justice by the Courts alone

The courts alone have power to administer justice in criminal cases. No person may be found guilty of a crime and sentenced to a penalty, except by decision of a court.

Article 8. Administration of Justice on the Principle of the Equality of Citizens before the Law and before the Court

In criminal cases justice is administered on the principle of the equality before the law and before the courts of all citizens, irrespective of their social, property or occupational status, nationality, racial origin or religion.

Article 9. The Participation of People's Assessors, and the Hearing of all Cases by a Full Court

In all courts, criminal cases shall be heard by judges and people's assessors, elected in accordance with the statutory procedure.

In all courts of first instance, criminal cases shall be heard by a judge and two people's assessors.

In judicial proceedings, the people's assessors shall enjoy the same rights as the presiding judge in deciding all matters which arise in the hearing of the case and pronouncement of sentence.

Appeals shall be heard by courts consisting of three members, and retrials at the demand of the supervisory authorities by courts consisting of not less than three members.

Article 10. Independence of Judges, who shall be subject only to the Law

In the administration of justice in criminal cases, judges and people's assessors shall be independent and subject only to the law. Judges and people's assessors shall decide criminal cases on the basis of the law, in accordance with the socialist concept of justice, and under conditions which preclude the exercise of any extraneous influence upon them.

Article 11. Language in which Judicial Proceedings are conducted

Judicial proceedings shall be conducted in the language of the Union Republic, Autonomous Republic or Autonomous Region, or, in cases for which provision is made in the Constitutions of Union or Autonomous Republics, in the language of the national area or in that spoken by a majority of the local inhabitants.

Persons not knowing the language in which judicial proceedings are conducted shall be guaranteed the right to make statements, give evidence, address the court and make submissions in their own language, and also to make use of the services of an interpreter according to the statutory procedure.

Copies of documents submitted during the preliminary investigation and the trial, translated into the native language of the accused, or into another language which he understands, shall, in accordance with the statutory procedure, be handed to the accused.

Article 12. Hearing of Cases in Public

In all courts, cases shall be heard in public, except where a public hearing might prejudice the security of State secrets.

A court may also decide to sit *in camera*, provided that it states its reasons for so doing, to hear cases relating to crimes committed by persons who have

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1959, No. 1 (933), p. 12.

not attained the age of sixteen, or cases relating to sexual crimes, or other cases where it is desired to avoid public discussion of intimate details of the lives of persons concerned.

In all cases, the sentence of the court shall be pronounced in public.

Article 13. The Right of the Accused to Defence

The accused shall have the right of defence.

The investigator, the procurator and the court shall provide the accused with the opportunity of defending himself according to the statutory procedure against the charge preferred against him, and shall ensure the protection of his personal and property rights.

Article 14. Exhaustive, complete and objective Investigation of the Circumstances of the Case

The court, the procurator, the investigator and the examining official shall take all steps prescribed by the law to ensure an exhaustive, complete and objective investigation of the circumstances of the case, and shall ascertain the circumstances adverse to and in favour of the accused and all other circumstances, whether aggravating or extenuating.

Neither the court, nor the procurator, nor the investigator nor the examining official shall place responsibility for proving his innocence on the accused.

Evidence shall not be extracted from the accused by force, threats or other unlawful methods.

Article 20. Supervisory Functions of Procurators in Criminal Procedure

The Procurator-General of the USSR shall exercise supervision, both directly and through the procurators under his authority, to ensure strict observance of the laws relating to criminal procedure of the USSR and the Union and Autonomous Republics.

At all stages of criminal proceedings, the procurator shall take immediate steps in the manner prescribed by statute to remedy any violations of the law, whosoever may be responsible for them.

The procurator shall exercise his powers in criminal proceedings independently of any organs or officials, shall be subject only to the law and shall be guided by the instructions of the Procurator-General of the USSR.

Decisions of the procurator, pronounced in accordance with the law, shall be binding on all institutions, undertakings, organizations, officials and citizens.

Article 21. The Rights of the Accused

The accused shall be entitled: to be informed of the charge preferred against him, and to submit statements in explanation thereof; to give evidence; to make submissions; on completion of the preliminary investigation, to inspect all the records of the case; to make use of the services of defending counsel; to be present at the hearing by the court of first instance; to challenge statements made in court; to lodge complaints against the actions and decisions of the investigator, the procurator and the court.

The defendant shall be entitled to the last word.

Article 22. Participation of Defending Counsel in Criminal Proceedings

Defending counsel shall be permitted to participate in the case from the time when the accused is informed that the preliminary investigation has been completed, and the records are forwarded to the accused for his information.

In cases relating to crimes committed by minors, or persons who by reason of their physical or mental disabilities are unable to exercise their right to defend themselves, defending counsel shall be permitted to take part in the case from the time when the charge is preferred.

Lawyers, representatives of trade unions and other public organizations and other persons so entitled under the laws of the Union Republics may act as defending counsel.

In cases specified in the laws of the Union Republics, the participation of defending counsel shall be mandatory.

Article 27. Duty to explain their Rights to all Persons concerned in the Case

The court, the procurator, the investigator and the examining official are under a duty to explain to all persons concerned in the case what rights they enjoy and to ensure that they are able to exercise their rights.

Article 31. Supervision to ensure Observance of the Laws during the Preliminary Inquiry and Investigation

The procurator shall, in accordance with the regulations concerning the supervisory functions of procurators in the USSR, exercise supervision to ensure observance of the laws during the preliminary inquiry and investigation.

The procurator shall give instructions in writing, and these shall be binding on the investigator and the examining official.

Article 38. Equality of Rights of all Participants in the Proceedings

The prosecutor, the accused, the defending counsel and the injured party, and also the complainant and the respondent and their representatives, shall all have equal rights with regard to giving evidence, examining the evidence and making submissions.

Article 44. Right to appeal and to contest the Verdict

The defendant, his counsel and legal representative, and also the injured party, shall be entitled to appeal against the verdict of the court.

The procurator is in duty bound to contest all verdicts pronounced unlawfully or without sufficient grounds.

Article 46. Incompetence of Courts of Appeal to impose a more severe Penalty on a convicted Person, or of applying a Law relating to a more serious Crime

After hearing an appeal, the court may impose a less severe penalty than that imposed by the court of first instance, or may apply a law relating to a less serious crime; but it is not competent to impose a more severe penalty, or to apply a law relating to a more serious crime.

UNITED ARAB REPUBLIC

NOTE

In addition to the Provisional Constitution and other texts from which extracts appear below, the enactments described in the following paragraphs were adopted in the United Arab Republic during 1958.

Political Parties

Legislative decree No. 2 of 1958, of 12 March 1958 (*Official Journal* No. 1 *bis*, of 13 March 1958) included the following provisions:

"*Art. 1.* Political parties and organizations now existing in the Syrian Region shall be dissolved, and the formation of new political parties or organizations shall be prohibited.

"*Art. 2.* Members of dissolved political parties and organizations shall in no manner undertake any partisan activity.

"No help shall be given to such persons which would assist them in undertaking partisan activity.

"*Art. 3.* Funds of the dissolved political parties and organizations shall pass to the National Union."

Social Legislation[1]

Act No. 46 of 1958, of 24 May 1958 (*Official Journal* No. 13, of 5 June 1958) concerned the organization of work in mines and quarries in the Egyptian Region of the United Arab Republic.

Act No. 98 of 1958, of 17 July 1958 (*Official Journal* No. 20 *bis* A, of 29 July 1958) concerned individual labour contracts in the Egyptian Region.

Act No. 202 of 1958, of 8 December 1958 (*Official Journal* No. 40 *bis* A, of 11 December 1958) concerned workers' insurance and workman's compensation in the United Arab Republic.

[1] Information kindly furnished by Mr. Adel El Tahry, Substitut au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*.

PROVISIONAL CONSTITUTION of 5 March 1958[1]

Part I

THE UNITED ARAB STATE

Art. 1. The United Arab State is a democratic, independent, sovereign Republic and its people are a part of the Arab nation.

Art. 2. Nationality of the United Arab Republic is determined by law. All persons in possession of Syrian or Egyptian nationality or entitled thereto under laws and statutes in force in Syria or Egypt at the time effect is given to this Constitution shall possess nationality of the United Arab Republic.

Part II

BASIC CONSTITUENTS OF SOCIETY

Art. 3. Social solidarity is the basis of society.

Art. 4. The national economy shall be organized in accordance with plans which take into account the principles of social justice and which aim at increasing production and raising the standard of living.

Art. 5. The right of private property is guaranteed and its social function is regulated by law. Property may not be expropriated except in the public interest and subject to payment of fair compensation according to law.

Art. 6. Social justice is the basis of public taxation.

Part III

RIGHTS AND DUTIES

Art. 7. All citizens are equal before the law. They have equal rights and duties without distinction as to race, origin, language, religion or creed.

Art. 8. There is neither crime nor penalty except under law. Penalties may be imposed only in respect of offences committed after the enactment of the law prescribing them.

Art. 9. The extradition of political refugees shall be prohibited.

Art. 10. Public freedoms shall be guaranteed within the limits of the law.

Art. 11. The defence of the country is a sacred obligation and the performance of military service an

[1] Text published in *Official Journal* No. 1, of 13 March 1958, and kindly furnished by Mr. Adel El Tahry, Substitut au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

honour for all citizens; conscription is compulsory in accordance with law.

. . .

Part IV

THE SYSTEM OF GOVERNMENT

. . .

Sect. II. — *The legislative power*

. . .

Art. 15. A member of the National Assembly may not be less than thirty years of age (Gregorian).

. . .

Art. 27. Public taxes may not be levied, modified or abolished except by virtue of a law. No person shall be exempted from the payment of taxes except in the cases determined by law. No person may be required to pay any other taxes or dues except within the limits of the law.

. . .

Sect. IV. — *The judiciary*

Art. 59. Judges are independent; the only authority above them in the administration of justice is the law. No authority may interfere in judicial proceedings or in the affairs of justice.

Art. 60. Judges shall be irremovable, as prescribed by law.

. . .

Art. 62. Courts shall sit in public, unless a court decides to sit *in camera* for the preservation of public order or morality.

. . .

Part V

GENERAL PROVISIONS

. . .

Art. 66. Laws shall have effect only from the date of their enactment and shall not have retroactive effect. Nevertheless, in all but criminal matters, a law may provide to the contrary, subject to the approval of the majority of members of the National Assembly.

. . .

Part VI

TRANSITIONAL AND FINAL PROVISIONS

Art. 68. All legislative provisions in force in each of the two regions of Egypt and Syria at the time this Constitution comes into effect shall remain in force in the regional area prescribed at the time of their enactment. These legislative provisions may be repealed or amended in accordance with the procedure established in this Constitution.

Art. 69. The entry into force of this Constitution shall not affect the provisions of international treaties and agreements concluded by Syria or Egypt with foreign States. The said treaties and agreements shall continue in force in the regional area prescribed at the time of their conclusion, in accordance with the principles of international law.

. . .

Art. 72. Citizens shall constitute a National Union to work for the achievement of national aims and to spur all efforts to build the nation on a sound political, social and economic basis. The President of the Republic shall determine by decree the manner in which the National Union shall be constituted.

Art. 73. This provisional Constitution shall remain in force until the approval by the people of the final Constitution of the United Arab Republic is announced.

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC ENACTING ACT No. 43 OF 1958 TO AMEND THE CODE OF CRIMINAL PROCEDURE ENACTED UNDER ACT No. 150 OF 1950 IN THE EGYPTIAN REGION

of 24 May 1958 [1]

Art. 1. The text of the first paragraph of article 91 of the Code of Criminal Procedure shall be replaced by the following text:

"House search is one of the acts of preliminary examination procedure. It may not be resorted to unless the person whose residence it is desired to search has been charged with the commission of a crime or a major offence or with participation in the commission thereof, or there is evidence that he is in possession of articles connected with the crime or offence."

Art. 2. This Act shall be published in the *Official Journal*, and shall be applied in the Egyptian Region.

[1] Text kindly furnished by Mr. Adel El Tahry, Substitut au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

NATIONALITY ACT

Enacted under legislative decree No. 82 of 1958[1]

Art. 1. Nationality of the United Arab Republic is hereby conferred on all persons who on 22 February 1958: (*a*) possessed Syrian nationality under the terms of the aforesaid Legislative Decree No. 21 of 4 February 1953; (*b*) possessed Egyptian nationality under the terms of Act No. 391 of 1956.

The provisions of this article shall not apply to any person already deprived of Syrian or Egyptian nationality.

Art. 2. The following persons shall be nationals of the United Arab Republic:

1. Any child born of a father having this nationality;

2. Any child born in the United Arab Republic of a mother having the nationality of this republic and a father whose nationality is not known or who is stateless;

3. Any child born in the United Arab Republic of a mother having the nationality of this Republic and the identity of whose father is not legally established;

4. Any child born in the United Arab Republic of unknown parents.

Any child found in the said republic shall be presumed to have been born therein, barring proof to the contrary.

The provisions of this article shall apply even in the case of children born before the date of the entry into force of this Act.

Art. 3. Any person born abroad of a mother having the nationality of the United Arab Republic and an unknown father or a father who is stateless or whose nationality is unknown may, by an order of the Minister of the Interior, be deemed to be a national of the United Arab Republic if within one year from the date on which he attained his majority he had opted for the nationality of the United Arab Republic, provided that he has ordinarily been resident in the United Arab Republic for a period of not less than five consecutive years before attaining his majority.

Art. 4. Nationality of the United Arab Republic may be granted by an order of the Minister of the Interior to any alien born in the said republic, provided that

1. He has applied for nationality of the republic within one year from the date on which he attained his majority;

2. He is ordinarily resident in the republic at the time of attaining his majority;

3. He is of sound mind and does not suffer from any infirmity that would make him a burden on society;

4. He is of good conduct and repute and has not been convicted of a criminal offence or sentenced to deprivation of liberty for an offence involving loss of civil rights, unless his rights have been restored to him;

5. He knows the Arabic language.

Art. 5. Nationality of the United Arab Republic may be granted by an order of the Minister of the Interior to any alien, provided that:

1. He has attained his majority;

2. He is of sound mind and does not suffer from any infirmity that would make him a burden on society;

3. He has ordinarily been resident in the United Arab Republic for a period of not less than ten consecutive years prior to his application for naturalization;

4. He is of good conduct and repute and has not been convicted of a criminal offence or sentenced to deprivation of liberty for an offence involving loss of civil rights, unless his rights have been restored to him;

5. He has lawful means of livelihood;

6. He knows the Arabic language.

Art. 6. Nationality of the United Arab Republic may be granted by an order of the Minister of the Interior to any alien who fulfils the conditions prescribed in the foregoing article if he has been authorized by the Minister of the Interior to take up residence in the United Arab Republic with a view to naturalization and has in fact resided there for a period of five consecutive years after the authorization was granted. The effect of the authorization shall lapse if the alien fails to apply for naturalization within the three months following the expiry of the said period.

If the person authorized as aforesaid dies before nationality of the United Arab Republic has been granted to him, his wife and minor children at the time the authorization was issued shall have the benefit of the said authorization and of the deceased person's period of residence.

Art. 7. Any person belonging to the Arab Nation who is not resident in any Arab State and does not possess the nationality of any Arab State shall be deemed to be an "emigrant citizen".

A certificate attesting to this status may, by an order of the Minister of the Interior, be issued to the person concerned on an application being made by him and referred for an opinion to the "Emigrant Citizens' Committee", the constitution of which shall form the subject of a decree to be made by the President of the Republic.

[1] Text published in *Official Journal* No. 17, of 3 July 1958, and kindly furnished by Mr. Adel El Tahry, Substitut au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

The Minister of the Interior may, after consultation with the "Emigrant Citizens' Committee", withdraw this certificate if the activities of its holder appear to constitute the slightest danger to public security or to economic or social interests.

. . .

Art. 9. Holders of emigrant citizen's certificates shall have the following rights:

(*a*) The right to enter the United Arab Republic without an entry visa;

(*b*) The right to reside in both Regions of the United Arab Republic;

(*c*) The rights possessed by citizens of the United Arab Republic as defined in a decree to be made by the President of the Republic, within the limits specified therein;

(*d*) The right to practise a profession or engage in a commercial or industrial activity in accordance with the laws of the Republic, in the case of an "emigrant citizen" who has been resident in the Republic for a period of not less than one year and has made an application to be filed with and approved by the "Emigrant Citizens' Committee".

Art. 10. Nationality of the United Arab Republic may be granted by an order of the Minister of the Interior to:

1. Any person born in the United Arab Republic of an alien father also born therein if the said alien belongs by race to the majority of the population of an Arabic-speaking country or a country of the Islamic faith;

2. Any person born in the Arab Republic of a father of Syrian or Egyptian origin who has no other nationality, provided that he applies for nationality after taking up habitual residence in the Arab Republic;

3. Any person of Syrian or Egyptian origin who applies for nationality of the Arab Republic five years after taking up habitual residence in the Republic, provided that he has no other nationality at the time of application.

Art. 11. Nationality of the United Arab Republic may be granted by a decree of the President of the Republic to:

1. Any person holding an emigrant citizen's certificate who applies for nationality;

2. Any alien who has rendered outstanding services to the State, Arab nationalism or the Arab Nation;

3. The heads of the religious communities.

Art. 12. The acquisition of nationality of the United Arab Republic by an alien shall not automatically confer that nationality on his wife unless she declares her desire to acquire it and notifies the Minister of the Interior to that effect, and provided that she has lived with her husband for a period of two years from the date of the notice.

Nevertheless, the Minister of the Interior may, by an order made before the expiry of the two-year period and accompanied by a statement of his reasons, deny the wife the right to acquire nationality of the United Arab Republic.

The former alien's minor children shall possess the nationality of the United Arab Republic unless they are ordinarily resident abroad and unless, under the laws of the country in which they reside, they retain their father's original nationality. Children whose nationality has been established in accordance with the foregoing provisions may, in the year after they attain their majority, opt for their original nationality.

Art. 13. An alien woman who marries a national of the United Arab Republic shall not acquire the nationality of that Republic unless she notifies the Minister of the Interior of her desire to do so and has lived with her husband for a period of two years from the date of the notice.

Nevertheless, the Minister of the Interior may, by an order made before the expiry of the period specified in the foregoing paragraph and accompanied by a statement of his reasons, deny the wife the right to acquire the nationality of the United Arab Republic.

Art. 14. An alien wife who acquires the nationality of the United Arab Republic in accordance with the provisions of the two foregoing articles shall not lose it when the marriage is dissolved unless she should marry an alien and acquire his nationality in pursuance of the law governing that nationality or unless she should recover her foreign nationality.

This provision shall apply to any woman who has already acquired Egyptian nationality under articles 8 and 9 of the decree of the President of the Republic promulgating Act No. 391 of 1956 aforesaid.

Art. 15. A wife who formerly possessed the nationality of the United Arab Republic or is of Syrian or Egyptian origin shall recover that nationality as soon as her alien husband acquires the nationality of the United Arab Republic. She shall also recover the said nationality as soon as she marries a national of the United Arab Republic.

Art. 16. An alien who acquires the nationality of the United Arab Republic under the provisions of articles 3, 4, 5, 6, 10, 12 and 13 or has acquired Syrian nationality under the provisions of the aforesaid legislative decree No. 21 of 4 February 1953 or Egyptian nationality under the provisions of articles 3, 4, 5, 6, 8 and 9 of Act No. 391 of 1956 shall not enjoy the rights of citizens of the United Arab Republic or exercise their political rights until five years after the date of his naturalization.

Furthermore, he may not be elected or appointed a member of any representative body until ten years after that date.

Members of the non-Moslem religious communities to be designated by decree of the President of the Republic shall be exempted from the five-year time limitation prescribed in the first paragraph of this article in so far as concerns the exercise of their rights

with regard to elections to and membership in their respective milli [congregational] councils.

Any person who has enlisted in the Arab armed forces and has fought in their ranks may, by an order of the Minister of the Interior, be exempted from both the aforesaid time limitations.

Art. 17. No national of the United Arab Republic may acquire a foreign nationality without prior authorization granted by an order of the Minister of the Interior.

Any person who acquires a foreign nationality without obtaining the said prior authorization shall continue to be considered a national of the United Arab Republic in all respects and in all cases, unless the Minister of the Interior decides to deprive him of the nationality of the United Arab Republic under the terms of article 22.

Art. 18. The wife of a national of the United Arab Republic who, being duly authorized, acquires a foreign nationality, shall lose the nationality of the United Arab Republic if she assumes her husband's nationality under the law governing the new nationality, unless within one year from the date on which her husband acquires the foreign nationality she declares her desire to retain the nationality of the United Arab Republic.

Minor children shall lose the nationality of the United Arab Republic if as a result of their father's change of nationality and in pursuance of the law governing his new nationality they assume the nationality of the father.

Children whose nationality has been established in virtue of the foregoing provisions may, in the year after they have attained their majority, opt for their original nationality.

Art. 19. A woman having the nationality of the United Arab Republic who marries an alien shall retain the said nationality unless, when the marriage is performed or during her married life, she declares her desire to acquire her husband's nationality in accordance with the law of his country.

If the marriage of a woman having the nationality of the United Arab Republic and an alien is not recognized under the laws in force in the United Arab Republic and is valid according to the law of the country of the husband, the woman shall continue to be a national of the United Arab Republic and shall be deemed never to have acquired her husband's nationality.

Art. 20. A woman having the nationality of the United Arab Republic who has lost her nationality pursuant to the two foregoing articles may recover the nationality of the United Arab Republic on the dissolution of her marriage at her own request and with the approval of the Minister of the Interior.

Art. 21. Nationality of the United Arab Republic may, by an order of the Minister of the Interior accompanied by a statement of his reasons, be withdrawn from any person who has acquired it, within five years from the date of such acquisition, if

(*a*) He has been convicted in the United Arab Republic of a criminal offence or sentenced to deprivation of liberty for an offence involving loss of civil rights;

(*b*) He has been convicted by a court of an offence against the internal or external security of the State;

(*c*) He has interrupted his residence in the United Arab Republic for a period of two consecutive years without an excuse acceptable to the President of the Republic.

However, nationality of the United Arab Republic may be withdrawn at any time from any person who acquired it by means of a false declaration or by fraud.

The terms of this article shall apply to any person to whom Syrian or Egyptian nationality has been granted under previous laws.

Art. 22. Any national of the United Arab Republic may be deprived of his nationality by an order of the Minister of the Interior accompanied by a statement of his reasons, if

(*a*) He has acquired a foreign nationality contrary to the provisions of article 17;

(*b*) He has consented to perform military service for a foreign State without prior authorization granted by the Minister of War;

(*c*) He has engaged in activities for the benefit of a foreign State or Government which is in a state of war with the United Arab Republic or with which diplomatic relations have been severed;

(*d*) He has accepted a post abroad in the service of a foreign Government or a foreign or international organization and retains that post despite an order from the Government of the United Arab Republic to resign from it;

(*e*) He has his ordinary place of residence abroad and has joined a foreign organization which has the object of attempting to undermine the social or economic order of the State by any means whatsoever;

(*f*) He has received a definitive conviction in respect of an offence under the law requiring all persons to obtain permission to work for a foreign organization;

(*g*) He has at any time whatsoever displayed Zionist sympathies;

(*h*) He has been convicted of an offence described in the judgement as affecting his loyalty to his country or involving treason.

Art. 23. Any national of the United Arab Republic who leaves the Republic with the intention of not returning may be deprived of the nationality of the United Arab Republic by an order of the Minister of the Interior for reasons considered sufficiently grave by the Minister, if he is absent abroad for a period exceeding six months after being warned to return, and if he fails to reply or replies giving unsatisfactory

reasons within the three months following the date of the warning. If he refuses to accept the warning or his place of residence is unknown, publication of an appropriate notice in the *Official Journal* shall be deemed to constitute the warning.

In the case of persons who have left the Syrian Region for a place outside the United Arab Republic before the entry into force of this Act, the period of six months shall begin on the day following the date of its entry into force.

Art. 24. Withdrawal of nationality from a person in the cases specified in article 21 shall entail the loss of that nationality.

Such loss may, by an order of the Minister of the Interior, be extended to any person who acquired that nationality through the naturalization of the person above mentioned.

Deprivation of nationality in the cases specified in article 22 shall entail the loss of nationality only by the person so deprived.

Deprivation of nationality in the cases specified in article 23 shall also entail the loss of nationality by the wife and minor children of the person concerned who leave the country with him.

Art. 25. Nationality of the United Arab Republic may be restored, by an order of the Minister of the Interior, to any person from whom it has been withdrawn or who has been deprived thereof pursuant to articles 21, 22 and 24.

The Minister may also restore nationality of the United Arab Republic to any person from whom it has been withdrawn or who has been deprived or divested thereof under the nationality laws in force in the Syrian or the Egyptian Region before 22 February 1958.

Art. 26. In the absence of provisions to the contrary, the acquisition, withdrawal, deprivation or recovery of nationality of the United Arab Republic shall not have retroactive effect.

. . .

Art. 30. The provisions of any treaties or international agreements relating to nationality concluded between the United Arab Republic and foreign States, and also any agreements concluded between the Republic of Egypt or the Republic of Syria and foreign States shall be carried out, each within its regional sphere, even if they are contrary to the terms of this Act.

Art. 31. For the purposes of this Act:

(*a*) "Majority" means the attainment of the age of twenty-one years (Gregorian);

(*b*) "Person of Syrian or Egyptian origin" means any Syrian or Egyptian who was unable to obtain recognition of his Egyptian or Syrian nationality before 22 February 1958 because he, his father or his spouse did not fulfil the residence requirements or could not prove that he did, one of his ancestors having been born in the United Arab Republic;

(*c*) "Arab Nation" means the peoples of the territories situated between the Atlantic Ocean and the Arab (Persian) Gulf the principal language of which is Arabic.

Art. 32. Residence in either the Syrian or the Egyptian Region shall be complementary to residence in the other Region in conformity with this Act and the nationality laws referred to in article 1.

Art. 33. All decisions rendered in nationality matters shall be binding as final and shall be published in the *Official Journal.*

. . .

Art. 37. Legislative decree No. 21 aforesaid and the decree of the President of the Republic promulgating Act No. 391 of 1956 aforesaid are hereby repealed.

Art. 38. This Act shall be published in the *Official Journal*, and shall be put into effect in both Regions of the Republic thirty days after the date of its publication. The Minister of the Interior shall make the orders necessary for giving effect to it.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

1. *Article 3 of the Universal Declaration of Human Rights*

The First Offenders Act, 1958, which entered into force on 7 August 1958, restricts the imposition by magistrates' courts of sentences of imprisonment on first offenders, and requires that, where such courts do impose such sentences they must give their reasons in writing.

The position in Northern Ireland in regard to regulations under the *Civil Authorities (Special Powers) Acts*, remains as stated in the *Yearbook* for 1957.[2] The power to require persons in a specified area to remain within doors during certain hours was not, however, used in 1958.

2. *Articles 10 and 12 of the Universal Declaration*

The National Service (Miscellaneous) Amendment Regulations, 1958, provide that applications for postponement of call-up under the National Service Acts on grounds of exceptional hardship should be heard in public before Military Services (Hardship) Committees and the umpire, unless the chairman or the umpire directs otherwise for reasons of public security, or if intimate, personal or financial circumstances are likely to be disclosed. The regulations also permit legal representation in cases before the Military Services (Hardship) Committees.

The Tribunals and Inquiries Act, 1958, received the Royal Assent on 1 August 1958. Not all of it came into force in 1958, but it is best considered as a whole. Section 3 came into effect on 1 January and Sections 8, 9 and 12 on 1 April 1959. Section 7 has not yet been brought into effect. The rest of the Act came into effect on Royal Assent.

The Act is a complex one, and contains many detailed provisions. All have the same general purpose, which is to ensure the effective administration of justice in classes of tribunal concerned, and therefore accord with Article 10 of the Universal Declaration of Human Rights.

The Act is based on recommendations made by the committee set up under the chairmanship of Sir Oliver Franks, which made its report in July 1957. The Report and the Act are not concerned with the ordinary courts of law, but with the constitution and the working of tribunals set up under Acts of Parliament by ministers of the Crown for the purpose of those ministers' functions.

Sections 1 and 2 of the Act provide for the setting up and operation of a Council on Tribunals, which is to be concerned with both the constitution and the operation of tribunals. The report of its proceedings and those of its Scottish committee is to be made to the Lord Chancellor and the Secretary of State for Scotland, and laid before Parliament each year.

Section 3 makes detailed provisions as to the appointment and removal of members of tribunals, for which the Lord Chancellor is given particular responsibility in England, and the respective heads of the judiciary in Scotland and Northern Ireland. Section 4 gives the Council on Tribunals the power to make recommendations in this respect.

Section 5 makes special provisions restricting the power of ministers to remove members of tribunals without the consent of the head of the judiciary in each part of the United Kingdom where the tribunal concerned sits.

Section 6 provides that certain tribunal members shall have legal qualifications, and Section 7 makes special provision concerning the appointment and qualifications of General Commissioners of Income Tax.

Section 8 provides that the Council shall be consulted whenever rules of procedure are made for those tribunals which come under its direct supervision.

Section 9 provides the right of appeal to the High Court of Justice on points of law from the decisions of most kinds of tribunal, and the right to require such tribunals to state a case for the opinion of the court. These rights already existed in the case of many tribunals. The section makes certain procedural provisions, and special provisions for appeals to be made and cases to be stated to the Court of Session in Scotland or the High Court of Northern Ireland from tribunals sitting in those jurisdictions.

Section 10 empowers the Lord Chancellor and the Secretary of State for Scotland to extend parts of the Act to certain tribunals to which they do not at present apply.

Section 11 repeals any provision which, in any existing Act, curtailed the supervisory powers of the superior courts over tribunals. Sub-section 3 makes two exceptions, and also preserves any time limits

[1] Note kindly furnished by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations.

[2] See *Yearbook on Human Rights for 1957*, p. 250.

within which such supervisory powers may have been restricted.

Section 12 concerns the procedure of certain tribunals, and provides that their decisions, and those given by certain ministers after holding inquiries, shall, except in special circumstances, be supported by oral or written statements of their reasons.

Section 13 removes the restrictions which formerly limited the right to appeal from the Scottish Court of Session to the House of Lords in certain matters concerning tribunals.

The remaining four sections contain no substantial provisions but are concerned with matters of form and operation.

3. *Article 21 of the Universal Declaration*

The Life Peerages Act, 1958, which came into force on 30 April 1958, provides for the creation of life peerages entitling the holders, including women, to sit and vote in the House of Lords. Previously, even women holding peerages in their own right had been excluded from membership of the House of Lords.

4. *Article 22 of the Universal Declaration*

Early in 1958 there was a general increase in the standard rates of benefits and contributions relating to both the National Insurance and Industrial Injuries Insurance Schemes. The National Health Service contribution was also increased. (*National Insurance (No. 2.) Act, 1957: National Health Service Contributions Act, 1957*). Similar extensions in the field of social security in Northern Ireland were made by parallel legislation in Northern Ireland.

On 5 July 1958, about 425,000 late entrants into insurance qualified for retirement pensions (118,000 wives qualified on their husbands' insurance). They became insured for pensions under the National Insurance Act, 1946, on or after 5 July 1948 and could not qualify for pension until ten years after the start of the National Insurance scheme.

In October 1958, the Government announced proposals for introducing pensions related to earnings. Contributions (4¼ per cent of earnings between £9 and £15 a week) will be paid equally by employer and employee and will in due course give entitlement to additions to retirement pension, graduated according to the contribution paid. This system is additional to, and a departure from, the present system of flat-rate contributions and benefits, which will continue in force. A feature of the new scheme, aimed at encouraging the development of occupational pension schemes, is that the employer may contract his pension schemes out of the State scheme provided they are financially sound and can provide pension rights at least equal to those under the graduated part of the State scheme. Provision will also be made for the preservation of pension rights already acquired when a man changes his job. These proposals have been embodied in the National Insurance Act, 1959, which is expected to come into operation early in 1961.

Several international agreements on social security were negotiated or brought into force throughout the year.

An agreement with Norway covering all the benefits provided under the schemes of National Insurance, Industrial Injuries Insurance and Family Allowances and the corresponding schemes of Norway came into operation on 1 April. The agreement also includes reciprocal provisions on health services (*The Family Allowances, National Insurance and Industrial Injuries (Norway) Order, 1958*).

Similar comprehensive agreements with Belgium and Yugoslavia came into force on 1 April and 1 September respectively (*The Family Allowances, National Insurance and Industrial Injuries (Belgium) Order, 1958, and The Family Allowances, National Insurance and Industrial Injuries (Yugoslavia) Order, 1958*).

A similar agreement between Northern Ireland and Italy came into force on 1 July 1958 (*National Insurance and Industrial Injuries (Reciprocal Agreement with Italy) Order (Northern Ireland) 1958*).

On 1 April a revised agreement with Australia superseded the one already operating. In addition to various extensions and simplifications the revised agreement enables people to qualify for Australian benefits, on the basis of residence in the United Kingdom, instead of insurance. (*The Family Allowances, National Insurance (Australia) Order, 1958*).

A supplementary agreement with Malta, effective from 21 April, amended the provisions of the existing agreement relating to the insurability of certain workers (*The National Insurance and Industrial Injuries (Malta) Order, 1958*).

During the year negotiations began for agreements with Finland and Turkey and negotiations continued with Austria and Denmark. Because of changes in the legislation of the Federal Republic of Germany the two agreements with that country which were signed on 18 December 1956 were not ratified. Negotiations for new agreements continue.

On 7 July a new schedule of occupational diseases for which compensation is provided under the Industrial Injuries Act replaced the schedule which had been applicable since 1948 and to which five diseases had since been added. Descriptions of certain diseases and occupations were amended to bring them into line with modern scientific terminology (*National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations, 1958*).

5. *Article 23 of the Universal Declaration*

The Slaughterhouses Act 1958: Section 7 of the Act amends section 151 (1) of the Factories Act, 1937, and so brings within the scope of the Factories Act all slaughterhouses and knackers' yards including their lairages (where on the same premises or attached)

except lairages at markets or on agricultural ground. Responsibility for enforcement of the provisions of the Factories' Act, dealing with the safety, health and welfare of all persons employed in slaughterhouses and knackers' yards, now rests with the Factories' Inspectorate.

The Building (Safety, Health, and Welfare) (Amendment) Regulations, 1958, were made under section 60 of the Factories Act, 1937, and relate to lifting appliances which form the subject matter of part III of the Building (Safety, Health and Welfare) Regulations, 1948. They amend the requirements relating to derrick cranes, including rail-mounted tower derrick cranes, and impose additional requirements affecting the stability and use of lifting appliances, the communication of audible and visible signals relating to the safe loading of lifting appliances, and requirements as to the safe working loads of cranes with variable operating radii.

The Work in Compressed Air Special Regulations, 1958, were made under sections 46 and 60 of the Factories Act, 1937, and impose requirements for the safety, health, and welfare of persons employed in compressed air on work of engineering construction.

6. *Article 25 of the Universal Declaration*

The National Insurance (No. 2), Act 1957, provided for an increase in the standard rate of unemployment and also increased the benefits for maternity, widows and orphans.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1958

A SUMMARY OF PERTINENT ACTIONS TAKEN BY FEDERAL, STATE, AND OTHER GOVERNMENTAL AUTHORITIES [1]

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INTRODUCTORY NOTE

Basic guarantees of individual rights and freedoms are contained in the Constitution of the United States (especially the first ten amendments thereto, known collectively as the "Bill of Rights") and in corresponding provisions of the constitutions or organic laws of the states, territories, and other jurisdictions. The exercise of governmental authority must conform to these constitutional provisions, which have been fortified by action at all levels of government to protect and keep inviolate the freedom of all persons in this country.

The following survey is confined to official acts and court decisions of consequence during 1958. A more nearly complete picture would encompass the countless day-to-day activities of the various agencies of government, and of the American people themselves, in the protection, enhancement and enjoyment of individual rights and freedoms for all.

HUMAN RIGHTS IN GENERAL

Human Rights Day

In recognition of the tenth anniversary of the proclamation of the Universal Declaration of Human Rights by the General Assembly on December 10, and of the one hundred and sixty-seventh anniversary of the adoption of the United States Bill of Rights on 15 December, President Eisenhower proclaimed the period of December 10 to December 17 as Human Rights Week, and called upon the citizens of the United States "to observe this week by rereading and studying the Bill of Rights in the Constitution of the United States and the Universal Declaration of Human Rights of the United Nations, that we may all be reminded of our many responsibilities and privileges as a people blessed by a heritage of freedom and equality. Let us firmly dedicate ourselves to the achievement of the goals of liberty and equal opportunity for posterity, for ourselves and for our neighbors throughout the world."

Treaties

A new treaty of friendship, commerce and navigation entered into force in 1958 with the Republic of Nicaragua, making a total of 36 countries with which the United States has agreements of this type currently in effect. These treaties include provisions for the protection of fundamental rights of American citizens in foreign countries and of their nationals in the United States. Among the rights specified in the treaty with Nicaragua are freedom of movement and residence, freedom of conscience and religious worship, and freedom to gather data and to transmit material for dissemination to the public abroad subject to measures necessary for the maintenance of public order, public health, morals and safety; the right to fair and prompt trial and reasonable and humane treatment if taken into custody, property rights, compensation or other benefits on the same basis as nationals for disease, injury or death incurred in the course of employment, and social security benefits in case of sickness, disability, or loss of financial support due to death of the person liable for maintenance.

CIVIL AND POLITICAL RIGHTS

Early in 1958 the Commission on Civil Rights, which had been authorized by the United States

[1] Statement kindly furnished by the Permanent Representative of the United States of America to the United Nations.

Congress in 1957, completed its organization and began operations. Among its first public actions was the designation of advisory committees in a number of states to aid in the administration of the new Civil Rights Act. By the end of 1958, such committees had been organized in forty-six States and in Hawaii. The Commission also began an investigation of alleged denial of voting rights to citizens in certain areas.

On 28 August 1958, Congress amended the Revised Organic Act of the Virgin Islands[1] to add to the Bill of Rights of the territory a paragraph providing that no political or religious test other than an oath to support the Constitution and laws of the United States and the laws of the Virgin Islands should be required as a qualification for any office or public trust under the Government of the Virgin Islands.

Basic civil and political rights guaranteed in the Constitutions and laws of the United States and the various States are interpreted and enforced largely through adjudication of cases in the federal and state courts. Because of their importance, the following account includes some decisions of lower courts in addition to those of the Supreme Court of the United States.

EQUAL PROTECTION OF THE LAW

Education

The Supreme Court's 1954 decision in the Brown case[1] that racial segregation in public education is unconstitutional under the Fourteenth Amendment to the Federal Constitution, which prohibits any state from denying to any person equal protection of the law, was the basis for a number of additional court decisions on this subject. The Supreme Court of the United States, in Cooper *v.* Aaron denied a request of the Little Rock, Arkansas, school board for a two-year delay in its integration plan. Meeting in special session on 28 August 1958, the court found no grounds for the delay, and ordered the plan continued and the schools integrated accordingly. The court said:

"In short, the constitutional right of children not to be discriminated against in school admission on grounds of race or color declared by this court in the Brown case can neither be nullified openly and directly by state legislators, or state executive or judicial officers nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingenuously or ingeniously'. . . . The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds or property, cannot be squared with the amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law."[3]

Following these principles, the lower courts continued to enjoin local school boards from discriminatory practices in pupil placement and to hold discriminatory legislation unconstitutional. Thus, Arkansas legislation which closed four schools and authorized the school board of Little Rock to lease these to a private corporation and provide students with tuition funds on a per capita basis was held invalid by the Federal Court of Appeals, on the ground that such action would prevent the carrying out of a desegregation order with which the school board was under obligation to comply.[4] Similarly, where a local school board in Maryland was proceeding with an approved plan of integration which would have maintained segregation in the highest high school grades until September 1959, and a Negro pupil in the highest grade applied for admission to a white school, the Federal Court of Appeals held that since this was the last year in which the applicant could attend the school of her choice she must be admitted.[5]

In Warren County, Virginia, where the only public high school limited its enrolment to white students, and Negro children of high-school age were transported either 25 miles to a Negro school in Clarke County, or a distance of over 50 miles to Prince William County, where they were boarded at public expense, the Court of Appeals, ruling that such discrimination was "by any possible test, legally indefensible", issued a decree prohibiting the school board from denying Negro children immediate admission to the high school.[6]

In Louisiana, a federal court of appeals held a state law unconstitutional which required each college applicant to obtain a certificate of eligibility and good moral character addressed to the particular institution at which the student wished to matriculate, on the ground that another section of the same statute made any teacher, including a school principal who would normally sign such an application liable to discharge if he advocated desegregation, and the implied standard of race and colour to be applied was repugnant to the Fourteenth Amendment.[7] In another Louisiana case, the Federal District Court held an Act unconstitutional which placed responsibility for school placement in a legislative subcommittee, thereby relieving the school board from action to be taken under a decree enjoining it from "requiring or permitting segregation of the races in any school under their supervision". "Compulsory

[1] See *Yearbook on Human Rights for 1954*, pp. 364-5.

[2] See *Yearbook on Human Rights for 1954*, pp. 283-4 and 290.

[3] 358 U.S. 1.

[4] 261 F2d 97.

[5] 261 F2d 527.

[6] 259 F2d 497.

[7] 252 F2d 372.

segregation is violative of the equal protection clause of the Federal Constitution," the court stated. "Any legal artifice, however cleverly contrived, which would circumvent this ruling and others predicated on it, is unconstitutional on its face."[1]

In other cases throughout the country courts directed school boards to submit plans for desegregation "without further delay",[2] or within a "reasonable time", and to make reasonable starts in integration.

One of the many ways in which such "reasonable starts" could be made in the transition from the traditionally segregated to nonsegregated system of education was through the operation of the so-called pupil placement laws or plans adopted in several states. Under these laws, the school board reviews the application of each student and, under stated objective criteria, places him according to his merits. The Supreme Court affirmed a decision of the Federal District Court which held that, as long as legal machinery was furnished "for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to their race or colour" and the law was applied in such non-discriminatory manner, these laws constituted a proper method for steady desegregation of the schools.[3]

On the basis of these principles, the Federal Court of Appeals ordered the admission of four negro students to formerly white schools where the pupils could not reasonably have been said not to have met the requirements of the Virginia pupil placement law.[4]

Public accommodations and facilities

The principle of equal protection was upheld also in various cases involving public transportation or the use of public facilities. A federal circuit court prohibited the City of Miami, Florida, from limiting the use of public golf courses by Negroes to certain days only,[5] and declared an ordinance requiring segregation in the buses in that city unconstitutional.[6] On the ground that "the courts have decided that the refusal of city and state officials to make publicly supported facilities available on a non-segregated basis to Negro citizens deprives them of equal protection under law . . .", a federal circuit court of appeals prohibited New Orleans city park officials from restricting the use of public parks by Negroes.[7] The New Jersey Supreme Court refused to enforce a private agreement restricting sale of cemetery plots to members of the Caucasian race; such restrictions, said the court, were against the public policy of the state.[8]

[1] U.S.D.C., E.D.La. 163 F. Supp. 701.

[2] 256 F2d 688.

[3] 162 F. Supp. 372; affirmed 358 U.S. 101.

[4] 252 F2d 929.

[5] 252 F2d 787.

[6] 253 F2d 428.

[7] 252 F2d 122.

[8] 145 A2d 665.

A Virginia Court reversed the conviction of a Negro who had refused to comply with a law requiring segregated seating at a public meeting, on the grounds that such a law was repugnant to the equal protection clause of the Federal Constitution.

Segregation of public transportation facilities in New Orleans was struck down when the U.S. Court of Appeals affirmed a decision by the District Court in New Orleans finding such discrimination contrary to the Federal Constitution.[9]

Fair Trial

Under regular procedures guaranteed in the federal and state constitutions the courts, on application by defendants alleging grievances, continued to scrutinize police activities lest in the assiduity of performance of public duties officers of the law violate the integrity and spirit of rights guaranteed in state and federal constitutions. Under the Fifth and Fourteenth Amendments of the Federal Constitution, no person can be made to bear witness against himself in a criminal proceeding, nor can he be treated in any way which conflicts with "that fundamental freedom essential to the very concept of justice".

Thus, a federal circuit court reversed a conviction for murder, even though there was enough evidence to sustain a verdict of guilty aside from a confession, on the ground that the accused had been arrested without a warrant, and had not been advised of his rights before making a confession.[10] In another case, the court held that an individual convicted and sentenced as a result of similar treatment had a cause of action against the police officers involved.[11]

Likewise, a convicted defendant was freed pursuant to a writ of habeas corpus, where he produced evidence showing that his confession of felony-murder had been obtained under duress. In accordance with a rule requiring a Federal Court to make an independent examination of the record when an individual asks protection of his constitutional rights, the court reviewed the whole course of events and held that "if the undisputed facts disclose that a defendant's confession was involuntary and it appears that without this evidence he would not have been convicted, his conviction and detention have been obtained in violation of the due process of law promised by the Fourteenth Amendment."[12]

In another 1958 decision, the Supreme Court reversed the conviction of a narcotics procurer who was encouraged by a police informer to obtain narcotics on the ground that police should not encourage a suspect to participate in crime in order to effectuate his arrest. "The function of law enforcement," said the court, "is the prevention of crime and the ap-

[9] 252 F2d 102.

[10] 356 U.S. 560.

[11] 253 F2d 59.

[12] 256 F2d 7.

prehension of criminals. Manifestly that function does not include the manufacturing of crime."[1]

Decisions also illustrated the rule that due process requires that a defendant not only have counsel, but that counsel must be effective in the accused's defence. The United States Court of Military Appeals for the first time laid down the rule that counsel for defendants before General Courts Martial must be legally trained, reversing the conviction of a defendant who, by his own wish, had been defended by a lay officer. "The constitutional right to effective assistance of counsel," said the court, "is not concerned with merely a procedural requirement, but also demands a professional and requisite standard of skill."[2] In an unusual case in the Eighth Circuit Court of Appeals, where a defence counsel had been found tampering with state's evidence and his activities were made known to the jury, thereby emasculating his effectiveness as counsel, a conviction following such proceedings was reversed and a new trial granted.[3]

In order to assure just and fair procedures to rich and poor alike, the Supreme Court held that an indigent defendant who could not afford to pay for transcripts of records required to prosecute an appeal had to be supplied them without cost. "A state denies a constitutional right guaranteed by the Fourteenth Amendment," said the court, "if it allows all convicted defendants to have appellate review except those who cannot afford to pay for the records of their own trials".[4]

The Supreme Court of the United States also upheld the right of a defendant to trial by an impartial jury. In a Louisiana case involving the conviction of a Negro, where it was shown that grand jury rolls over the years implied the systematic exclusion of Negroes, the court held that he was entitled to have the conviction reversed. "Local tradition," said the court, "cannot justify the failure to comply with the constitutional mandate requiring equal protection of the laws."[5] On the same principle, the Supreme Court of North Carolina reversed a Negro defendant's conviction, and remanded the case for new trial on grounds that the trial court did not give defence counsel adequate time to gather evidence to support the allegation that the procedure used in summoning the jury had been discriminatory.[6]

In addition to the careful review of conduct of criminal trials and the actions of law enforcement officials by the courts, the Federal Government is empowered to initiate prosecution of officials who willfully attempt to deprive persons of their constitutional rights. Typically the cases involve abuse by police officers of their authority in gathering evidence of criminal activities. In 1958 there were several such prosecutions resulting in punishment of police officers; in one case, police officers who mistreated prisoners were heavily fined and suspended from duty.[7]

Freedom of Speech and Association

Under the First and Fourteenth Amendments to the Constitution, neither Congress nor the states can adopt any legislation abridging freedom of speech or the right to peaceful assembly.

In 1958, the Supreme Court had occasion to deal directly for the first time with the constitutionality of requiring a private organization to disclose its membership list. In a case involving the National Association for the Advancement of Coloured People, the court declared an Alabama law requiring such disclosure unconstitutional as an improper restraint on the "right to freedom of association", "likely to affect adversely the ability of [the organization] and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their association and of the consequences of this exposure."[8]

"Effective advocacy of both public and private points of view," said the Court, "is undeniably enhanced by group association. . . . It is beyond doubt that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the due process clause of the Fourteenth Amendment which embraces freedom of speech. . . . Inviolability of privacy in group action may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."

On similar grounds, the Supreme Court declared unconstitutional a city ordinance requiring an organization to obtain a permit before soliciting membership. The court said:

"It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official . . . is an unconstitutional censorship or prior restraint upon . . . the enjoyment of First Amendment freedoms and lays a forbidden burden upon the exercise of liberty protected by the Constitution."[9]

Questions regarding obscene publications arose in various jurisdictions. Both federal and state courts, while recognizing governmental responsibility to protect the morals of its citizens, were insistent that

[1] 356 U.S. 369.
[2] 9 U.S.C.M.A. 607.
[3] 253 F2d 917; cert. den. 357 U.S. 929.
[4] 357 U.S. 214.
[5] 356 U.S. 584.
[6] 99 So2d 455.
[7] 260 F2d 57.
[8] 357 U.S. 449.
[9] 355 U.S. 313.

such censorship be limited in scope. For example, an ordinance of the city of Knoxville making it a misdemeanour "to display for sale a publication which prominently features an account of crime or is obscene" was held unconstitutional for lack of objective standards. "The ordinance," said the court, "is so vague as to violate the Fourteenth Amendment by prohibiting the exercise of freedoms of speech and press which are guaranteed by the First Amendment."[1] Similarly, the censorship by the city of Chicago of a moving picture showing human birth was reversed as inconsistent with the guarantees of free speech outlined in the First and Fourteenth Amendments.[2]

In Garland *v.* Torre, the Second Circuit Court of Appeals dealt with the issue of freedom of speech.[3] The case arose as follows: An actress brought suit against a broadcasting system for breach of contract and for allegedly false and defamatory statements allegedly made concerning her by a "network executive" of the broadcasting system, and reported by a newspaper columnist in a newspaper. During the pre-trial proceedings, the newspaper columnist refused to disclose the identity of her informant. Proceedings were instituted in the District Court to compel her to do so and, when, upon being ordered by the judge to state the name of her informant, she refused, she was held in criminal contempt and sentenced to ten days' imprisonment. On appeal, the Circuit Court stated that freedom of the press, as guaranteed by the First Amendment to the United States Constitution, is not absolute, but means primarily freedom from previous restraint. The question put by this case was, according to the court, whether the interest to be served by compelling the testimony of the witness in this case justified some impairment of the freedom guaranteed by the First Amendment.

Noting that freedom of the press is basic to a free society, the court observed that courts of justice, armed with the power to discover truth, were also basic to a free society. Noting further that the exaction from each citizen of the duty to give testimony when properly summoned impinges sometimes, if not always, upon the First Amendment freedoms of a witness, the court held that in this case the witness had no right under the constitution to refuse an answer. On appeal, the Supreme Court refused to review the case.

Asylum

In 1958, a federal circuit court held that Hungarian refugees who entered the United States legally, during and following the abortive Hungarian revolution, could not be expelled from the country by termination of parole without a hearing and cause shown. The court said:

"There must be a hearing which will give assurance that the discretion of the Attorney-General shall be exercised against a background of facts fairly contested in the open."[4]

Of the numerous aliens who came to make a home in the United States during 1958, 1,878 were orphans adopted by United States citizens, the majority from Korea.

Nationality

The right to nationality was further affirmed in a decision of the United States Supreme Court declaring unconstitutional an Act of Congress which deprived a deserter dishonourably discharged from the armed services of his rights of citizenship. The opinion written by Chief Justice Earl Warren held that denaturalization was a "cruel and unusual" form of punishment barred by the Eighth Amendment to the Federal Constitution. On this point the Chief Justice, speaking for the majority of the court, said:

"The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the state has the power to punish, the amendment stands to assure that this power be exercised within the limits of civilized standards. Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect."[5]

An example of the emphasis traditionally placed by the United States on the right to nationality and a national homeland was the naturalization and grant of citizenship to 123,000 persons in 1958, in accord with established practice.

Privacy

The Fourth Amendment to the Constitution protects the individual from arbitrary arrest or illegal search and seizure. Decisions by the Supreme Court in 1958 further emphasized the prescribed standard in the Amendment that ". . . no warrants shall issue, but upon probable cause supported by oath or affirmation and particularly describing persons or things to be seized. . . ." Convictions were reversed in two cases where search warrants had not specified precisely the evidence sought, the court holding that "exploratory searches for evidence of crime had long since been condemned."[6]

In another case, evidence was held inadmissible because it had been seized after the time limit specified in the warrant had expired, since it is "the essential purpose of the Fourth Amendment to shield the citizen from unwarranted intrusions into his privacy."[7]

An ancient rule of the common law, incorporated in the Constitution by the Fourth and Seventh

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[1] 161 F Supp. 9.

[2] 260 F2d 670.

[3] 259 F2d 545 (1958), cert. denied 358 U.S. 910 (1958).

[4] 260 F2d 610.

[5] 356 U.S. 86.

[6] 357 U.S. 480; 21 F.R.D. 376.

[7] 357 U.S. 493.

Amendments was reiterated by the Supreme Court in protection of the sanctity of individual privacy. In the case of Miller *v.* U.S.,[1] where police officers had forced entrance into the apartment of a suspect without a warrant and without properly announcing themselves or their purpose, the court refused to accept the evidence seized under such circumstances, saying:

"We are duly mindful of the reliance that society must place for achieving law and order upon the enforcing agencies of the criminal law. But insistence on observance by law officers of traditional fair procedural requirements is, from the long point of view, best calculated to contribute to that end. The requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application. Every householder, the good and the bad, the guilty and the innocent, is entitled to the protection designed to secure the common interest against unlawful invasion of the house. . . ." Evidence illegally received must be suppressed.

Freedom of Movement

In 1958, the Supreme Court declared that, under the Fifth Amendment to the Federal Constitution, the right to travel "is part of the 'liberty' of which a citizen cannot be deprived." The court held that the Secretary of State was historically limited in his discretion to issue passports, and that he could rely on only two grounds for denial: that the applicant was not a citizen of the United States, or that the applicant was involved in a criminal act. "Travel abroad, like travel in a country, may be necessary for a livelihood," the court held. "It may be as close to the heart of an individual as the choice of what he eats or wears or reads. Freedom of movement is basic to our scheme of values," and Congress has not granted the Secretary an "authority which would trench so heavily on the rights of the citizen."[2]

Government by the Will of the People

The right of each citizen to vote, under prescribed laws of the state, is guaranteed by the Fifteenth Amendment to the Constitution. Any citizen deprived of such right is given a cause of action against the person responsible for its deprivation.[3] Thus where, in Louisiana, the registrar of voters challenged the right of three thousand persons to vote and did not give adequate opportunity to each voter[4] or his attorney[5] to answer the challenge, the court held that the defaulting registrar of voters was subject to suit by each of the aggrieved voters or his attorney.

In July 1958, Congress enacted legislation for the admission of Alaska as a State of the Union, thus enabling the people of this vast area to attain complete political equality with their fellow citizens in the several States. Congress also increased the responsibility of the legislature of the Virgin Islands by requiring its consent to appointments by the Governor of members of certain territorial boards, authorities and commissions. Likewise, progress continued toward self-government at the local level in the Trust Territory of the Pacific Islands. During the year, the Yap Island Congress was organized, and in the Marshalls District the former bicameral Congress voted for the adoption of a new constitution establishing a unicameral legislative body consisting of 80 per cent elected representation and 20 per cent representation by hereditary chiefs. In the Ponape District a unicameral legislative body elected entirely by the people was chosen to succeed the former bicameral body, which included a hereditary house of nobles.

Laws adopted in 1958 by the Guam Legislature and by the Congress of the United States provided for the jurisdiction of the District Court of Guam over questions relating to the Guam territorial income tax, thus assuring Guam taxpayers judicial review in their own courts.

ECONOMIC, SOCIAL AND CULTURAL MATTERS

While individual initiative functioning in a system of private enterprise is the principal means of economic, social and cultural progress in the United States, the Government, by regulatory measures, co-operates and aids such private initiative in furtherance of steady economic advancement and social and cultural development. Responsibility for legislation in these fields rests largely with state and local governments, with assistance from the Federal Government in accordance with constitutional provisions.

Among 1958 actions affecting all aspects of economic development was an Act of Congress extending for ten years the life of the Virgin Islands Corporation, the purpose of which is to promote the economic development of the Virgin Islands for the welfare of its people.

Also of general interest were additional treaties providing for technical and economic co-operation. New treaties of this type were negotiated in 1958 with Brazil, Burma, Ecuador, Israel, Malaya, Morocco, Philippines, Saudi Arabia, Sudan, Tunisia and Yugoslavia, and other agreements were extended.

Work and Remuneration

During 1958, the Fair Employment Practices Act of New York was amended to prohibit discrimination on account of age, and in Maryland, Michigan and New Jersey the legislatures provided for studies on the employment problems of older workers. The United States Congress also enacted legislation in this field, directing the Secretary of Health, Education and

1 357 U.S. 301.

2 357 U.S. 116.

3 41 U.S.C. sect. 1983.

4 252 F2d 930.

5 252 F2d 910.

Welfare to plan and conduct a White House conference on ageing to be called by the President in January 1961. This statute authorized grants to the states of from $5,000 to $15,000 to assist them in conducting preparatory state conferences prior to the 1961 meeting.

Massachusetts enacted two amendments to the state minimum wage law, increasing the basic minimums applicable for most occupations, and the other increasing the minimum wage rate for manufacturing industries to match the minimum provided for employees covered by the Federal Fair Labor Standards Act. Under authority of these enactments, the minimum wage rates were immediately increased in seven occupations: personal services, public housekeeping, mercantile, amusement and recreation, building service, food processing and the needle and garment trade. Wage orders increasing the minimum rates in the dry cleaning, clerical and related occupations were also issued.

During the calendar year, new minimum wage rates became effective under the Hawaii statutory law and under 14 wage orders in seven other states (California, Connecticut, New York, Oregon, Pennsylvania, Rhode Island, Vermont) and the District of Columbia. In some of these orders, the highest basic minimum is higher than that of the Federal Fair Labor Standards Act.

At the end of 1958, there were 34 jurisdictions having minimum wage laws. These laws and the wage orders issued under them are especially important to women workers, large numbers of whom are concentrated in the trade and service occupations to which such laws and orders chiefly apply. The state laws in effect supplement the federal law, which is limited to employees in manufacturing and other interstate industries.

One state, Kentucky, enacted an hours law prohibiting the employment of women for more than four hours without a ten-minute rest period in addition to regularly scheduled lunch periods. The law specifies that there shall be no reduction in compensation. The rest period is optional with employees.

New York strengthened its private employment agency law, tightening its prohibitions against violations of child labour and minimum-wage laws.

In the field of occupational health and safety, a Commission on Radiation Protection was created in New Jersey to develop rules to prevent unnecessary radiation. In Kentucky, an act to regulate atomic energy development directed various State agencies to study changes needed in laws and regulations. Both Kentucky and New Jersey also improved other occupational health and safety laws in 1958.

At the national level, the United States Congress authorized the Secretary of Labor to establish and enforce safety standards respecting employment in the longshore and ship-repair industries. The Secretary was empowered by that statute to inspect places of employment, question employees and investigate conditions to aid him in the enforcement of these provisions.

The interest and activity of the states in improving the living and working conditions of migratory agricultural workers and their families continued. Four states — Colorado, North Dakota, Rhode Island and Washington — established migratory labour committees during 1958, bringing to 20 the number of States with such committees, and one additional state, Maryland, took action to establish such a committee. New York strengthened laws to protect migrant farm workers.

The Congress extended for two years the Mexican Migratory Farm Labor Program under which the Secretary of Labor is authorized to recruit agricultural workers from Mexico, to provide them with such subsistence as may become necessary during transportation, to assist them in negotiating contracts for agricultural employment and to guarantee the performance by employers of provisions of such contracts relating to the payment of wages or the furnishing of transportation.

Major improvements in workmen's compensation benefits were adopted in 1958, in Massachusetts, Mississippi, New York and Virginia; and California, which provides unlimited medical benefits under the workmen's compensation law for workers generally, extended these benefits to disaster-service workers. Georgia, Louisiana, New Jersey, New York and Virginia extended coverage under workmen's compensation laws to additional groups of workers. Coverage under Federal statutes was extended to include persons employed overseas by welfare and morale organizations, such as the U.S.O., American Red Cross and the Salvation Army, and certain civilian employees of ship stores and post exchanges.

The United States Congress took action requiring the administrators of employee welfare and pension benefit plans, private as well as public, to keep financial and other information in their offices for examination by participants and beneficiaries and to file similar information with the Secretary of Labor, who is directed to make it available to the public.

To implement a Memorandum of Understanding attached to the treaty of 23 January 1955 between the United States and the Republic of Panama with respect to wage and unemployment practices of the Government of the United States in the Canal Zone, federal legislation was enacted establishing a Canal Zone Merit System. This legislation provided that the basic wage for any given level will be the same for a citizen of the United States as for a resident of the Republic of Panama, but in the case of the former there may be added an overseas differential plus an allowance for those elements, such as taxes, which operate to reduce the disposable income of such an employee as compared with an employee who is a resident of the area.

Vocational Rehabilitation

A new record wasset in 1958, for the third consecutive year, in the number of physically and mentally handicapped persons prepared for and placed in employment through the state-federal vocational rehabilitation programmes. Over 70,000 persons were so rehabilitated, an increase of 4.8 per cent over 1857. Heightened concern for rehabilitation was evident also in new legislation. Massachusetts established a Commission on Employment of the Handicapped to carry on a continuing programme to promote the employment of handicapped persons.

Social Security

Federal legislation in 1958 liberalized the old-age, survivors' and disability insurance programme which covers almost all the gainfully employed. Coverage was extended by inclusion of certain public employees and other workers and payments to all beneficiaries were increased. The maximum amount of earnings creditable toward social security benefits was also increased, as were scheduled tax rates for contributions. Payments were provided for the first time for dependents of disability insurance beneficiaries, and certain restrictions on eligibility for disability benefits were removed.

Provision was made for payment of social security benefits for additional aliens residing outside the United States. Formerly benefits were paid to such aliens under a number of circumstances — for example, if the insured worker had either ten years of coverage or of residence in the United States. The new provisions will benefit Canadian workers employed on United States railroads operating in Canada or Canadian railroads operating in the United States.

Provisions under which the Federal Government shares in the cost of public assistance programmes administered by the various states were revised to make it possible to give relatively greater support to the states with per capita income below the national average. The total amounts authorized as grants-in-aid to assist states in maternal and child health, crippled children's and child welfare programmes were increased. Federal funds were made available to aid child welfare services in urban areas; such aid had previously been extended to rural areas. Guam became eligible for federal aid for its public assistance, maternal and child welfare programmes.

A permanent unemployment insurance programme for veterans, financed by the Federal Government, was established by including them in the unemployment insurance provisions previously set up for federal civilian employees. Seven states made permanent improvements in their unemployment compensation laws by increasing payments, in one state by allowing additional payments for dependent children. In 34 states, the period in which benefits could be paid was extended temporarily through state and federal legislation.

National and state welfare agencies and professional organizations moved ahead to clarify the responsibilities of the physician, the attorney, and the social worker in providing necessary safeguards for children placed in adoption.

Standard of Living

While it is not the function of government in the United States to guarantee a specific level of living to all persons, many federal and state government actions encourage and bolster private initiative to improve living levels and standards, and supplement personal endeavours in fields such as employment and housing.

In 1958, the average weekly earnings in manufacturing industries were the highest on record. Real earnings were somewhat lower due to an increase in prices and a general recessional trend against which both the Federal and state governments took appropriate measures, so that recovery was almost complete by the end of the year. The personal income of families and unattached individuals rose by about $6 billion, due in part to an increase in farm income.

Housing

In 1958 construction was begun on 1,200,000 new homes, a 15 per cent increase over 1957 and the tenth year with over a million new housing starts. Since the end of World War II, the proportion of the nation's families owning their own homes has increased from two-fifths to three-fifths. The supply and quality of housing has shown a similar increase.

These gains have been accomplished with the aid of all levels of government. Under a law passed in April the Federal Government was authorized to insure higher-ratio loans, so that a purchaser could buy a home with a smaller down payment. The new law also provided more funds for the purchase from private lenders of mortgages on low cost homes, enabling those lenders in turn to make additional home loans.

The Federal Government continued to aid local authorities in urban renewal projects for slum prevention and elimination. One hundred and three communities started 183 additional projects, for a total of 648 projects in 386 communities since the beginning of the programme in 1949. The Federal Government contributes two-thirds of the net cost of these projects, and the communities one-third.

During 1958 three more states authorized their cities to participate in this programme, Colorado and Mississippi by legislation and South Carolina by constitutional amendment. Connecticut provided a grant of $10,000,000 for such urban renewal projects in its cities, while the voters of New York approved a proposal that their state grant its cities up to $1,800,000 each year for this purpose and also to lend up to $100,000,000 to assist both urban renewal and low rent housing projects. In addition, New York

provided $100,000,000 for private limited-profit housing projects for "middle income" families.

The Federal Government also continued its programme of aid to local authorities for construction of public housing for low-income families. The construction of 21,400 of these housing units was undertaken in 1958, increasing the total of such units in operation by the end of the year to over 557,000. Their construction is paid for by the Federal Government, and their maintenance partly subsidized by the communities.

The first of these public housing projects specifically designed to house elderly persons was dedicated in Massachusetts. That state established a special study commission on problems of tax exemptions for such housing, while in Maryland a committee was created for the general study of problems of the elderly. New York and Connecticut were also active in this field, establishing special loan funds for housing for the elderly. In Louisiana, cities were authorized to levy taxes for such homes.

In other housing fields, Michigan established a commission to study tax exemptions for veterans' housing, and the voters of California approved the provision of an additional $300,000,000 loan fund for such housing. Four colleges, with Federal funds, started special studies of the financing of farm homes.

Pittsburgh, Pennsylvania, adopted an ordinance prohibiting discrimination in the sale or rental of housing. During the year, also, the New York State Supreme Court upheld the constitutionality of a New York State Law prohibiting racial and religious discrimination in publicly assisted multiple-unit housing. The court held that the statute was a reasonable exercise of state legislative authority in the interest of the public welfare.

Health

A significant development in the health field was an amendment to the Federal food and drug law prohibiting the use in food of additives which have not been adequately tested to establish their safety and officially declared to be safe for their intended use.

Prevention and control of communicable diseases, enforcement of sound food and drug standards, and provision of medical services to certain groups are co-operative efforts of federal and state governments. Medical, surgical, and hospital services in the United States are generally provided by private means. By the end of 1958, one hundred and twenty-three million persons — about 72 per cent of the population — were covered by hospital care insurance, an increase of 4.3 per cent over 1957. Several Presidential proclamations called for special health observances. The Federal Government emphasized medical and related research, training of public health workers, prevention of chronic diseases, care of the ageing, control of water and air pollution, and radiation protection.

In the field of health, research financed by government and private funds in 1958 produced steady and important progress. In the fight against cancer, for example, new light was shed on the role of viruses by a laboratory test in which malignant tumours were produced in mice with a single injection of a virus-like substance. In research on other diseases a new steroid appeared to be more potent in relieving the characteristic pain and inflammation of rheumatoid arthritis. After extensive clinical trials, a new oral diabetic drug, Orinase, went on the market, and was used by over 300,000 Americans.

Education

In 1958, Congress adopted legislation authorizing more than $1 billion in Federal aid to education, in line with the American goal of offering every young person in the United States opportunity to develop to his fullest capacity. A large share of the funds will be devoted to strengthening instruction in elementary and secondary schools, improving testing and counselling, and providing vocation aleducation for large numbers of persons to whom it has not been available in the past. Substantial aid to students in institutions of higher education in the form of loans and fellowships is also provided.

Since education is primarily the responsibility of state and local governments, most of the legislation enacted in 1958 were laws adopted in twenty-nine states. Many states emphasized provisions for special education of the exceptional and handicapped children. Some states extended certain benefits to children in private schools, such as pupil transportation and school milk and lunch programmes, previously restricted to public schools. New or extended programmes were established in vocational and adult education, and in educational television.

A number of jurisdictions strengthened scholarship programmes by enlarging appropriations or by awarding a greater number of scholarships. Many states provided for the conduct of extensive studies in education, including such topics as school construction, scholarship programmes, special education and higher education.

Cultural Opportunities

Cultural facilities in the United States are provided in large part through private initiative or voluntary civic organizations. Under traditional American freedoms of speech, opinion, and action, each individual may seek out and enjoy cultural activities of his own choice. The Federal, State and local governments aid, however, by providing public facilities and programmes.

For example, the Federal Congress in 1958 authorized the establishment of a Cultural Center in Washington, D.C., to "present classical and contemporary music, opera, dance and poetry from this and other countries, lectures and other programs, and to develop

programs for children and youth and the elderly . . . designed specifically for their participation, education, and recreation". Congress also reactivated a survey of historic buildings and sites throughout the nation which had been discontinued due to the onset of World War II. In another action Congress authorized additional space in Washington to house the National Collection of Fine Arts, including a national portrait gallery and a contemporary art programme. This collection, one of the many exhibits in the Smithsonian Institution, is separate from the National Gallery of Art, located elsewhere in Washington. Ground was broken also for a new building for the National Museum of History and Technology, which is visited annually by more than a million and a half persons.

Similarly, the city of New York, in co-operation with private citizens and organizations, established the Lincoln Park Centre for the performing arts, including ballet, concerts, opera and drama. This development, part of the city's urban renewal programme, will become the home for the famous Metropolitan Opera Company, the New York Philharmonic Orchestra, and other cultural groups. New York, like other cities, also continued support of various art museums, historical and natural science exhibits, musical and similar events. That support for such activities is increasing in all parts of the United States was evident in a survey of cities in all parts of the country undertaken by the Library of Congress. This showed that municipalities were everywhere contributing to the maintenance of art museums and to the support of symphony orchestras or other musical programmes.

The UNESCO Project for "Mutual Appreciation of Eastern and Western Cultural Values" was reflected in the activities of these municipal programmes as well as in the work of schools, universities and libraries. Typical of this interest was an exhibition of Korean art circulated by the U.S. National Commission for UNESCO and shown in museums in Washington, New York, Boston, Seattle, Minneapolis, San Francisco, Los Angeles and Honolulu. Several of the travelling exhibits organized by the Smithsonian Institution included great art works from Burma, Japan, China, India and elsewhere in the Orient. The U.S. National Commission for UNESCO entered into a bilateral arrangement with the Indian Commission for a series of roundtable discussions on traditional values in modern life in India and the United States. Civic groups and educational institutions gave particular attention to publications and lecturers on Asian culture.

During 1958, approximately six thousand persons were exchanged between the United States and ninety other countries under the international educational exchange programme of the Department of State, including students, teachers, university lecturers, research scholars, and specialists. While official programmes represent only a small part of the numbers travelling abroad and the knowledge gained, they assure continuing contacts between cultural leaders in the United States and in other countries. Further agreements facilitating educational exchanges were renewed or came into force in 1958 with Japan, Thailand, the United Kingdom, Germany and Spain, for the purpose of promoting mutual understanding "by a wise exchange of knowledge and of professional talents". An agreement also came into force with the Union of Soviet Socialist Republics for cultural, technical and educational exchanges. An exhibit of works of young American designers and craftsmen who had studied abroad under the international exchange programme was sponsored by the Smithsonian Institution's Travelling Exhibit Service.

BENEFITS OF SCIENTIFIC ADVANCE

In 1958 the scientific community, both governmental and non-governmental, placed particular emphasis on basic research. In response to this emphasis, Congress increased funds for scientific purposes, and for research agencies. It continued previous contracts available to educational and other non-profit institutions, and provided additional grants to include necessary technical equipment. Congress also took action to facilitate access to reports of scientific progress. Federal agencies were authorized to collect and translate foreign science literature, and the Atomic Energy Commission gave special attention to the declassification and distribution of information on nuclear science. The National Science Foundation was directed to arrange for indexing, abstracting, translation and other services leading to a more effective dissemination of scientific information, and to undertake programmes to develop new or improved methods, including mechanized systems for making scientific information available.

The new emphasis on scientific training and research was reflected likewise in the Federal Education Act of 1958, which included special provision for fellowships, research grants and loans to college professors and students in the scientific field. These fellowships and grants were in addition to awards made by the National Science Foundation under its regular programmes. The Atomic Energy Commission continued its research and fellowship programmes including training institutes for large groups of teachers and professors of nuclear physics.

A major development was the establishment by Congress of a new agency, the National Aeronautics and Space Administration, to "co-ordinate, initiate and support projects to expand human knowledge of the phenomena in the atmosphere and in space, improve performance, increase safety and efficiency of aeronautical and space vehicles, study potential benefits to be gained for mankind through space activities and co-operate with other nations in such activities and in peaceful application of the results". The United States satellite, "Explorer I", orbited under the auspices of the International Geophysical Year, was credited with the discovery of the great radiation belt

in outer space, known as the Van Allen Belt, in honour of the American physicist who developed the instrumentation.

Congress also authorized a new project in weather modification, directing the National Science Foundation to undertake study, research and evaluation in the field with particular attention to areas that have experienced floods, drought, hail, lightning, fog and other destructive weather phenomena.

Atomic power became increasingly available to the public through the licensing of five additional private firms for nuclear activities. Natural uranium moved for the first time exclusively in commercial channels from mines to finished products. In addition, six civilian nuclear power plants were in process of construction, as well as the power plant for the nuclear transport *Savannah*, and two power reactors for export. The Shippingport Atomic Power Station, dedicated in May 1958, completed two full power tests each of one thousand hours' duration.

In keeping with the principle of sharing scientific knowledge with other nations, six new bilateral agreements for exchange of information on atomic energy for civil uses, including three covering power reactors, went into force in 1958, making a total of 42 such treaties in effect. During this period an export licence was issued for the 11,500 kilowatt experimental power reactor in Mol, Belgium, the first power reactor exported. An agreement, with the European Atomic Energy Community, signed in Brussels on 8 November 1958, provided for United States co-operation in the installation of one million kilowatts in nuclear power in the six member nations.

VENEZUELA

DECREE No. 234 PROMULGATING THE ELECTORAL ACT of 23 May 1958 [1]

Chapter I
FUNDAMENTAL PROVISIONS

Art. 1. The present Act shall govern elections held in the Republic by universal, direct and secret suffrage.

Art. 2. Elections for the office of President of the republic, and of deputy to the National Congress, deputy to the State Legislative Assemblies and member of the municipal councils, shall be held in conformity with the present Act.

The election of senators, a power vested by the Constitution in the State Legislative Assemblies, shall take place in conformity with the present Act for purpose of constituting the next National Congress.

Art. 3. All Venezuelan men and women over eighteen years of age, in respect of whom there has not been a final judgement placing them under a civil disability or inflicting on them a sentence involving loss of political rights, shall have the right and the duty to register in the electoral roll, and to vote.

Sole paragraph. Members of the nation's armed forces shall not exercise voting rights while in active military service.

Art. 4. The principle of the proportional representation of minorities is hereby established.

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Chapter II
ELIGIBILITY

Art. 8. The conditions for eligibility as President of the republic, senator or deputy in Congress are those laid down by the National Constitution.

Art. 9. The conditions for eligibility as Deputy to the State Legislative Assemblies or member of the municipal councils are those specified in the state constitutions or the organic laws of the municipalities concerned.

Art. 10. The following persons shall not stand for election as Senator or Deputy in the National Congress:

(1) The President of the republic or anyone acting in that capacity;

(2) A person who at the time of nomination has been vested with, or is exercising, the function of minister attached to the President of the republic, secretary to the President of the republic, member of the federal courts or court of cassation, Procurador General de la Nación, National Comptroller or Deputy Comptroller, Governor or Governor's Secretary-General;

(3) A person who at the time of nomination has been vested with, or is exercising, the office of director or administrator of an autonomous institution;

(4) A person who at the time of nomination was engaged in any other remunerated public employment, unless fortuitously or in connexion with elections, education, teaching or social welfare.

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Chapter IV
ELECTORAL BODIES

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Sect. 6. — *Electoral Boards*

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Art. 45. The electoral boards shall have the following functions:

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(9) To ensure, in particular, the secrecy of the ballot and the maintenance of order in the place of voting;

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Chapter VI
ELECTIONS

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Sect. 2. — *Nominations for the Office of President of the Republic*

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Art. 69. Political organizations or parties duly constituted in at least seven (7) electoral districts shall be authorized to nominate candidates for the office of President of the republic.

Nominations may also be made by groups of voters over twenty-one (21) years of age, able to read and write and duly registered in at least seven (7) districts, provided that there are no fewer than 200 of them in each district.

Sole Paragraph. Legally constituted political organizations or parties shall be those constituted in accordance with the relevant Act or previously constituted in accordance with the legal regulations in force at the time of their constitution.

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[1] Published in *Gaceta Oficial*, year LXXXVI, No. 562 *Extraordinario*, of 24 May 1958. Translation by the United Nations Secretariat.

Sect. 3. — *Nominations for the Offices of Senator and Deputy in the National Congress, Deputy in the State Legislative Assemblies, and Member of the Municipal Councils*

Art. 73. Nominations for the offices of deputy and senator in the National Congress and of Deputy in the State Legislative Assemblies may be made by duly constituted political organizations or parties, or by groups of five citizens over twenty-one (21) years of age, able to read and write and representing at least one hundred (100) electors registered in the given district who meet those requirements.

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Sect. 5. — *Elections*

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Art. 98. During election day, public entertainments shall be prohibited and establishments dispensing alcoholic beverages shall remain closed.

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Chapter X

ELECTORAL PROPAGANDA

Art. 123. Duly constituted political organizations, and citizens in general, may engage in any kind of electoral propaganda, orally or in writing, through press, radio and television as well as through posters, announcements, leaflets or any other legal means designed to encourage the voters to register on the electoral roll or to vote, either generally or in favour of specific candidates.

Art. 124. Anonymous propaganda, propaganda designed to persuade the public not to vote, and propaganda constituting an affront to human dignity or disrespect for the law shall be prohibited.

Art. 125. Owners or managers of printing houses, periodicals, radio broadcasting stations, cinemas and any other publicity enterprises or organs shall not be responsible for the electoral propaganda carried out under the authority and on the responsibility of the organizations or citizens concerned.

Art. 126. Propaganda from loudspeakers installed on vehicles moving through streets or thoroughfares shall be permitted within the limits established by the Supreme Electoral Council equally for all participants in the electoral process, and shall be confined to the encouraging of citizens to fulfil their duty to vote, to the reading of lists of candidates standing for election and of the basic points of their programmes, to the inviting of citizens to attend functions held for purposes of electoral propaganda, or to the making of similar announcements.

Art. 127. Posters, drawings and other similar media of propaganda shall not be exhibited on public buildings or monuments, churches, and trees in city parks; nor shall they be exhibited on privately owned houses or buildings, except with the consent of the occupants. This prohibition shall not apply to notices of meetings, to posters or to lists of registered voters which, in virtue of this Act, must be affixed by the electoral bodies with a view to ensuring the fullest operation of the electoral process.

Paragraph 1. There shall be no interference with the posting of propaganda bills or sheets in public places, provided that it does not obstruct the movement of persons or vehicles, or the legitimate right of others to employ similar methods.

Paragraph 2. In addition, the Municipal Electoral Councils and the district electoral councils in the capitals of districts or departments shall set aside places for the display of propaganda posters by the various participants in the electoral process, in such a way that no preference is accorded to any particular participant or participants.

Paragraph 3. Each municipal electoral council shall be empowered to settle, briefly and summarily, any disputes which may arise between various organizations or groups in virtue of the exercise of the rights mentioned in this article. Appeal from its decisions may be made to the district electoral council.

Art. 128. Public meetings for the purpose of electoral propaganda, and demonstrations or processions, shall be notified by their sponsors to the civil authority of the locality at least forty-eight (48) hours in advance. The civil authority shall not forbid such meetings, demonstrations or processions, except in the interests of public order, the free movement of traffic, or the protection of other rights of citizens whenever they are liable to be impaired thereby. The civil authority shall indicate generally the places and areas authorized for that purpose, to the end that all groups or organizations participating in the electoral process may have equal opportunities to make use of them in the order in which they are applied for provided that the exercise of this right by some shall not have the effect of denying it to others.

Paragraph 1. Appeal from any negative decision taken by the local authority may be made to the governor of the state, territory or federal district concerned. The electoral bodies shall, either on their own initiative or on the complaint of an aggrieved party, appeal to the authorities against any violations of this article or in any other case in which the exercise of the rights mentioned in this chapter is obstructed. If they should fail to receive satisfaction, they may appeal to the Supreme Electoral Council with a view to its presenting their complaint to the Minister of the Interior.

Paragraph 2. No notification or authorization shall be required in respect of meetings held on premises serving as headquarters for political organizations or groups.

Art. 129. All electoral propaganda shall cease thirty (30) hours before the voting begins. Persons shall not hand out badges or lists of candidates within one hundred (100) metres of the voting places.

No propaganda, posters, pictures or similar publicity

material relating to candidates shall be affixed or displayed within the premises in which electoral bodies are working.

Art. 130. Publications, radio broadcasts and other official media of education and communication shall not be used for electoral propaganda, except such as the electoral bodies may carry out in order to secure the largest possible attendance at the polling booths and the best possible information for the citizens, without any bias towards specific candidates or groups.

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Chapter XII

OFFENCES AND PENALTIES

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Art. 142. Any person who on election day causes public entertainments, meetings or demonstrations to be held, dispenses alcoholic beverages or acts in a way that may interfere with the normal business of voting shall be liable to a fine of between 100 and 300 bolivars or a period of imprisonment in proportion thereto.

Art. 143. Any person who in any manner forces workers or employees subordinate to him to join a given political organization, or to vote or refrain from voting for a specific list or candidate, shall be punishable by a fine of between 500 and 2,500 bolivars or a period of imprisonment in proportion thereto. If the offender is a public official, he shall in addition be liable to dismissal from his post, and to exclusion from appointment to any other public office for a period of six months from the date of the sentence.

Art. 144. Any person taking part in acts prohibited by article 142 shall be punishable by a fine of between twenty-five and 100 bolivars or a period of imprisonment in proportion thereto.

Art. 145. Any person unlawfully damaging or destroying electoral propaganda shall be punishable by a fine of between fifty and 150 bolivars or a period of imprisonment in proportion thereto.

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Art. 155. After the period for registrations has closed and until the expiry of two months after election day, citizens who should have registered and voted shall be required to present their voting cards, in order:

(1) To occupy or continue to occupy public office;

(2) To conclude contracts of any nature, either on their own behalf or on behalf of third parties, with the Government, the States, the Municipalities, the autonomous institutes and other public bodies, except for the issuance of credits to, or the granting of land to, small farmers;

(3) To perform services for the execution of public works, or to engage in any remunerated activity in autonomous institutes and other public bodies or in the employ of contractors for public works or services, except where such services shall be performed in the capacity of labourer;

(4) To matriculate in universities and receive academic degrees or professional diplomas;

(5) To obtain manufacturing, commercial or agricultural trademarks, patents for inventions, or municipal or police licences.

Paragraph 1. Persons under twenty-one or over sixty-five years of age, and those who were unable to register on the Electoral Roll for reasons fully justified to the local judge, shall not be subject to the provisions of this article.

The judge shall examine the evidence, investigate its reliability and reach a decision within eight days from the date of the request for exemption.

Paragraph 2. As from election day, the voting card should bear, for the purposes of this article, a certification to the effect that the elector duly voted.

Art. 156. For thirty (30) days following expiry of the period for registrations, and for an equivalent period following the voting, any Venezuelan over twenty-one and under sixty-five years of age who does not present his voting card or the certification that he has voted shall be prohibited from leaving the country.

Workers who have to leave the country in accordance with the terms of labour contracts, and persons who prove that it was impossible for them to register or vote, shall not be subject to the prohibition laid down in the present article. Their claims for exemption shall be substantiated before a local judge. The prohibition shall likewise not apply to persons who are compelled to travel for reasons of health, and their claims shall be substantiated before the authority granting the exit permit.

Art. 157. Voters who have failed to register or to vote shall be liable, in addition, to a fine amounting to 5 per cent of the income tax which they would have had to pay for the preceding fiscal year.

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Art. 158. The penalties prescribed in this chapter shall not apply to persons who can prove to a judge that they belong to one of the following categories:

(1) Persons over sixty-five or under twenty-one years of age;

(2) Persons having been legally nominated in an electoral unit other than that in which they were required to vote;

(3) Persons who, at the time of the voting, were more than sixty (60) kilometres from the place in which they were required to vote, for one of the following reasons:

(*a*) Change of residence after expiry of the period for registrations;

(*b*) Performance of duties imposed by public office;

(*c*) Other serious reasons, duly evaluated by the judge;

(4) Persons who were unable to vote owing to illness or for other reasons of *force majeure*;

(5) Persons having completed military service after the close of registration.

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FINAL PROVISIONS

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Art. 165. The Electoral Statute of 18 April 1951,[1] the electoral registrations and voting cards of the previous census, and any other provisions contrary to the present Act are hereby declared null and void.

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[1] See *Yearbook on Human Rights for 1951*, pp. 391-2.

YUGOSLAVIA

DEVELOPMENTS RELATING TO HUMAN RIGHTS, 1956–1958 [1]

I. 1956

A. LABOUR RELATIONS

1. *Regulation concerning the Federal Labour Inspectorate* (7 February 1956; *Službeni list FNRJ*, No. 6/56)

The Federal Labour Inspectorate is an autonomous federal organ, the main tasks of which are: to follow the implementation of federal provisions and measures of federal organs for the regulation of working relations and working conditions; to control the work of the organs of inspection of the Republics; and to publish annual reports and other publications.

The Federal Labour Inspectorate disposes of the necessary inspectors and experts. The chief inspector, who is appointed by the Federal Executive Council and responsible to it, directs the work of the Federal Labour Inspectorate.

2. *Regulation amending and supplementing the Regulation on Material Security and other Rights of Workers and Employees Temporarily out of Work* (4 January 1956; *Službeni list FNRJ*, No. 1/56)

All economic organizations, institutions, state organs, co-operatives, co-operative and social organizations and employers are bound under the threat of administrative-penal sanctions to notify the competent Bureau of Labour Mediation of every case of notice served and of every vacant job. The right to material security during temporary unemployment belongs to persons having worked without interruption for twelve months before the expiration of the period of notice or with interruption for 18 monhts in the course of two years.

3. *General Directive amending and supplementing the General Directive on the Execution of the Regulation on Material Security and other Rights of Workers and Employees Temporarily out of Work* (25 January 1956; *Službeni list FNRJ*, No. 5/56)

An unemployed person who qualifies for material security and makes application within the prescribed period is entitled to unemployment allowance until the resumption of work. His new employment need not completely correspond to his qualifications and professional training, but it must suit his physical and health condition.

4. *Regulation concerning Salaries of Workers and Employees of Economic Organizations (Enterprises)* (9 March 1956; *Službeni list FNRJ*, No. 11/56)

The salaries of workers and employees of economic organizations are fixed on the basis of the scales laid down in the Rules on Salary Scales. The salaries depend on the achievements of the workers and employees in their work and on the results achieved by the economic organization.

Economic organizations are obliged to use a part of the funds, set aside for salaries and remaining after the payment of salaries, for awarding premiums to workers occupying the positions on which the general success of the work of the economic organization depends, and for premiums for success in the fulfilment of various tasks aimed at the achievement of better organization of work, economy (for instance in the use of materials), greater productivity and better quality of work. The right to the premium and its level are determined on the basis of the tasks and the standards of evaluation of the success achieved, which are fixed in advance. The level of the premium is not to be limited by the level of the salary.

The salary funds still remaining after the deduction of the part set aside for the payment of premiums may be used by the economic organizations for the increase of salaries above the prescribed levels.

If the worker considers that an error has been made in the calculation of his salary he is entitled to ask the organ which has made the calculation to do it again. If he feels dissatisfied even after the repeated calculation he may lodge a complaint with the executive committee of the economic organization. The decision of the executive committee may be contested in the regular courts.

The rules on salary scales are adopted in agreement between the economic organization, the municipal people's committee and the trade union organization.

5. *Decision concerning the Prohibition of Night Work of Women employed in Industry and Building* (26 April 1956; *Službeni list FNRJ*, No. 19/26)

Night work by women employed in industrial and building enterprises is prohibited irrespective of their

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[1] Information kindly furnished by Dr. Albert Vajs, Professor in the Faculty of Law, Belgrade University, government-appointed correspondent of the *Yearbook on Human Rights*.

The original texts of the legislation reviewed were published in *Službeni list FNRJ* (Official Gazette of the Federal People's Republic of Yugoslavia), in Serbo-Croatian, Slovenian and Macedonian identical editions.

age. Exceptions from this rule may be made only in the following cases: (1) if the work is interrupted because of *force majeure* which could not be foreseen and is not of a permanent nature; (2) if it is a matter of saving from threatened destruction raw materials or other materials subject to quick deterioration; (3) when night work is necessary in the interests of the community in an emergency situation. Decision on temporary suspension of the prohibition is arrived at in the first and second case by the executive committee of the enterprise, which must notify the competent Inspectorate of Labour, while in the third case such a decision is arrived at by the Federal Executive Council or the organ authorized to that effect upon the advice of the Central Council of the Federation of Trade Unions and of the competent federal economic chamber.

Night work by pregnant women and nursing mothers may in no case be permitted.

B. Social Insurance

Regulation on Mutual Assistance Funds (26 March 1956; *Službeni list FNRJ*, No. 15/56)

Mutual assistance funds, operating outside the general organization of social insurance, offer material assistance to their members in cases of disease, invalidity, old age and death.

Such funds may be established by social organizations, professional and other associations, co-operatives and economic chambers if their rules make provisions for mutual material assistance on the part of their members. The mutual assistance fund is managed by the executive committee, elected by the fund members at their assembly. A permanent representative of the district social insurance administration is attached to the executive committee of the fund. Fund membership is voluntary.

The resources of the mutual assistance fund consist of regular contributions by its members, grants, gifts, and other temporary revenues provided for by the Rules. The fund must have its safety reserve for meeting its liabilities towards its members in the case of emergency.

C. Education

Act concerning Administrative Schools (27 June 1956; *Službeni list FNRJ*, No. 29/56)

Administrative schools are established for the training, professional improvement and education of administrative cadres of government organs, institutions and organizations. They serve also for completing the training or advancement of administrative officials through organized instruction, courses, seminaries and other forms of education.

The regular training period is two years. The teaching programme comprises the fundamentals of legal and economic sciences, organization and operation of government administration, local self-government and public services. Theoretical training is accompanied by practical work.

Candidates are selected on a competitive basis. Persons competing must, as a rule, have secondary school qualifications. Persons having incomplete secondary school training enjoy equal status if they have spent a specified number of years in practical administrative work in government organs, institutions and organizations, or economic and social organizations, or have discharged political and organizational functions in the people's committees.

Students of administrative schools may be awarded scholarships. A student sent for regular studies by the institution or organization he is employed with is entitled to a paid leave during his studies.

D. Health

1. *Regulation on the Federal Institute of Physical Culture* (9 March 1956; *Službeni list FNRJ*, No. 11/56)

The Federal Institute of Physical Culture has its seat in Belgrade, and its task is to examine the state of physical culture and study measures for its development. It is particularly concerned with studying the effect of physical culture on productivity of work and on the health of workers; and exploring and determining modern methods in the field of physical culture in the country.

2. *Decision concerning the Institution of Contributions for Collective Voluntary Health Insurance by Foreign Nationals* (6 April 1956; *Službeni list FNRJ*, No. 23/56)

Foreign nationals employed by international organizations and institutions and by foreign diplomatic and consular offices are to pay a health insurance contribution of 3,000 dinars per month each, if their respective organization, institution or diplomatic or consular office applies for their collective insurance.

The payment of this contribution gives the insured person and the members of his family the right to health protection within the scope and under the conditions prescribed by the Act on Health Insurance of Workers and Employees.

II. 1957[1]

1. *Act concerning the Rights and Duties, Election and Recall of Federal People's Deputies* (9 December 1957; *Službeni list FNRJ*, No. 51/57)

Chapter two of this Act contains the main provisions on election and recall of people's deputies. Chapter

[1] See also *Yearbook on Human Rights for 1957*, pp. 261-7. See also the translations into English and French, published by the International Labour Office as *Legislative Series* 1957 — Yug. 1, of the Ukase of 6 December 1957 promulgating a Pension Insurance Act (*Službeni list FNRJ*, 11 December 1957, No. 51, text 629; *errata: ibid.*, 18 December 1957, No. 52, p. 1027; 15 January 1958, No. 2, p. 31; and 5 March 1958, No. 9, p. 173).

eight contains detailed provisions on recall of deputies (by the bodies participating in the election) — i.e., the proposal of recall, content of the proposal, examination of the proposal, announcement and procedure of voting and determination of the results of voting. Chapter nine provides for protection of the right to vote, objections and petitions, and criminal sanctions.

2. *Code of Civil Procedure* (8 December 1956; *Službeni list FNRJ*, No. 4/57)

The code prescribes the rules of procedure in regular economic and military tribunals in property disputes, disputes arising from family and work relations and other civil law disputes.

Part one of the code contains general provisions concerning matters of court jurisdiction, exclusion of judges, parties in dispute and their attorney and proxies, papers filed by the parties, time limitations and dates of summons, records, decisions, service of documents and examination of documents, costs of proceedings, and legal aid.

A party having no capacity to appear in proceedings is represented by his legal representative, who is appointed by law or by the competent state authorities, and where legal persons are concerned also under the rules of such persons. In cases provided for by law the court may appoint *ex officio* a temporary representative. A party having capacity to appear may act in the proceedings through his attorney.

Part two of the code contains the provisions concerning proceedings in the court of the first instance, and the procedure on legal remedies.

The main trial is public. The court may exclude publicity during the whole or a part of the main trial only if the interests of safeguarding official, business or personal secrets or the interests of public order or of public morals so require. The decision to exclude publicity must be sustained and publicly proclaimed.

Regular legal remedies under this code include appeal from the decision and review. A judgement may be appealed against on the ground of erroneous or incomplete findings of fact and on the ground of erroneous application of substantive law. As a rule the court of second instance decides an appeal without trial. A judgement rendered in the second instance by the supreme court of a people's republic or of the autonomous province of Vojvodina may be contested by an action for review, except where the finding of law is based exclusively on the law of a People's Republic. An action for review is decided upon by the Federal Supreme Court and/or the supreme court of a people's republic or of the autonomous province of Vojvodina. An action for review may introduce new facts or propose the introduction of new evidence only if they concern a material violation of the provisions of civil procedure.

Extraordinary legal remedies are the repetition of proceedings and request for the protection of legality. Under the conditions provided for by law the proceedings may be repeated at the motion of the party. A motion for the repetition of proceedings is always submitted to the court which had delivered judgement in the first instance and that within thirty days after the existence of one of the grounds specified by law came to the knowledge of the party. The request for protection of legality must be filed not later than six months after the judgement has become valid, and in the case of violation of an international treaty not later than two years after the judgement has become valid. Decisions on requests for the protection of legality are delivered by the Federal Supreme Court, supreme courts of the people's republics and the supreme court of the autonomous province of Vojvodina.

Part three of the code contains provisions concerning the procedure in marriage suits, in disputes arising from work relations, from interference with possession and from issuance of an order of payment, and in disputes before the court of arbitration.

These separate procedures are governed by the provisions applied in regular civil proceedings, unless their specific nature is regulated by separate provisions.

Publicity is excluded in marriage suits. As a rule in such cases the marital partners are summoned before the main hearing and an attempt is made to reconcile them. The judgement declaring a marriage non-existent or invalid, or pronouncing divorce, regulates the custody, education and maintenance of children.

Disputes arising from work relations are considered urgent and therefore statutory limitations are here shorter than those applied in regular proceedings.

Part four of the code contains special provisions on the jurisdiction and procedure of economic courts.

3. *Act concerning the Organization of Scientific Work* (10 July 1957; *Službeni list FNRJ*, No. 34/57)

Scientific institutions and academies of science are established for the purpose of organizing and promoting scientific work, developing scientific thought and ensuring the necessary conditions for scientific creation. Scientific institutions are independent institutions, managed on the principles of social management. Freedom of scientific thought and of scientific creation is guaranteed and the results of science are accessible to the public.

4. *Act concerning Public Servants* (11 December 1957; *Službeni list FNRJ*, No. 53/57)

The Act concerning Public Servants repeals the previous Act concerning Civil Servants of 1946, and represents at present the fundamental law for all civil servants. According to the Act, the appointment and the promotion of public servants to specified grades and positions depend on their personal efficiency, professional knowledge, success shown in work and years of service. As a rule public servants are appointed by competition, conducted by commissions.

The Act offers the public servant the greatest possible protection from dismissal, by defining expressly the cases in which no notice of dismissal may be given (e.g., absence due to sickness, pregnancy and child-suckling by mothers). Notice of dismissal depends on the class and years of service and ranges from 1 to 6 months, but for honorary servants only fifteen days. Public servants and other citizens having a legal interest in respect of a particular public service relationship may appeal against all legal acts which violate their rights or legal interests.

III. 1958

A. Freedom of Association

1. *Act concerning Economic Associations* (23 December 1957; *Službeni list FNRJ*, No. 1/58)

Economic organizations may be formed for the purpose of the common discharge of various economic activities, advancement of production and sale of goods or rendering of services. Economic association is effected in the form of economic chambers, professional associations, co-operative associations and communities of economic organizations.

It is the task of economic chambers to foster the development of good habits and responsibility on the part of economic organizations toward the social community, and particularly to promote the productivity of work, the application of modern processes and rationalization, co-operation and specialization, the improvement of exchange of goods and markets and the variety and quality of goods, joint studies and researches and training and advancement of economic cadres. Economic chambers are self-governing organizations.

2. *Regulation concerning Agricultural Co-operatives* (28 April 1958; *Službeni list FNRJ*, No. 18/58)

Agricultural co-operatives are engaged in agricultural production, including its organization and improvement. Such production may be organized by an agricultural co-operative on land leased from its members or other persons, or on a land constituting social property, provided that co-operative production is carried on by the members themselves and the co-operative is managed by the members working in it (peasant working co-operatives). With the agreement of the relevant union of agricultural co-operatives and the permission of the municipal people's committee in the territory of which the seat of the co-operative is located, an agricultural co-operative may also engage in other economic activities besides those enumerated.

Association in agricultural co-operatives is voluntary. Every worker and employee who has entered into a lasting work relationship with an agricultural co-operative is entitled to become a member of such a co-operative, reception into membership being decided upon by the management board of the co-operative. Membership ceases through death, retirement or expulsion from the co-operative. Under no circumstances may anyone be constrained to remain a member of a co-operative against his will.

For the establishment of an agricultural co-operative it is required that not less than ten agricultural producers of full age agree to establish a co-operative, that they hold an inaugural meeting, lay down the rules, elect a temporary manager and register the co-operative. A resolution on the establishing of a co-operative is passed by the inaugural meeting on the basis of permission issued by the municipal people's committee. An agricultural co-operative is founded and obtains the status of a legal person on the date of its registration at the county economic court.

Co-operative property is social property, and the co-operative may under no circumstances be divested of it. This property includes all the articles produced by the co-operative, as well as the articles and rights acquired by the co-operative at the moment of its establishment or in course of its work, which are considered as the resources of economic organizations.

B. Labour Relations

Instructions concerning Collective Agreements and the Work of Social Arbitration Councils (16 September 1958; *Službeni list FNRJ*, No. 38/58)

Written collective agreements are made between district trade union councils, or the organs authorized by them, and district economic chambers. A collective agreement must contain the clauses expressly provided for in these instructions. A signed agreement must be sent for approval and registration by the administrative organ of the municipal people's committee competent for work and labour relations. If that organ finds that the collective agreement is not drawn up in conformity with the existing provisions it is to ask the contracting parties to comply with the provisions. A collective agreement becomes valid upon being signed by both parties and approved and registered by the competent municipal organ. A collective agreement may be amended and supplemented only under the conditions and in the manner specified by these instructions.

Disputes arising under collective agreements are to be settled by a special arbitration council, consisting of three members and three deputy members.

C. Social Insurance

Act concerning Invalidity Insurance (28 November 1958; *Službeni list FNRJ*, No. 49/58)

Invalidity insurance, as a part of general social insurance, is based on the principle of mutuality of insurance and the principle of the self-management of the social insurance service and funds by the insured persons themselves. Invalidity insurance is compulsory.

Invalidity insurance secures the following rights:

the right to rehabilitation in preparation for another occupation (vocational rehabilitation) and the right to material support; the right to employment according to the remaining working capacity and the right to monetary remuneration; the right to invalidity pension and the right to attendance and care allowance, if needed; the right to invalidity rent and the right to health insurance. These rights are guaranteed for the case of invalidity and the case of physical disablement resulting from disease or injury outside work, accident at work or occupational disease, and are determined according to the degree of invalidity and the degree of the remaining working capacity, the age of the insured person, the contribution of the insured person to society and other social interests.

The rights under invalidity insurance may not be extinguished. They may not be modified by contract, inherited or transferred to other persons. Funds to which the beneficiary has become entitled under invalidity insurance, and not paid out because of his death, may however be inherited.

The following persons are insured against all cases of invalidity, irrespective of their cause: persons in an employment relationship in the territory of Yugoslavia having full-time employment as prescribed for the respective occupation, except persons in temporary employment relationships; people's deputies receiving regular monthly remuneration and councillors of the people's committees having permanent duties and receiving regular monthly remuneration for their work; elected persons having permanent duties and receiving permanent salaries in social and co-operative organizations, professional associations and economic chambers or their unions, if this is their only and main occupation; members of artisan co-operatives (producers', processing and service co-operatives); and members of sea, lake and river fishing co-operatives whose economic activity in such co-operatives is their only and main occupation.

Of persons in employment relationships having part-time employment the following are insured against all cases of invalidity: work invalids, wartime and peacetime invalids; persons having reduced working hours during the period of medical treatment; women having reduced working hours as suckling mothers attending their babies; persons having reduced working hours on account of their school or course attendance, where such work has been approved under the existing provisions; and persons engaged in youth work activities if the cause of invalidity has arisen during their work in such activities.

Foreign citizens employed in the territory of Yugo slavia are insured under the provisions of this Act, unless it is provided otherwise in the Act or international treaties. Foreign citizens employed in international organizations and institutions, foreign diplomatic and consular representatives in the territory of Yugoslavia, or in personal service of foreign citizens enjoying diplomatic immunity, are however insured under this Act only if it is so provided by international treaties.

The following persons are insured only against invalidity resulting from accident at work or industrial disease: persons whose working time is shorter than the regular working time prescribed for the respective occupation and persons in a temporary employment relationship, apprentices and pupils of vocational schools with practical training; pupils of vocational schools and students of vocational high schools, faculties and academies of art when performing compulsory practical work in school-rooms and workshops or when performing practical work in economic organizations and institutions; and persons engaged in voluntary work without salary.

Persons not having the qualifications to be insured persons as aforesaid are insured under the provisions of this Act only against invalidity caused by accident in the territory of Jugoslavia while participating in organized public works of general importance or in rescue activities or defence against natural calamity or disaster; or in the exercise of specified public functions or civil duties at the invitation of State organs. The same insurance is enjoyed by persons sent to vocational rehabilitation courses as wartime or peacetime military invalids, who, while performing practical work and exercise during the rehabilitation course, suffer an accident causing them invalidity.

The grounds for acquisition of invalidity insurance rights are as follows: invalidity, physical disablement of not less than 30 per cent and immediate risk of disablement at a particular work place.

The conditions for acquisition of invalidity insurance rights differ according to whether invalidity and physical disablement are caused by disease or injury outside one's occupation, or by accident at work or industrial disease.

Invalidity insurance rights enjoyed by insured persons differ according to the grounds of entitlement. Thus in some cases they are entitled to invalidity pensions, in the others to invalidity rent; in some cases to vocational rehabilitation and material support, in the others to employment and remuneration in respect of the use of the right to employment.

D. EDUCATION

1. *General Act concerning Schools* (28 June 1958; *Službeni list FNRJ*, No. 28/58)

The General Act concerning Schools prescribes the general principles of education, the system of schools and other educational and training institutions, the life and work of schools and their status and organization.

Schools and other educational institutions organized on the principle of social self-management are established by the social community through state organs and economic and social organizations for the purpose of creating certain conditions of education and training

in the interests of the complete development of the socialist society and of human personality.

In the realization of the aims of education and training, (which include training and education of the younger generation, providing the basis of a scientific view of the world, acquaintance with the history and achievements of the Yugoslav people and mankind as a whole, helping the building up of man's personality and the development of the sense of social responsibility and of the need for active participation in social life), schools and other institutions of education and training are to co-operate with the family, economic, trade union, youth and other social organizations and professional associations, institutions and services.

Instruction is based on uniform principles in the whole territory of Yugoslavia; it is free of charge and carried out on the basis of teaching plans and programmes in the languages of the peoples of Yugoslavia. National minorities are provided instruction in their own languages. Certificates issued by the school have the force of public documents.

All citizens regardless of their ethnic origin, sex, social origin and religion, enjoy, under equal conditions, equal rights to education and training. Attendance at primary schools is compulsory for all persons of seven to fifteen years of age. Compulsory education is to last eight years. Registration at gymnasiums, technical and higher technical schools, university faculties, high schools and academies of arts is to be by competition.

Education and training is realized through a uniform system, which comprises pre-school institutions, primary schools, gymnasiums, technical and higher technical schools, university faculties, high schools and academies of arts, as well as adult education and professional advancement institutions.

Professional and higher professional schools, used also as adult education and professional advancement institutions, are the following: schools for skilled workers, schools for highly skilled workers, technical and other professional schools of economics and public service, schools of art and university faculties.

Under the provisions of this Act concerning the internal life and work of schools and concerning pupils and teachers, the whole internal life and forms and methods of work of schools and other educational and training institutions are to be organized so as to contribute to the realization of the aims of education and training. Pupils have the right and duty to contribute according to their age to the realization of these aims in their schools. Pupils in the final grades of primary schools and pupils in professional schools and gymnasiums set up their own grade and school communities, where matters of school life and work are discussed. By their work at school and outside, teachers actively participate in the education and training of youth and in the spreading of enlightenment and culture. The rights and duties of teachers as public servants are laid down in federal laws.

The Act regulates also the status, organization and management of schools and other educational institutions. The school is managed jointly by the teaching and educational collective and the citizens and directly by the following social organs: the school board, the council of teachers, and the director. The pupils of a specified age are also to participate in school management through their representatives.

The Yugoslav Council of Education is established as an independent body for determining general matters concerning education and training and drawing up the bases for teaching plans and programmes.

2. *Decision concerning the Council for Educational Affairs of National Minorities* (6 July 1958; *Službeni list FNRJ*, No. 23/58)

The Council for Educational Affairs of National Minorities is a technical body of the secretariat of the Federal Executive Council for Education and Culture, whose task is to consider general school and other important educational matters of national minorities, follow and study the conditions of work in the schools and other educational institutions of national minorities and offer opinions on such matters to the secretariat of the Federal Executive Council for Education and Culture. The Council is also to make proposals for the improvement of school and other educational activities of national minorities and for the co-ordination of the work of educational organs in this field.

E. Rest and Recreation

Act concerning the Establishment and Operation of Rest Centres (28 June 1958; *Službeni list FNRJ*, No. 26/58)

Rest centres (rest homes, summer vacation centres and tourist camps) offering boarding services to particular categories of persons may be established by trade unions and those social organizations one of whose basic aims is to organize rest for their members; by economic organizations, for their working collectives; by the people's committees, for children, youth and other persons specially cared for by the social community; and by educational institutions, for children and youth. Every rest centre must have its rules of organization and operation, which are issued by the founder, who is also to ensure the necessary resources for its operation. Rest centres are exempted from a series of obligatory payments and taxes. For the purpose of reduction of board charges the founding economic organization may extend grants-in-aid to a rest centre.

F. Health

Order concerning the Restriction of Traffic in Radioactive Isotopes (25 October 1958; *Službeni list FNRJ*, No. 44/58)

For the purpose of protecting the interests of national defence, execution of international obligations

in the field of nuclear energy, control of the export and import of radioactive raw materials and the protection of the life, health and property of citizens from harmful effects of isotope radiations, special conditions are prescribed for traffic in and any other treatment of isotopes.

Thus, traffic in and use of isotopes is allowed only by institutions and economic organizations having permission from the Federal Commission for Nuclear Energy. Isotopes must be dealt with in a manner which will protect human beings and property from ionizing radiations.

G. Property and Nationalization

Act concerning the Nationalization of Rental Buildings and Building Grounds (28 December 1958; *Službeni list FNRJ*, No. 52/58)

The Act provides for the nationalization of the following objects: rental dwelling buildings owned by citizens, all dwelling buildings and apartments forming separate parts of the buildings owned by civil legal persons and social organizations, business premises owned by such persons, if not used for their legitimate operations, apartments in excess of two owned by one citizen and business premises in dwelling buildings owned by citizens. Building grounds in towns and urban settlements are also nationalized and turned into social property.

For a nationalized building, or separate part of a building or a building ground, the former owner is entitled to compensation under the provisions of this Act, and the owner who is not a legal person is left the property rights on one apartment. The compensation for a nationalized building or a separate part of a building together with the ground amounts to 10 per cent of the rent paid for such building or a part of the building at the time of coming in force of this Act, for the period of fifty years. For a nationalized unused ground the former owner is entitled to a compensation specified by the tariff of compensations for expropriated building grounds, for a period of fifty years. Where a nationalized ground had been used by the former owner for agricultural purposes as the sole or main source of his income, the amount of compensation as fixed must be paid not later than three months after the transfer of possession of such ground to the municipality or another beneficiary.

The following are exempt from nationalization and remain the property of citizens: family dwelling buildings of two apartments or three smaller apartments, or not more than two apartments forming separate parts of the building, or business premises serving for the personal use of workers of other private businesses. Buildings, separate parts of buildings and grounds not subject to nationalization may be freely disposed of and inherited.

The provisions of this Act do not apply to buildings and separate parts of buildings owned by foreign states or international organizations, which serve the needs of foreign diplomatic and consular representations or organizations, or to buildings and premises serving for the performance of religious ceremonies by religious communities, or serving as dwellings for their clergy. The provisions of the Act do not apply to the buildings or parts of the buildings owned by dwelling co-operatives.

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

TRUST TERRITORY OF NAURU

NOTE[1]

Judiciary Ordinance 1957

This ordinance, which came into force on 2 December 1957, repealed existing ordinances relating to courts, and established a district court, a central court and a court of appeal.

The district court consists of such magistrates as the Administrator appoints. The Administrator may at any time revoke an appointment (section 13).

The central court consists of such judges and magistrates as the Administrator appoints. A judge or magistrate of the central court shall hold office until he attains the age of 65 years, subject to removal from office by the Administrator on the ground of proved misbehaviour or incapacity. The remuneration of a judge or magistrate shall not be diminished during his continuance in office (section 21).

The court of appeal consists of one judge. A person shall not be appointed to be a judge of the court of appeal unless he is or has been a justice of the High Court of the Commonwealth or of the supreme court of a state or territory of the Commonwealth. The judge may be removed from office by the Administrator on the ground of proved misbehaviour or incapacity. The remuneration of a judge shall not be diminished during his continuance in office (section 28).

[1] Note kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

TRUST TERRITORY OF NEW GUINEA

NOTE[1]

Industrial Safety (Temporary Provisions) Ordinance 1957 (Papua and New Guinea)

Section 7 of the ordinance provides that an employer shall not employ an employee in any work of a dangerous or hazardous nature unless the employee's physical and mental capacity are such as to fit him for such duties and unless the employer has —

(1) Given appropriate prior warning to the employee of the risks involved and of the measures required of the employee to reduce those risks to a minimum;

(2) Appropriately instructed the employee in the safe performance of his duties and in the use of any boilers, pressure vessels, machinery, electrical equipment, fittings, appliances, tools and explosive or dangerous substances used in connexion with those duties;

(3) Provided for the use of the employee such protective clothing and equipment as is prescribed or as is necessary for the safe performance of his duties and for his personal safety; and

(4) Taken such other measures as will ensure that the employee is adequately safeguarded and protected whilst employed in that work, including all such safety precautions as are necessary to reduce as far as is practicable the risk of accidental death or injury or as are normal in relation to the particular risks involved or as are prescribed or as are, in any particular case, required to be taken by an industrial inspector or medical officer.

Section 8 provides that an employer shall instal, maintain, and operate in a manner adequate to safeguard and protect employees from injury any boilers, pressure vessels, machinery, driving belts, electrical equipment, fittings, appliances and tools which are used or are to be used at or in any place or premises in which employees work or in which employees or their dependants are accommodated by or on behalf of the employer or which they use, and in regard thereto shall in addition comply promptly with any reasonable instruction given by an Industrial Inspector or Medical Officer relating to measures for the protection of employees and their dependants.

Criminal Code Amendment Ordinance (New Guinea) Amendment Ordinance 1958

The ordinance repeals sections 6, 9 and 10 of the Criminal Code Amendment Ordinance 1923-1939 of New Guinea.

[1] Note kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

Section 6 provided that in any prosecution under the Criminal Code for an offence of having unlawful carnal knowledge of or indecently dealing with a girl under a specified age, where the offence was alleged to have been committed against a native girl, it was a defence to prove that the girl had developed a state of puberty.

Section 9 provided that any European woman who voluntarily permitted any native (other than a native to whom she was married) to have carnal knowledge of her was guilty of an indictable offence.

Section 10 provided that any native having or attempting to have carnal knowledge of a European woman (other than a European woman to whom he was married) with her consent was guilty of an indictable offence.

Native Employment Ordinance 1958 (Papua and New Guinea)

When it comes into force, this ordinance will replace existing legislation on the employment of native workers contained in the Native Labour Ordinance 1950-1956.

The ordinance consists of one hundred and sixty-seven sections, and regulates in detail the subject with which it deals. Features of the ordinance are the inclusion of more stringent provisions to safeguard the welfare of native workers and the strengthening of requirements relating to medical welfare, including the provision of drugs and dressings, the supply at the employer's expense of adequate medical staff and the supply of hospitals.

Workers' Compensation Ordinance 1958 (Papua and New Guinea)

Section 8 (1) of this ordinance provides that if, in any employment, personal injury by accident arising out of or in the course of the employment is caused to a worker, his employer shall, subject to the ordinance, be liable to pay compensation in accordance with the ordinance.

Where personal injury by accident is caused to a worker while he is travelling to or from his employment the employer shall, subject to the ordinance, be liable to pay compensation as if the accident were an accident arising out of or in the course of his employment (section 9 (1)).

Where (*a*) a worker is incapacitated by disease, or (*b*) he is suspended from his usual employment on account of having contracted a disease, or (*c*) his death is caused by a disease, and the disease is due to the nature of any employment in which the worker was employed at any time within the twelve months immediately preceding the date of the disablement or suspension, or to the failure by one or more employees at any time within that period to comply with the provision of any law concerning the responsibilities of an employer in relation to a worker, he or his dependants shall be entitled to compensation under the Ordinance as if the disease or the suspension were a personal injury by accident arising out of or in the course of that employment (section 12 (1)).

The amount of compensation payable to a worker varies according to the wages earned. Section 7 (1) provides that where an amount of compensation is prescribed for a worker, that prescription shall be read as a prescription —

(*a*) In the case of a worker whose wages are less than £400 per annum, of 27 per cent of that amount; and

(*b*) In the case of a worker whose wages are £400 per annum or more, but less than £668 per annum, of 60 per cent of that amount.

Transactions with Natives Ordinance 1958 (Papua and New Guinea)

This ordinance is an amalgamation of the Natives' Contracts Protection Ordinance of New Guinea and the Transactions with Natives Ordinance of Papua.

Broadly, the ordinance applies to contracts with natives that do not amount to employment contracts.

Section 6 (1) provides that, subject to certain exceptions, a contract is unlawful and void as against a native unless it is in writing and contains the full names and residences of every party thereto and what is to be done under the contract by each of those persons and unless the contract is approved by an authorized officer.

In the ordinance, "job contract" means a contract for the performance of a piece of work by a native other than a contract which creates the relationship of master and servant between the parties. Section 9 provides that where it appears to a court that in the interest of the welfare of a native party to a job contract the contract should be terminated or varied in any way or that the contract or the manner of its performance is in any way unjust, inequitable or unconscionable against a native party, the court may make such order as to termination or variation or as to the rights of the parties to the contract as it considers equitable.

The Administrator may prohibit, either absolutely or subject to conditions, paying natives in goods or commodities in lieu of money or the selling of goods or commodities to natives on credit (section 11 (1)).

The Director of Native Affairs may exempt a native from the operation of any or all of the provisions of the ordinance, upon such terms and conditions as he may think fit (section 12 (1)).

Amendment of the Places of Entertainment Regulations of New Guinea

This amendment repeals regulation 6 (*c*) of the regulations, which required separate seating accommodation for Europeans and natives in places of public entertainment except where, in particular cases, the Administrator granted an exemption from the requirement.

BELGIUM

TRUST TERRITORY OF RUANDA-URUNDI

NOTE[1]

The following decrees, which are summarized in the section relating to the Belgian Congo,[2] apply also to Ruanda-Urundi:

Decree of 6 June 1958 amending article 42 of the Criminal Code relating to suspended sentences;

Decree of 10 June 1958 amending the consolidated Decrees respecting contracts of employment;

Legislative ordinance of 4 October 1958 regarding conciliation and arbitration procedure in collective labour disputes;

Decree of 15 April 1958 regarding certain types of co-operative societies (associations mutualistes);

Decree of 19 May 1958 regarding equalization-funding for workers' family allowances;

Decree of 10 June 1958 amending the Decree of 8 December 1954 and expanding the category of persons covered by the system of family allowances for non-indigenous employees;

Decree of 25 November 1958 on the conferring of academic degrees.

The international agreements mentioned in the section relating to the Belgian Congo have also been made applicable to Ruanda-Urundi.

[1] This note has been drafted on the basis of information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See p. 287.

FRANCE

TRUST TERRITORY OF THE CAMEROONS UNDER FRENCH ADMINISTRATION

NOTE [1]

Developments in the Cameroons were similar to those in Togoland.[2] The new statute, which had been promulgated in April 1957,[3] provided for a large measure of domestic autonomy. Its terms were approved in March 1958 by the Trusteeship Council, which noted that "the Administering Authority would establish, in complete agreement with the Cameroonian Government, a reasonable time-table which would lead the Cameroons to its emergence from trusteeship".

In October 1958 France transmitted to the Trusteeship Council the Legislative Assembly's resolution requesting recognition of the complete independence of the Cameroons and the termination of trusteeship on 1 January 1960.

A new statute was promulgated by an ordinance of 30 December 1958.[4] It was similar to that of Togoland. The High Commissioner could only request a second reading of texts prepared by the Assembly or the Council. If such texts were maintained unaltered but seemed to conflict with the statute, legality or international agreements, the French Government might annul them by decree. Because of the disturbed domestic situation, the High Commissioner might also assume responsibility for the maintenance of order in the event of serious disturbances.

Moreover, in the interests of pacification, a very comprehensive Act of Amnesty was passed on 17 February 1958.[5] It covered, *inter alia*, acts committed during the events of May 1955.

[1] Note kindly prepared by Mr. E. Dufour, Maître des requêtes au Conseil d'Etat, Paris, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat. See also the final paragraph of the note on the Trust Territory of Togoland under French administration.

[2] See p. 277.

[3] See *Yearbook on Human Rights for 1957*, p. 273.

[4] Ordinance No. 58-1375, *Journal officiel*, December 1958, p. 12, 113. See below.

[5] Act No. 58-148, *Journal officiel*, February, p. 164.

ORDINANCE No. 58-1375 OF 30 DECEMBER 1958 ESTABLISHING THE STATUTE OF THE CAMEROONS [1]

Title I

THE STATE OF THE CAMEROONS

Art. 1. The organization of the State of the Cameroons and its relations with the French Republic are defined, until its independence and the termination of the trusteeship, by this statute.

Art. 2. Cameroons nationals (ressortissants camerounais) shall possess Cameroons citizenship, the conditions for the attribution of which shall be established by Cameroons law.

Throughout the French Republic they enjoy the rights and freedoms guaranteed to French citizens.

French citizens shall enjoy in the Cameroons the rights attached to the status of a Cameroons citizen, on a basis of reciprocity.

Their personal status shall continue to be governed by French law.

Cameroons citizens shall not be subject to military service on behalf of the French Republic. They may, however, enlist voluntarily in the armed forces of the French Republic.

. . .

Title II

CAMEROONS INSTITUTIONS

Art. 4. Cameroons affairs shall be managed by the Legislative Assembly and the Cameroons Government, headed by a Prime Minister.

Art. 5. Cameroons laws and regulations must respect treaties and international agreements, the principles and fundamental freedoms inscribed in the Universal. Declaration of Human Rights, the Charter of the United Nations and the provisions of this Statute.

Sect. 1. — *Legislative Powers*

Art. 6. Legislative powers shall be vested in the Legislative Assembly which shall be elected by universal direct and secret suffrage for a term of five years and shall have its seat in the capital of the State of the Cameroons.

. . .

[1] Published in *Journal officiel de la République française*, 90th year, No. 307, of 31 December 1958. Translation by the United Nations Secretariat. The ordinance entered into force on 1 January 1959.

Title III

POWERS EXERCISED BY THE FRENCH REPUBLIC

. . .

Art. 24. The Government of the French Republic shall be represented in the Cameroons by a High Commissioner, in whom the powers of the French Republic shall be vested. He shall be assisted by a Deputy High Commissioner.

. . .

Title IV

INTERNATIONAL TRUSTEESHIP

Art. 26. By reason of the obligations assumed by the Government of the French Republic, the High Commissioner shall be kept informed by the Prime Minister of the functioning of the Cameroons institutions.

Cameroons laws, regulations and administrative acts shall be communicated to him prior to promulgation, publication or application.

Within a period of ten clear days he may request that they be read or examined a second time and this request may not be refused.

After there has been a further deliberation or examination, the High Commissioner may, within the same period, if he deems such texts to be contrary to the provisions of the present Statute, to treaties and international agreements or, in general, to legality, inform the Government of the French Republic which, after consulting the Conseil d'Etat, may within a period of three months issue a decree annulling the act submitted for consideration. The application of the act in question is suspended during this period.

. . .

TRUST TERRITORY OF TOGOLAND UNDER FRENCH ADMINISTRATION

NOTE [1]

In the autumn of 1957, the United Nations General Assembly had rejected a French proposal for the termination of trusteeship, despite the fact that a new statute providing for genuine domestic self-government had been put into operation in 1956. New stages in the progress towards independence were attained in the course of 1958.

A new statute was enacted by decree of 22 February 1958.[2] Under this, the institutions of the Republic of Togoland comprised an elected Chamber of Deputies, and a Prime Minister who was answerable to it, and was assisted by a government. Togoland obtained wide legislative powers, France retaining only the powers of regulation in regard to foreign affairs, currency and foreign exchange matters, and defence. The High Commissioner of the French Republic attended the meetings of the Council of Ministers and could preside over the Council only when it dealt "jointly with matters of Togolese competence and the French services or programmes for the allocation of financial aid". The sole remaining sign of the maintenance of trusteeship was a right of veto over written instruments drafted by the Togolese authorities in accordance with their powers; this veto the High Commissioner could exercise only within a period of ten clear days.

This new statute entered into force in March 1958 simultaneously with the signing of conventions between France and Togoland on the transfer of domestic powers.

The Opposition, led by Mr. S. Olympio, gained the majority on 27 April 1958 in the elections for the Legislative Assembly which was to replace the Territorial Assembly existing before implementation of the statute of self-government. Subsequently, the new government requested France to complete the evolution towards independence, and the French Government accepted that request on 2 October 1958. A new statute was submitted to the Togolese Chamber in October, and was adopted at the same time as the independence principle.

On 14 November 1958 the United Nations General Assembly, acting upon a French proposal, agreed to terminate trusteeship as from 1 January 1960, the date on which independence would be proclaimed.

The last provisional statute of the Trust Territory of Togoland was enacted by an ordinance of 30 December 1958.[3] It completed the establishment of a parliamentary system of government in whose operations the French representative could intervene solely in order to nominate the Prime Minister. The right of veto exercised by the French Minister for Overseas France over Togolese legislation, and by the High Commissioner over the Government's decisions, remained in force for the duration of trusteeship. At Togoland's request, France retained responsibility only for foreign affairs, monetary policy and defence.

* * *

Thus will be concluded France's legislative task in these two countries[4] entrusted to its administration

[1] Note kindly prepared by Mr. E. Dufour, Maître des requêtes au Conseil d'Etat, Paris, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] Decree No. 58-187, *Journal officiel*, February 1958, p. 2270. See below.

[3] Ordinance No. 58-1376, *Journal officiel*, December 1958, p. 12115. See below.

[4] Trust Territories of the Cameroons and of Togoland under French administration.

by the will of the nations. By guiding these new States to independence, France has accomplished the mission given to it. What remains to be done is for France to continue supplying to these States, on a footing of friendship and co-operation, any assistance which they may still request of it.

DECREE No. 58-187 OF 22 FEBRUARY 1958 AMENDING THE DECREE OF 24 AUGUST 1956 SETTING FORTH THE STATUTE OF TOGOLAND [1]

Art. 1. The provisions of the Decree of 24 August 1956 setting forth the Statute of Togoland[2] are amended and supplemented as follows:

Title I

THE REPUBLIC OF TOGOLAND

Art. 1. Togoland is a Republic based on respect for treaties and international conventions and for the principles set forth in the Universal Declaration of Human Rights and in the preamble to the Constitution of the French Republic.

Its relationship with the French Republic is defined in this statute on the basis of community of thought and of interests.

Title II

INSTITUTIONS

Art. 2. Togoland affairs shall be managed by a legislative assembly to be called the "Chamber of Deputies", elected by direct universal suffrage, and by a Togoland Government headed by a Prime Minister.

. . .

Title III

THE HIGH COMMISSIONER OF THE FRENCH REPUBLIC

Art. 18. The French Republic shall delegate a High Commissioner to Togoland.

. . .

Title V

CITIZENSHIP

Art. 31. The nationals of Togoland (ressortissants du Togo) are Togoland citizens.

Art. 32. Togoland citizens shall enjoy all the rights and freedoms guaranteed to French citizens, shall have free access to public office and may vote and stand for election anywhere in the French Republic, under the same conditions as French citizens.

Togoland citizens shall not be subject to military service. They may, however, enlist voluntarily in the armed forces of the French Republic.

Art. 33. French citizens shall enjoy in Togoland all the rights and freedoms attached to the status of Togoland citizens. Their personal status shall continue to be governed by French law.

. . .

Title VIII

TRANSITIONAL PROVISIONS

Art. 40. As long as Togoland remains under the International System, such provisional trusteeship as seems advisable (une tutelle provisoire d'opportunité) shall be exercised over the powers of the Togoland authorities in order to enable the French administration to discharge all its obligations under chapter XII of the United Nations Charter, and under the Trusteeship Agreement.

Art. 41. This provisional trusteeship shall be exercised by means of the right of veto on the part of the Minister for Overseas France over the laws of Togoland and a right of veto on the part of the High Commissioner over the decisions of the Council of Ministers and of the ministers. The right of veto may be exercised only within a period of ten clear days from the date of the adoption of the relevant law, or from the date of publication of the decision. The application of the provisions of article 15 shall be suspended during the period of provisional trusteeship.

. . .

[1] Text published in *Journal officiel de la République française*, 90th year, No. 46, of 23 February 1958. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1956*, pp. 267-8.

ORDER No. 58-1376 OF 30 DECEMBER 1958 SETTING FORTH THE STATUTE OF THE REPUBLIC OF TOGOLAND [1]

Title I

THE REPUBLIC OF TOGOLAND

Art. 1. Togoland is a democratic State which will, at its own request, be proclaimed an independent and sovereign republic as soon as it ceases to be under the International Trusteeship System.

Its relations with the French Republic are defined by this Statute and by conventions.

The consequences arising from the provisional maintenance of the International Trusteeship System are specified in articles 32 and 33 below.

[1] Text published in the *Journal officiel de la République française*, 90th year, No. 307, of 31 December 1958, and in the *Journal officiel de la République du Togo*, 4th year, No. 82 (*bis*), of 4 January 195. Translation by the United Nations Secretariat.

Title II

INSTITUTIONS

Sect. 1. — *The Chamber of Deputies*

Art. 2. The legislative power shall be vested in the Chamber of Deputies, which shall enact the laws.

Art. 3. Deputies shall be elected by direct universal suffrage for a period of six years.

. . .

Sect. III. — *The Judiciary*

. . .

Art. 21. Judges shall be independent and subject only to the authority of the law in the discharge of their functions.

Members of the Bench (Magistrats du siége) shall be irremovable.

. . .

Title III

THE HIGH COMMISSIONER OF THE FRENCH REPUBLIC

Art. 23. The French Republic shall be represented in Togoland by a High Commissioner.

. . .

Title IV

NATIONALITY AND CITIZENSHIP

Art. 26. The nationals of Togoland shall possess Togolese nationality.

Art. 27. Togolese nationality shall be defined by law.

Art. 28. All citizens shall be equal before the law. They shall have the same rights and the same duties.

. . .

Title VI

TRANSITIONAL PROVISIONS

. . .

Art. 32. As long as Togoland remains under the International Trusteeship System, France will discharge its responsibilities as Administering Authority, under the terms of chapter XII of the United Nations Charter and of the Trusteeship Agreement of 13 December 1946, by the exercise of a right of veto.

Art. 33. This right of veto will be exercised, in the case of Togolese laws, by the Minister for Overseas France and, in the case of decisions of the Council of Ministers and of the Ministers, by the High Commissioner.

It may be exercised only within a period of ten clear days from the date of the adoption of the law or the publication of the decision.

. . .

ACT No. 58–30 OF 20 FEBRUARY 1958 CONCERNING THE ELECTION OF MEMBERS OF THE LEGISLATIVE ASSEMBLY [1]

ELIGIBILITY

Art. 4. Election to the Legislative Assembly shall be open to any citizen, of either sex, who has attained the age of twenty-three, who has not been placed under guardianship, who is not disqualified from voting, who is registered in an electoral list in Togoland or can show proof that he should have been so registered before the date of the election, who has been actually resident for not less than two years in the territory of the Autonomous Republic of Togoland, and who is able to speak and read French.

The condition of residence shall be waived in the case of citizens who have been registered in the direct taxation rolls for not less than two years, or of citizens whose absence from Togoland was due to purposes of study, training or further training, or occasioned by the execution of a mission or appointment to an official Togoland or French post.

Art. 5. The following persons shall not be entitled to stand as candidates for election to the Legislative Assembly while they are exercising their functions and for six months following the termination of their functions by reason of resignation, dismissal, change of residence or any other cause, if they have been exercising or exercised those functions for not less than six months:

(1) Directors or chiefs of administrative departments and advisers holding appointments in the ministries of the Autonomous Republic: in any electoral circonscription;

(2) Labour inspectors and school inspectors: in any electoral circonscription;

(3) Officers and non-commissioned officers of the Garde togolaise, police inspectors and local police chiefs (commissaires de police): in any electoral circonscription within their district;

(4) The paymaster-treasurer and the heads of departments employed in the assessment, collection and recovery of direct or indirect taxes and the payment of public expenditure of any kind, holding appointments in the territory of the Autonomous Republic of Togoland: in any electoral circonscription;

(5) Chiefs of customs offices: in any electoral circonscription;

(6) Chiefs of administrative circonscriptions: in any electoral circonscription;

[1] Published in *Journal officiel de la République autonome du Togo*, third year, No. 44, of 27 February 1958.

(7) The Secretary-General of the Legislative Assembly: in any electoral circonscription;

(8) Civilian and military officials belonging to the departments referred to in article 27 of the Statute, holding appointments at least equivalent to that of head of section: in any electoral circonscription.

The ineligibility of persons holding the offices specified in this article shall extend, in the same conditions, to persons who have been exercising or who exercised the same functions for a period of not less than six months without being or having been established in the said offices.

Art. 6. The following persons shall not be entitled to stand as candidates for election to the Legislative Assembly while they are exercising their functions and for two months following the termination of their functions by reason of resignation, dismissal, change of residence or any other cause, if they have been exercising or exercised those functions for not less than three months:

(1) Guards in the *Garde togolaise* and policemen: in any electoral circonscription within their district;

(2) Accountants and officials of any nature employed in the assessment, collection and recovery of direct or indirect taxes and in the payment of public expenditure of any kind, holding appointments in the Autonomous Republic of Togoland: in any electoral circonscription;

(3) Assistants to chiefs of administrative circonscriptions, including chefs de poste administratif: in any electoral circonscription.

The ineligibility of persons holding the offices specified in this article shall extend, in the same conditions, to persons who have been exercising or who exercised the same functions for a period of not less than three months without being or having been established in the said offices.

Art. 7. The public or private functions enumerated in articles 5 and 6 of Togoland Act No. 56-2 of 18 September 1956 are incompatible with the office of deputy to the Legislative Assembly, in the conditions specified in the said Act.

. . .

ITALY

TRUST TERRITORY OF SOMALILAND

POLITICAL ELECTIONS ACT (No. 26) of 12 December 1958 [1]

Title I

General

Art. 1. — General Features of the Elections

The deputies shall be elected by universal suffrage.

Every voter shall have one vote and shall vote for lists of candidates presented in each electoral district.

The vote shall be free, direct and secret.

. . .

Art. 6. — Date and Duration of the Elections

The elections shall last five days, and shall begin on 1 March 1959.

Art. 7. — Moral Obligation to vote

Voting is a moral obligation that no one can evade without failing in his explicit duty.

. . .

Title II

The Electorate

Art. 9. — Qualifications for Voters

The following shall be voters: Somali citizens of either sex who:

(1) Are at least eighteen years of age in the year in which the elections are held;

(2) Are not under a judicial disability, mentally deranged or debarred from public office;

(3) Are not serving a sentence of imprisonment.

The Minister of the Interior is hereby authorized to issue regulations for the purpose of ensuring that, as a general rule, the voters normally resident in each electoral district vote therein.

. . .

Title III

Eligibility and Lists of Candidates

Art. 11. — Qualifications for Candidates

The following may be elected as deputies: voters of either sex who:

(1) Are at least twenty-five years of age in the year in which the elections are held;

(2) Prove their ability to read and write in Arabic or in Italian by passing an appropriate test;

(3) Have not been sentenced to a term of imprisonment of more than three years for the deliberate commission of an offence.

Art. 12. — Ineligibility

The following shall be ineligible as deputies: (1) judges; (2) members of the armed forces and members of groups organized on a military basis; (3) prefects, district commissioners and district delegates.

The foregoing shall not constitute grounds for ineligibility if the person concerned has ceased to exercise his functions not later than sixty days before the opening date of the elections.

Employees of government departments and of public corporations and institutions under state control who are elected deputies shall be suspended from their employment for the duration of their term of office as deputies.

The full period of such suspension shall be credited for purposes of professional advancement and periodical salary increments; during such period the person concerned shall be entitled only to the emoluments payable for his service as a deputy.

Art. 13. — Incompatibility

The office of deputy is incompatible with that of municipal or district councillor.

The person elected shall enjoy the right of option, which he shall exercise within fifteen days of the date of the proclamation. Any deputy who fails to exercise such right of option within the said time-limit shall be relieved of his functions as municipal or district councillor.

. . .

Title V

Electoral Propaganda

Art. 34. — Opening and Conduct of Electoral Propaganda

Electoral propaganda, which must be conducted strictly within the limits fixed by and in accordance with the provisions of law, shall begin thirty days before the opening date of the elections.

On the day preceding the elections and on the actual voting days all forms of electoral propaganda, whether direct or indirect, shall be prohibited.

[1] Published in *Bollettino Ufficiale*, year II, No. 12, supplement No. 2, of 12 December 1958. Translation by the United Nations Secretariat.

Art. 35. — Meetings

Meetings and public gatherings for propaganda purposes shall be governed by the provisions of Ordinance No. 1 of 20 February 1954.[1]

Not more than two meetings or electoral gatherings may be held in the same electoral district on the same day.

Processions shall be prohibited.

Art. 36. — Posters and Leaflets

Electoral propaganda posters and leaflets must be filed with the District Office not later than twenty-four hours in advance.

They shall be exempt from all fiscal charges.

It shall be unlawful to affix posters to buildings used for religious worship or, unless the owner's consent has been obtained, to private buildings.

Art. 37. — Uniforms

The use of uniforms of a military type or likely to be mistaken for such shall be prohibited.

Title VI

VOTING

. . .

Art. 45. — Voters unable to vote without Assistance

Voters shall attend the polling station in person in order to cast their votes.

Any voter who, by reason of a plainly apparent physical handicap recognized as such by the polling officers, is unable to cast his vote shall be allowed by the chairman to do so with the assistance of another voter who enjoys his confidence.

The secretary shall indicate in the report the specific reason why a voter has been authorized to obtain assistance in casting his vote and the name of the person who assisted him.

No medical certificate shall be required; if one is produced it shall be attached to the report.

. . .

[1] See *Yearbook on Human Rights for 1954*, pp. 321-322.

[Other provisions of this title protect the secrecy of voting.]

. . .

Title VIII

PENAL PROVISIONS

Art. 61. — Interference with the Right to conduct Propaganda

Any person who in any manner obstructs or disturbs an electoral propaganda meeting, whether public or private, or who obstructs the affixing of notices by the public authorities concerning the electoral operations, or who obstructs the circulation or affixing of printed electoral propaganda or destroys posters or printed matter which are affixed or intended for affixing and circulation, shall be liable to imprisonment for not more than two years or to a fine not exceeding 2,400 somalos.

Any person who, for electoral propaganda purposes, uses means or methods not allowed by law shall be liable to the same penalty.

. . .

Art. 71. — Loss of Political Rights and Application of Summary Procedure

Any voter who is convicted of an electoral offence and sentenced by the court to imprisonment for not less than two years shall be disqualified from voting and from standing for election for a period of five years.

Persons accused of such offences shall be tried by summary procedure.

Title IX

FINAL AND TRANSITIONAL PROVISIONS

. . .

Art. 77

This Act shall enter into force on the date of its publication in the *Bollettino Ufficiale della Somalia*. Ordinance No. 6, of 31 March 1955,[2] shall be repealed with effect from the same date.

[2] See *Yearbook on Human Rights for 1955*, pp. 277-278.

LEGISLATIVE DECREE No. 25 PROMULGATING THE LABOUR CODE of 15 November 1958[1]

SUMMARY

In addition to laying down certain general provisions, the legislative decree deals with the following matters, among others: trade unions and trade union federations; collective labour agreements and individual contracts of employment; apprenticeship; remuneration; hours of work; night work and work performed in arduous, dangerous and unhealthy conditions; work of women, young persons and children; weekly rest, public holidays and annual leave with pay; occupational health and safety; the public placement service; labour disputes; and the regulation of the right to strike.

[1] Text published in *Bollettino Ufficiale della Somalia*, No. 11, Supplement No. 2, of 24 November 1958. The legislative decree entered into force on 1 January 1959.

Part I (General Provisions) of the legislative decree includes the following sections 1 and 3:

"1. *Rights and duties of citizens.* Every citizen has the right to follow any occupation he chooses and has the duty, in following such occupation, to contribute to the material and moral progress of society."

"3. *Freedom of labour.* Forced or compulsory labour shall be forbidden in any form.

"The cases in which labour may be imposed by military or civil necessity or as a result of a criminal conviction shall be regulated by law."

Chapter I (Trade Unions) of part II (Trade Union Organizations) includes the following sections 6, 7, 9, 12 and 13:

"6. *Purposes of trade unions.* The organization of trade unions shall be free. The purposes of a trade union shall be to study and protect the legal, economic and moral interests of the branch of activity concerned.

"7. *Organization of trade unions.* Persons engaged in the same occupation or trade, or in related occupations or trades, may establish a trade union.

"Every person shall be free to join a single trade union of his own choosing, within the framework of his occupation."

"9. *Freedom of association.* It shall not be lawful to engage in any act of discrimination or any act restricting the right of freedom of association, and more particularly to —

"(1) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

"(2) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities.

"It shall likewise be unlawful for any employers' organization to engage in any act of interference, including financial interference, in the establishment or functioning of a workers' organization, and vice versa."

"12. *Affiliation to a trade union.* Any person who has reached the age of eighteen years may freely join a trade union.

"Any person under eighteen but over fifteen years of age may join a trade union, if there is no objection from his father or the person legally substituted for his father.

"13. *Right of withdrawal.* Any member of a trade union may withdraw from it at any time, notwithstanding any stipulation to the contrary."

Section 55, dealing with remuneration, includes the provision that:

"For work of equal value women workers shall be entitled to the same remuneration as men."

Subject to certain exceptions set out in sections 70-71 it is provided in section 70 that: "The hours worked by wage and salary earners of either sex and of whatever age, whether at time rates, piece rates or job rates, shall not exceed eight a day or 48 a week."

Part X (Strikes) of the legislative decree includes the following section 138:

"138. *Freedom to work and to strike.* It shall not be lawful to take any direct action to compel a worker to take part in a strike or to prevent a resumption of work, whether individual or collective.

"It shall not be lawful to threaten or take reprisals against a worker who proposes to take part in a strike or who has taken part in a strike."

Complete translations of the legislative decree into English and French have appeared in International Labour Office: *Legislative Series 1958* — It. Som.1.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

TRUST TERRITORY OF TANGANYIKA

THE TANGANYIKA (LEGISLATIVE COUNCIL) (AMENDMENT) ORDER IN COUNCIL, 1958 [1]

NOTE

This order deleted from the Tanganyika (Legislative Council) Order in Council, 1926, as amended, the provision made in paragraph (*d*) of clause VI F,[2] which disqualified for appointment or election as a Representative Member of the Legislative Council persons who hold office of emolument under the Crown, and instead conferred on the Legislature of Tanganyika a power to prescribe by law what offices or appointments or classes of office or appointment shall so disqualify.[3]

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[1] Published as *Statutory Instruments*, 1958, No. 592, by H.M. Stationery Office, London. The order was made on 3 April 1958 and entered into force on 22 August 1958.

[2] See *Yearbook on Human Rights for 1955*, p. 280.

[3] The Legislative Council (Disqualification) Ordinance, 1958, No. 31 of 1958 (published as *Supplement No. 1 to the Tanganyika Gazette, Vol. XXXIX, No. 43, dated the 22nd August, 1958*) disqualified for appointment or election as Representative Members of the Legislative Council persons holding public office or belonging to the police force or regular armed forces, as these categories were defined in the ordinance.

UNITED STATES OF AMERICA

TRUST TERRITORY OF THE PACIFIC ISLANDS

See page 254.

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA

NOTE [1]

Industrial Safety (Temporary Provisions) Ordinance 1957 (Papua and New Guinea)

Native Employment Ordinance 1958 (Papua and New Guinea)

Workers' Compensation Ordinance 1958 (Papua and New Guinea)

Transactions with Natives Ordinance 1958 (Papua and New Guinea)

These ordinances are described in the note on the Trust Territory of New Guinea.[2]

White Women's Protection Ordinance (Papua) Repeal Ordinance 1958

The White Women's Protection Ordinance 1926-1934 of Papua, which provided special and heavier penalties for sexual offences against European females, has been repealed.

Matrimonial Causes (Papua) Ordinance 1958

This ordinance repeals section 48 of the Matrimonial Causes Ordinance 1941-1951 of Papua, which provided that no suit for nullity, dissolution of marriage, judicial separation or restitution of conjugal rights was to be instituted by or against a married native.

A new section 48 was inserted in the following terms:

"48. Nothing in this ordinance contained applies to or in relation to a marriage by native custom."

The present position is that a marriage to which a native is a party and which was celebrated under the Marriage Ordinance of Papua may be the subject of a suit for nullity, dissolution, judicial separation or restitution of conjugal rights under the Matrimonial Causes Ordinance, but a marriage by native custom may not.

Amendment of Public Entertainment Regulations, 1926, of Papua

This amendment repeals regulation 11 of the regulations, which required separate seating accommodation for Europeans and natives in places of public entertainment, except where, in particular cases, the Administrator granted an exemption from the requirement.

[1] Note kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See p. 273.

BELGIUM

BELGIAN CONGO

NOTE [1]

I. Laws and Regulations

Action against Measures of Discrimination

The decree of 2 December 1957 (*Bulletin officiel*, 1 January 1958) introduces the following provision nto the Criminal Code of the Belgian Congo:

"Any person displaying racial or ethnic aversion or hatred, or committing an act likely to provoke the said aversion or hatred, shall be liable to imprisonment for a period of not less than one month and not more than one year and to a fine not exceeding 3,000 francs, or to either of these penalties."

A decree of 6 June 1958 (*Bulletin officiel*, 1 July 1958), amending article 42 of the Criminal Code of the Belgian Congo, extends to all indigenous inhabitants the benefit of the suspension of the execution of sentence in criminal cases. Previously that measure could be applied only to non-indigenous inhabitants, and to indigenous inhabitants who were registered (immatriculés) or held a civic merit card (carte de merite civique).

The effect of other decrees mentioned hereunder (decree of 6 June 1958 on vagrancy and begging; decree of 8 May 1958 setting out the code of judicial organization and competence; decree of 17 June 1958 on the right of residence in the territory of the Belgian Congo) has been to introduce equality of treatment as between indigenous and non-indigenous inhabitants.

Freedom from Arbitrary Detention

A decree of 6 June 1958 (*Bulletin officiel*, 1 July 1958), amending the decrees of 23 May 1896 and of 11 July 1923 on vagrancy and begging, leaves the detention of vagrants to the discretion of the courts and introduces equality of treatment as between indigenous and non-indigenous vagrants and beggars.

Right to a Fair Trial

The decree of 8 May 1958 (*Bulletin officiel*, 17 May 1958), setting out the code of judicial organization and competence, implements the principle of the separation of administrative and judicial functions. A judge may be declared incompetent for certain reasons enumerated in the decree — e.g., if he has already intervened in the case in the capacity of officer of the criminal police, examining judge, or administrative agent. Criminal offences are tried by the same courts, irrespective of whether the defendant is an indigenous or a non-indigenous inhabitant.

Regulation of Freedom of Residence

The decree of 17 June 1958 (*Bulletin officiel*, 1 July 1958) defines and regulates the measures of banishment and of forced residence which may be taken by the administrative authorities against persons who endanger, or threaten to endanger, public peace and order to a serious degree. The decree in question introduces two main changes, by comparison with the decree of 5 July 1910 which it repealed: application of the measures on an equal footing to all persons, whether indigenous or non-indigenous; and the institution of an appeal procedure and of a procedure for the periodic and automatic review of all decisions involving forced residence. The appeals are brought before commissions, presided over by judges, who examine the reasons adduced by the Administration in support of the measures taken by it, and who may hear the person concerned.

Right to work

A decree of 10 June 1958 (*Bulletin officiel*, 1 July 1958) amends the consolidated decrees respecting contracts of employment, in particular with regard to the following points: the period of notice of termination of a contract may not be less than fifteen days when given by the employer, or more than fifteen days when given by the worker (article 2); the "worker's family" for whom the employer must provide lodging and food is expanded in conception so as to include children under legal or customary guardianship (article 16); the employer must continue to pay to a worker who is ill two thirds of his remuneration, even if he has been rendered totally incapable of work (article 18); and the amount of any fines imposed on a worker for disciplinary reasons must not exceed the wages due in respect of the day on which such fines were incurred (article 19).

Legislative ordinance No. 22/415 of 4 October 1958 (*Bulletin administratif du Congo belge*, 17 November 1958), which repeals the decree of 27 June 1944, regulates conciliation and arbitration procedure in

[1] This note has been drafted on the basis of information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

collective labour disputes. The parties to such a dispute must submit it to conciliation commissions on which the two sides are equally represented — first at district level and later, in case of failure, at provincial level. Strikes and lock-outs are permitted only if the procedure has broken down and if the parties to the dispute have not signed an agreement to refer the case to arbitration. Failure by one of the parties to a conciliation agreement or to an arbitration award to carry out the said agreement or award entitles the other party to terminate the contract of employment.

Social Insurance

The decree of 15 April 1958 (*Bulletin officiel*, 15 July 1958) defines and regulates the status of private co-operative societies (*associations mutualistes*) whose objects are social and medical aid, the assistance of the aged and the disabled, and the promotion of savings. It provides in particular (article 11) that a member's admission to such a society shall not be made contingent upon his membership of some other group. Any person who is more than eighteen years old or who is married is eligible, but a husband may oppose his wife's membership (article 12). Should the provisions of the decree be infringed, certain advantages granted by the public authorities may be withdrawn from the society and its managers will be liable to a fine (articles 49-50).

Family Allowances

The decree of 19 May 1958 (*Bulletin officiel*, 15 June 1958) regulates equalization-funding for workers' family allowances. All employers for whom one or more persons engaged by them under a contract of employment (but excluding domestics) are working must pay a monthly contribution designed to cover the cost of funding operations. Failure to carry out the obligations prescribed by the Decree renders the employer liable to the payment of interest to the equalization funds; in addition, he may incur a fine or a short term of imprisonment.

A decree of 10 June 1958 (*Bulletin officiel*, 1 July 1958), confirming a legislative ordinance of the Governor-General dated 20 August 1957, amends the decree of 26 May 1951 by introducing a housing allowance for workers and their families, whenever housing is not provided by the employer.

A decree of 10 June 1958 (*Bulletin officiel*, 1 July 1958), amending the decree dated 8 December 1954, expands the category of persons covered by the system of family allowances for non-indigenous employees. Its effect is to extend the benefits of the system to natural children, even though unrecognized, whose birth certificates bear the name of the employee's wife, and to the brothers and sisters maintained by an employee, if their father has died or if, because of a disability, he is incapable of exercising any trade or profession.

Right to Education

The decree of 25 November 1958 (*Bulletin officiel*, 1 December 1958) regulates examinations for and the conferring of, various academic degrees at universities of the Belgian Congo. In order to qualify for the degrees of candidat ès-lettres and candidat ès-sciences, students must pass examinations which include papers on African culture and linguistics.

II. International Agreements

The *Bulletin officiel du Congo belge* of 15 February 1958 states that on 3 September 1957 the Belgian Government extended to the territory of the Congo the application of the following international labour conventions:

Convention No. 42 concerning Workmen's Compensation for Occupational Diseases, adopted by the International Labour Conference on 21 June 1934;

Convention No. 84 concerning the Right of Association and the Settlement of Labour Disputes in Non-Metropolitan Territories, adopted by the International Labour Conference on 11 July 1947; and

Convention No. 85 concerning Labour Inspectorates in Non-Metropolitan Territories, adopted by the International Labour Conference on 11 July 1947.

The Agreement on the Importation of Educational, Scientific and Cultural Materials, together with its annexes and annexed Protocol,[1] ratified by Belgium on 31 October 1957, has been made applicable to the Belgian Congo (*Bulletin officiel de Congo belge*, 15 April 1958).

[1] See *Yearbook on Human Rights for 1950*, pp. 411-415.

FRANCE

PROVISIONS AFFECTING THE OVERSEAS TERRITORIES AS A WHOLE [1]

In 1958, demands for domestic autonomy became more explicit in all the overseas territories. At the same time, instances of rivalry between countries and parties tended to give to the plans worked out a rather complex appearance. Plans of the "federative" type contended with plans for direct association with metropolitan France. The demands made it all the more urgent for France to amend part VIII of its Constitution, relating to the French Union.

The events of May 1958, and the return to power of General de Gaulle, can be said to have reinforced the hope that these demands would not go unheard. And in fact the French Government, in July 1958, decided to take an interim step toward satisfying them by transferring the presidency of the government councils of the territories of French West Africa, French Equatorial Africa and Madagascar, hitherto held by the High Commissioners, to the vice-presidents appointed by the territorial assemblies.

Later, in September, all the territories (except Guinea) approved by a very large majority (over 90 per cent) the provisions of the Constitution whereby the territories became entitled to join the Community and withdraw from it, to opt for one of three forms of status within the Community, or simply to remain associated with the Community.

After the referendum, and after discussions had been held on the advisability of various regroupings of "federal" type, each territory of the former federations of French West Africa, French Equatorial Africa and Madagascar chose, through its Territorial Assembly elected by universal suffrage, to join the Community with the status of State member. Notifications to that effect were received between October 1958 (Madagascar) and December 1958 (Ubangi Shari).

Thus, twelve new republics were formed:

Madagascar: The Malagasy Republic.

French West Africa: The Sudanese Republic, The Republic of Senegal, The Islamic Republic of Mauritania, The Republic of the Ivory Coast, The Republic of Dahomey, The Republic of the Upper Volta, The Republic of the Niger.

French Equatorial Africa: The Gabon Republic, The Republic of the Congo, The Republic of Chad, The Central African Republic.

All these States enjoy, henceforward, domestic political and administrative autonomy, without prejudice to future regroupings of various kinds.

The other territories retain the status of overseas territories, with a given degree of domestic autonomy. These are French Polynesia, New Caledonia, French Somaliland, the Comoro Islands, and St. Pierre and Miquelon.

The following instruments, affecting the overseas territories as a whole, are worthy of mention:

In the matter of *civil status*, a decree of 1 March 1958 relates to the institution of family register booklets and indicates the entries to be made in them.[2] This is an important innovation calculated to make the keeping of civil registers considerably more efficient.

In the sphere of *industrial accidents*, a decree of 24 February 1957,[3] subsequently amended by one of 23 July 1957,[4] was recast afresh by the order of 24 September 1958,[5] which confers various powers of organization on the territorial assemblies.

A decree dated 19 April 1958[6] provides for the application in the overseas territories of the Act of 11 March 1957[7] concerning *literary and artistic copyright*.

Lastly, under a decree of 24 June 1958,[8] "the provisions of the Act of 25 July 1952 establishing a French Office for the Protection of *Refugees and Stateless Persons* are made applicable in the overseas territories".

[1] Note kindly prepared by Mr. E. Dufour, Maître des requêtes au Conseil d'Etat, Paris, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] Decree No. 58-251, *Journal officiel*, March 1958, p. 2452.

[3] Decree No. 57-254, *Journal officiel*, February 1957, p. 2305.

[4] Decree No. 57-829, *Journal officiel*, July 1957, p. 7320.

[5] Order No. 58-875, *Journal officiel*, September 1958, p. 8809.

[6] Decree No. 58-447, *Journal officiel*, April 1958, p. 4026.

[7] See *Yearbook on Human Rights for 1957*, p. 82.

[8] Decree No. 58-562, *Journal officiel*, June 1958, p. 6075.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

KENYA

THE KENYA (CONSTITUTION) ORDER IN COUNCIL, 1958

Made on 3 April 1958 [1]

Part I

INTRODUCTORY

. . .

Interpretation

2. (1) In this order, unless it is otherwise provided or required by the context —

"The colony" means the colony of Kenya;

. . .

"Kenya" means the colony and the protectorate;

"Legislature of Kenya" means the legislature established for Kenya by this order, and includes any legislature previously established for the colony or the protectorate or the former East Africa protectorate;

"The protectorate" means the protectorate of Kenya;

. . .

(5) For the avoidance of doubts it is hereby declared that any person who has vacated his seat in any council, or has vacated any office, established by this order, may, if qualified, again be elected, appointed or otherwise selected as a member of that council or appointed to that office, as the case may be, from time to time.

. . .

Part IV

LEGISLATIVE COUNCIL

Legislative Council

23. (1) There shall be a Legislative Council in and for Kenya.

(2) The Legislative Council shall consist of —

(*a*) A speaker, who shall be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State;

(*b*) The persons (who shall be styled "ex officio members") who for the time being are ministers or temporary ministers and are not members of the Legislative Council of any of the classes mentioned in the following paragraphs of this sub-section;

(*c*) Thirty-six persons (who shall be styled "constituency elected members") elected in accordance with the provisions of section 24 of this order and of any law enacted in pursuance of that section;

(*d*) Such persons (who shall be styled "specially elected members") as may be elected in accordance with the provisions of regulations made under section 25 of this order;

(*e*) Such persons (who shall be styled "nominated members") as may be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State;

(*f*) Such persons (who shall be styled "substitute elected members") as may be appointed or otherwise selected to fill vacancies among the elected members under any provision of any law or regulations such as is referred to in section 26 of this order;

(*g*) Such persons (who shall be styled "temporary members") as may be appointed or otherwise selected under section 27 of this order or any provision of any law or regulations such as is referred to therein.

Constituency Elected Members

24. (1) Of the Constituency Elected Members —

(*a*) Fourteen shall be Europeans and shall be elected by Europeans;

(*b*) Fourteen shall be Africans and shall be elected by Africans;

(*c*) Six shall be Asians, of whom two shall be of the Muslim faith and shall be elected by Asians of that faith and four shall not be of that faith and shall be elected by Asians not of that faith;

(*d*) Two shall be Arabs and shall be elected by Arabs.

. . .

Specially Elected Members

25. (1) During the period of ten years beginning with the date of the commencement of this order and thereafter until any regulations made under this section otherwise provide —

(*a*) Of the total number of specially elected members, one-third shall be European, one-third shall be

[1] Published as *Statutory Instruments*, 1958, No. 600, by H.M. Stationery Office, London. The order entered into force on 5 April 1958.

African, and one-third shall be composed in the manner specified in paragraph (*b*) of this subsection;

(*b*) Of the one-third last referred to, one-quarter shall be Arab, one-quarter shall be Asian of the Muslim faith, and one-half shall be Asian not of that faith.

(2) Subject to the provisions of this section, the Governor may, by regulations, prescribe the number of specially elected members who are to be elected. . . .

Substitute Elected Members

26. (1) Provisions may be made by law enacted under this order for the filling, by appointment by the Governor or otherwise, of any vacancy in the number of constituency elected members by reason of the fact that no person has been nominated as a candidate for election as such a member in any constituency.

(2) The Governor may, by regulations, make provision for the filling, by appointment by the Governor or otherwise, of any vacancy in the number of specially elected members by reason of the fact that no person has been nominated as a candidate for election to the seat of any such member.

. . .

Part VI

THE COUNCIL OF STATE

Council of State

47. (1) There shall be a Council of State in and for Kenya.

. . .

(4) The members of the Council of State shall be appointed by the Governor by instruments under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

. . .

General Function of Council

53. It shall be the general function of the Council of State to give to the Governor or the Legislative Council, if the Governor or the Legislative Council, as the case may be, so requests, any assistance which the Council of State can provide in relation to the study of matters affecting persons of any racial or religious community in Kenya and, in particular, assistance in the form of information or advice relating to any such matter.

Particular Function of Council with Respect to Differentiating Measures

54. (1) It shall be the particular function of the Council of State to draw attention to any bill and to any instrument which has the force of law and is made in exercise of a power conferred by any law of the legislature of Kenya if that bill or instrument is, in the opinion of the Council of State, a differentiating measure; and for that purpose, the Council of State shall have the powers conferred by the following provisions of this part of this order.

(2) In this section and in the following provisions of this part of this order, the expression "differentiating measure" means any bill or instrument any of the provisions of which are, or are likely in their practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly, by prejudicing persons of that community, or indirectly, by giving an advantage to persons of another community.

. . .

MAURITIUS

THE MAURITIUS (CONSTITUTION) ORDER IN COUNCIL, 1958 of 30 July 1958 [1]

AS AMENDED BY THE MAURITIUS (CONSTITUTION) (AMENDMENT) ORDER IN COUNCIL, 1958 of 19 December 1958 [1]

Part I

INTRODUCTORY

. . .

Interpretation

2. . . .

(3) (*a*) For the purposes of this order, a person shall not be deemed to be a public officer by reason of receiving —

(i) Any salary or allowance as speaker, deputy speaker, minister, acting minister or as a member of the Legislative Council;

(ii) Any salary or allowance as mayor, chairman or a member of a municipal corporation, or as the standing counsel or the attorney of a municipal corporation;

(iii) A pension or other like allowance in respect of

[1] Both published in the Appendix to *Statutory Instruments* 1958, by H.M. Stationery Office, London. The provisions quoted above entered into force on 31 December 1958.

service under the Crown or under a municipal corporation.

(*b*) A provision in any law in force in the colony that an office shall be deemed not to be a public office for any of the purposes of this order shall have effect as if it were included in this order.

. . .

(6) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

. . .

Part III

LEGISLATIVE COUNCIL

Legislative Council

17. There shall be a Legislative Council for the colony, which shall consist of a speaker, three ex officio members, forty elected members and such nominated members, not exceeding twelve in number, as the Governor may, under the provisions of this order, appoint.

. . .

Elected Members

21. The elected members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this order, and elected in the manner provided by any law enacted under the Mauritius (Electoral Provisions) Order in Council, 1958, or this order.

. . .

Qualifications for Elected Membership

23. Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Legislative Council if, and shall not be qualified to be so elected unless, he —

(*a*) Is a British subject of the age of twenty-one years or upwards;

(*b*) Has resided in the colony for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election;

(*c*) Has resided in the colony for a period of not less than six months immediately before the date of his nomination for election; and

(*d*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Council.

Disqualifications for Elected and Nominated Membership

24. No person shall be qualified to be elected or appointed a member of the Legislative Council who —

(*a*) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

(*b*) Holds, or is acting in, any public office;

(*c*) (i) In the case of an elected member, is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the government of the colony for or on account of the public service, and has not, within one month before the day of election, published in the English language in the *Gazette* and in a newspaper circulating in the electoral district for which he is a candidate a notice setting out the nature of such contract, and his interest, or the interest of any such firm or company, therein; or

. . .

(*d*) Has been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions and has not been discharged or has obtained the benefit of *cessio bonorum* in the colony;

(*e*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the colony;

(*f*) Is under sentence of death imposed on him by a court in any part of Her Majesty's dominions, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(*g*) In the case of an elected member, is disqualified for election by any law in force in the colony by reason of his holding, or acting in, any office the functions of which involve —

(i) Any responsibility for, or in connexion with, the conduct of any election; or

(ii) Any responsibility for the compilation or revision of any electoral register; or

(*h*) Is disqualified for membership of the Council by any law in force in the colony relating to offences connected with elections.

Tenure of Office of Elected and Nominated Members

25. . . .

(2) The seat of an elected or a nominated member of the Legislative Council shall become vacant —

(*a*) Upon a dissolution of the Council;

(*b*) If he resigns it by writing under his hand addressed, if he is an elected member, to the speaker, or if he is a nominated member, to the Governor;

(*c*) If, being an elected member, he is appointed as a nominated member of the Council or, being a nominated member, he is, with his consent, nominated as a candidate in any election of a member to the Council;

(*d*) If he ceases to be a British subject;

(*e*) If he becomes a party to any contract with the government of the colony for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to him to be just to do so, the Governor, acting in his discretion, may exempt any elected or nominated member from vacating his seat under the provisions of this paragraph, if such member, before becoming a party to such contract as aforesaid, or before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Governor the nature of such contract and his interest or the interest of any such firm or company therein;

(*f*) If he ceases to be resident in the colony;

(*g*) If any of the circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election thereto by virtue of paragraphs, (*a*), (*b*), (*d*), (*e*), (*g*) or (*h*) of the last foregoing section; or

(*h*) In the circumstances mentioned in the next following section.

Vacation of Seat on Sentence

26. (1) Subject to the provisions of this section, if an elected or nominated member of the Legislative Council is sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the speaker (or, if the office of speaker is vacant or he is for any reason unable to perform the functions of his office, the deputy speaker) may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence so, however, that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the foregoing subsection, and he may again perform his functions as a member of the Council.

(3) For the purpose of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

. . .

Qualifications of Electors

30. Subject to the provisions of the next following section, a person shall be entitled to be registered as an elector in one electoral district only, but he shall not be entitled to be registered as an elector unless he —

(*a*) Is a British subject of the age of twenty-one years or upwards; and

(*b*) Has resided in the colony for a period of at least two years immediately before the date of registration or is domiciled in the colony and is resident therein at that date; and

(*c*) Has resided in the electoral district in which he claims to be registered for a period of at least six months immediately before the date of registration.

Disqualifications of Electors

31. No person shall be entitled to be registered as an elector in any electoral district who —

(*a*) Has been sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(*b*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the colony; or

(*c*) Is disqualified for registration as an elector by any law in force in the colony relating to offences connected with elections.

Right to vote at Elections

32. (1) Any person who is registered as an elector in an electoral district shall, while so registered, be entitled to vote at any election for that district unless he is prohibited from so voting by any law in force in the colony —

(*a*) Because he is a returning officer; or

(*b*) Because he has been concerned in any offence connected with elections.

(2) No person shall vote at any election for any electoral district who is not registered as an elector in that district.

. . .

FEDERATION OF NIGERIA

AMENDMENTS TO THE NIGERIA (CONSTITUTION) ORDER IN COUNCIL, 1954

NOTE

The Nigeria (Constitution) Order in Council, 1954 was amended by four amending orders during 1958. The provisions of the order which appear in the *Yearbook on Human Rights for 1954*, pages 359-62, were amended by

(i) The addition of a reference to the House of Chiefs of the Southern Cameroons to the reference to the House of Assembly of the Southern Cameroons in section 14 (*d*),[1]

(ii) The addition to section 88 (1), as set out in its amended form in section 18 of the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1957,[2] of a paragraph (*c*) reading, "(*c*) such temporary ministers as may be appointed in accordance with section 92 of this order".[3]

Among other amendments made during 1958 to the order of 1954, section 106 of the Nigeria (Constitution) (Amendment) Order in Council, 1958,[4] added to the order of 1954 the following section 223 on compulsory acquisition of property:

"223. (1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in a region except by or under the provisions of a law which, of itself or when read with any other law in force in the region —

(*a*) Requires the payment of adequate compensation therefor;

(*b*) Gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the high court of the region;

(*c*) Gives to any party to proceedings in the high court of the region relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that court sitting as a court of original jurisdiction.

(2) (*a*) Nothing in this section shall affect the operation of any existing law.

(*b*) In this subsection, the expression 'existing law' means a law in force on the thirty-first day of March 1958, and includes a law made after that date which amends or replaces any such law as aforesaid (or such a law as from time to time amended or replaced in the manner described in this paragraph) and which does not

(i) Add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired; or

(ii) Add to the purposes for which or circumstances in which such property may be taken possession of or acquired; or

(iii) Make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person owning or interested in the property; or

(iv) Deprive any person of any right such as is mentioned in paragraph (*b*) or paragraph (*c*) of subsection 1 of this section.

(3) Nothing in this section shall be construed as affecting any general law —

(*a*) For the imposition or enforcement of any tax, rate or due; or

(*b*) For the imposition of penalties or forfeitures for breach of the law whether under civil process or after conviction of an offence; or

(*c*) Relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts; or

(*d*) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of persons of unsound mind, of deceased persons, and of companies, other corporate bodies and unincorporate societies in the course of being wound up; or

(*e*) Relating to the execution of judgements or orders of courts; or

(*f*) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of humans beings, plants or animals; or

(*g*) Relating to enemy property; or

(*h*) Relating to trusts and trustees; or

(*i*) Relating to the limitation of actions; or

(*j*) Relating to property vested in statutory corporations; or

(*k*) Relating to the temporary taking of possession of property for the purposes of any examination, investigation or inquiry; or

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[1] This amendment was made by section 5 of the Nigeria (Constitution) (Amendment) Order in Council, 1958, published as *Statutory Instruments* 1958, No. 429, by H.M. Stationery Office, London.

[2] See *Yearbook on Human Rights for 1957*, p. 285.

[3] This amendment was made by section 3 of the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1958, published as *Statutory Instruments* 1958, No. 1522, by H.M. Stationery Office, London.

[4] *Statutory Instruments* 1958, No. 429. This amending order entered into force on 1 April 1958.

(*l*) Providing for the carrying out of work on land for the purpose of soil conservation.

"(4) The provisions of this section shall apply to the compulsory taking of possession of property, movable or immovable, and the compulsory acquisition of rights over and interests in such property by or on behalf of the Crown.

"(5) The provisions of this section shall apply in relation to the Southern Cameroons and Lagos as they apply in relation to a region, and for that purpose references in subsection 1 to a region shall be construed as if they were references to the Southern Cameroons or to Lagos, as the case may be."

ELECTIONS (HOUSE OF REPRESENTATIVES) REGULATIONS, 1958[1]

Part I

PRELIMINARY

1. . . .

(2) These regulations shall apply to the registration of voters for, and in respect of all other things necessary or expedient to prepare for, elections to the proposed House of Representatives of three hundred and twenty elected members referred to in the Nigeria (Electoral Provisions) Order in Council, 1958, and references herein to the House of Representatives (other than in regulation 17) shall be construed as references to such proposed House of Representatives.

. . .

Part II

QUALIFICATIONS AND DISQUALIFICATIONS OF ELECTORS

4. Subject to the provision of regulations 5 and 19, every person shall be entitled to be registered as an elector and if so registered to vote at an election who on the qualifying date is ordinarily resident in Nigeria and is a British subject or British protected person of the age of twenty-one years or upwards, and if ordinarily resident in the Northern Region is a male.

5. No person shall be entitled to be registered as an elector or to vote at any election who —

(*a*) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state;

(*b*) Has been sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding six months, and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(*c*) Is, under any law in force in any part of Nigeria, adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(*d*) Is disqualified in accordance with any law relating to corrupt practices at elections.

6. No person shall be entitled to be registered as an elector in more than one constituency or to vote more than once in any election.

. . .

[Regulations 71, 109 and 137 make provisions safeguarding secrecy of voting.]

. . .

Part VIII

ELECTORAL OFFENCES

. . .

114. . . .

(2) No person shall on the date on which an election is held in the constituency —

(*a*) Convene, hold or attend any public meeting;

(*b*) Operate any megaphone, amplifier or public address apparatus for the purpose of making announcements concerned with the election (unless he is an officer appointed under these regulations making official announcements).

. . .

Part X

GENERAL PROVISIONS

. . .

143. (1) The following regulations shall be revoked with effect from the date that provision for the proposed House of Representatives shall have been made by order of Her Majesty in Council and shall have come into operation —

(*a*) Elections (House of Representatives) (General Provisions) Regulations, 1954;

(*b*) Elections (House of Representatives) (Eastern Region) Regulations, 1954;

(*c*) Elections (House of Representatives) (Southern Cameroons) Regulations, 1954;

(*d*) Elections (House of Representatives) (Northern Region) Regulations, 1954;

(*e*) Elections (House of Representatives) (Western Region) Regulations, 1954;

(*f*) Elections (House of Representatives) (Lagos) Regulations, 1954.[1]

. . .

[1] Published in *Supplement to Official Gazette No. 49, Vol. 45, 24th July — Part B.* The regulations entered into force on 24 July 1958.

[1] See *Yearbook on Human Rights for 1954*, pp. 362-3.

NORTHERN RHODESIA

THE NORTHERN RHODESIA (ELECTORAL PROVISIONS) ORDER IN COUNCIL, 1958

Made on 11 September 1958 [1]

Whereas it is proposed that in due course there should be established for Northern Rhodesia a Legislative Council (hereinafter referred to as "the proposed council") containing twenty-two elected members in addition to certain other members;

And whereas it is expedient that, for the avoidance of delay in constituting the proposed council, certain provisions should be made with respect to the election of those elected members, . . .

Interpretation

2. (1) In this order, unless it is otherwise expressly provided or the context otherwise requires —

. . .

"The existing orders" mean the Northern Rhodesia (Legislative Council) Orders in Council, 1945 to 1954;

. . .

"Voter" includes an ordinary voter and a special voter; . . .

Electoral Districts

3. (1) For the purpose of returning elected members to the proposed Council, Northern Rhodesia shall be divided into the following electoral districts — that is to say —

(*a*) Twelve electoral districts (hereinafter referred to as "ordinary constituencies") which shall together comprise the Crown lands in the western, central and southern provinces (with such exceptions as may be prescribed) and such adjoining areas of native reserve and native trust land as may be prescribed;

(*b*) Six electoral districts (hereinafter referred to as "special constituencies") which shall together comprise all parts of Northern Rhodesia not included in the ordinary constituencies;

(*c*) Two electoral districts (hereinafter referred to as "reserved African constituencies") which shall together comprise all parts of Northern Rhodesia included in the ordinary constituencies; and

(*d*) Two electoral districts (hereinafter referred to as "reserved European constituencies") which shall together comprise all parts of Northern Rhodesia included in the special constituencies.

. . .

[1] Published as *Statutory Instruments* 1958, No. 1520, by H.M. Stationery Office, London. The order entered into force on 18 September 1958.

Qualifications and Disqualifications of Voters

4. (1) For the purposes of elections to the proposed Council, the electorate shall consist of persons who are registered as voters.

(2) Subject to the provisions of subsection 5 of this section, no person shall be qualified for registration as a voter unless he is so qualified under either subsection 4 or subsection 6 of this section and —

(*a*) He is a citizen of the United Kingdom and colonies or a citizen of Rhodesia and Nyasaland or is a British protected person by virtue of his connexion with Northern Rhodesia; and

(*b*) He has attained the age of twenty-one years; and

(*c*) He has such residence qualifications as may be prescribed; and

(*d*) He is able to complete, in English and without assistance, such form of application for registration as may be prescribed or, if unable so to do by reason solely of some physical incapacity, has an adequate knowledge of the English language.

. . .

(4) Subject to the provisions of subsections 2 and 7 of this section, a person who has any of the qualifications specified in part I of the schedule to this order shall be qualified to be registered as an ordinary voter.

(5) Subject to the provisions of subsection 7 of this section, a person who on the date of commencement of this order is registered as a voter for the purpose of electing elected members of the Legislative Council established by the existing orders shall be qualified to be registered as an ordinary voter.

(6) Subject to the provisions of subsections 2 and 7 of this section, a person who is not qualified under the provisions of subsections 4 or 5 thereof for registration as an ordinary voter but who has any of the qualifications specified in part II of the schedule to this order shall be qualified to be registered as a special voter.

(7) Provision may be made by or under any law enacted under the existing orders for the imposition of disqualifications for registration as a voter and for the removal from the register of voters of persons who have become disqualified for registration as such, but, subject to the provisions of subsection 8 of this section, no person who has been registered as an ordinary or a special voter shall be removed from the register of ordinary or special voters by reason only of the fact that he no longer possesses any of the

qualifications specified in part I or part II (as the case may be) of the schedule to this order.

(8) Any person who is registered as a special voter and who subsequently becomes qualified to be registered as an ordinary voter may apply in the prescribed manner to be registered as an ordinary voter and thereupon he shall be registered accordingly and his previous registration shall be cancelled.

(9) Part III of the schedule to this order shall apply for the interpretation of parts I and II thereof.

Qualifications and Disqualifications for Election as a Member

5. (1) No person shall be qualified to be elected as a member of the proposed Council —

(*a*) For an ordinary constituency, unless he is registered as an ordinary voter;

(*b*) For a special constituency, unless he is registered as an ordinary voter or a special voter and has obtained a certificate in the prescribed form to the effect that they have no objection to his being a candidate for election from at least two-thirds of the chiefs recognized under the Native Authority Ordinance, or the Barotse Native Authority Ordinance, or any ordinance amending or replacing the same, as native authorities for areas contained within the constituency concerned.

(*c*) For a reserved African constituency, unless he is an African and is registered as an ordinary voter; or

(*d*) For a reserved European constituency, unless he is a European and is registered as an ordinary voter.

(2) Provision may be made by or under any law enacted under the existing orders prescribing residence qualifications for election to the proposed Council that are additional to the residence qualifications prescribed for registration as a voter and imposing disqualifications for election as aforesaid that are additional to the disqualifications imposed for registration as a voter.

Provision for Elections

6. (1) Subject to the foregoing provisions of this order, provision may be made by or under any law enacted under the existing orders for the election of twenty-two members to the proposed Council.

. . .

(3) A law enacted in pursuance of this section may provide that no person shall be registered as a voter unless he has taken an oath or affirmation of allegiance to Her Majesty in such form and manner as may be prescribed.

. . .

Schedule

QUALIFICATIONS FOR REGISTRATION AS ORDINARY OR SPECIAL VOTERS

Part I. *Qualifications for Registration as an Ordinary Voter*

1. An income qualification of not less than seven hundred and twenty pounds.

2. A property qualification of not less than one thousand five hundred pounds.

3. (In the case of a person who has completed a course of primary education of the prescribed standard) either an income qualification of not less than four hundred and eighty pounds or a property qualification of not less than one thousand pounds.

4. (In the case of a person who has attended at the first four years of a course of secondary education of the prescribed standard) either an income qualification of not less than three hundred pounds or a property qualification of not less than five hundred pounds.

5. Membership of such classes of ministers of religion or such membership of any of such religious bodies as may be prescribed.

6. Membership of any of such classes of chiefs as may be prescribed.

7. Being the wife of a person who possesses any of the other qualifications specified in this part of this schedule.

Part II. *Qualifications for Registration as a Special Voter*

1. An income qualification of not less than one hundred and fifty pounds.

2. A property qualification of not less than five hundred pounds.

3. (In the case of a person who has attended at the first two years of a course of secondary education of the prescribed standard) an income qualification of not less than one hundred and twenty pounds.

4. Membership of any of such classes of village headmen, tribal councillors and pensioners as may be prescribed.

5. Being the wife of a person who possesses any of the other qualifications specified in this part of this schedule.

[Part III of the schedule contains interpretations of some of the terms used earlier in the schedule.]

SIERRA LEONE

THE SIERRA LEONE (CONSTITUTION) ORDER IN COUNCIL, 1958

Made on 30 July 1958 [1]

Part I

PRELIMINARY

Interpretation

1. (1) In this order, unless the context otherwise requires:

. . .

"Meeting" means any sitting or sittings of the House of Representatives commencing when the House first meets after being summoned at any time and terminating when the House is adjourned *sine die* or at the conclusion of a session;

. . .

(5) (*a*) For the purposes of this order, a person shall not be considered to hold a public office if he is on leave of absence pending relinquishment of that office or by reason only that he is in receipt of a pension or other like allowance in respect of service in any such office; and if it shall be declared by any provision of any law for the time being in force in Sierra Leone that an office shall not be a public office for all or any of the purposes of this order, this order shall have effect accordingly.

(b) For the purposes of this order, a person shall not be considered to be a public officer by reason of the fact that he is in receipt of a salary or other emoluments or allowances in respect of his tenure of the office of speaker, deputy speaker, minister, ministerial secretary, member of the House of Representatives, chief, tribal authority, member of a tribal authority or member of a native court.

. . .

Part III

THE HOUSE OF REPRESENTATIVES

House of Representatives

19. There shall be a House of Representatives for Sierra Leone, which shall, subject to the provisions of this order, consist of a speaker, fifty-one elected members, and two nominated members:

. . .

Elected Members

23 (*a*) The elected members of the House of Representatives shall be persons qualified for election in accordance with the provisions of this order, and elected in the manner provided by, or in pursuance of, any law enacted under this order, of whom

(i) Fourteen shall be elected in the colony, and

(ii) Thirty-seven shall be elected in the protectorate.

(*b*) In this section, the term "protectorate" shall have the meaning assigned to it in subsection 2 of section 2 of the Sierra Leone Protectorate Ordinance,[2] and the term "colony" shall mean the remainder of Sierra Leone.

. . .

Qualifications for Elected and Nominated Membership

26. Subject to the provisions of section 27 of this order, a person shall be qualified to be elected as an elected member or appointed as a nominated member of the House of Representatives —

(*a*) If he is a British subject or a British protected person of the age of twenty-one years or more; and

(*b*) If he is at the date of his election or appointment, as the case may be, seized or possessed of property, whether real or personal, of an aggregate value of not less than one hundred pounds; and

(*c*) If, in any case in which an election of members to the House is carried out by a process of —

(i) Indirect election, he is a member of such local government body and of such class of persons as may be prescribed;

(ii) Direct election, he is registered in any electoral district as an elector for the election of members to the House; and

(*d*) If so provided in respect of any specified part of Sierra Leone by any law in force for the time being in Sierra Leone, he is liable to pay such tax, or is entitled to such exemption from liability to pay tax, as may be prescribed,

and no other person shall be qualified to be so elected or appointed.

Disqualification for Membership

27. No person shall be qualified to be elected as an elected member or appointed as a nominated member of the House of Representatives who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or State; or

(*b*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(*c*) Is under sentence of death or is serving, or has within the immediately preceding five years completed the serving of, a sentence of imprisonment (by whatever name called), without the option of a fine, of or

[1] Published as *Statutory Instruments* 1958, No. 1259, by H.M. Stationery Office, London. The order entered into force on 14 August 1958.

[2] Cap. 185, *Revised Edition Sierra Leone Laws*, 1946.

exceeding twelve months imposed in any part of Her Majesty's dominions and has not received a free pardon; or

(*d*) Holds, or is acting in, any public office; or

(*e*) Is a party to, or is a partner in a firm, or a director or manager of a company, which is a party to, any subsisting contract (the amount or value of the consideration for which exceeds one hundred pounds, or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds one hundred pounds) with the Government of Sierra Leone for or on account of the public service, and,

(i) In the case of an elected member, has not published within one month before the day of the election, in the *Gazette* and in some newspaper circulating in the area for which he is a candidate, a notice setting out the nature of such contract and his interest, or the interest of any such firm or company therein; or

. . .

(*f*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in Sierra Leone; or

(*g*) Is unable to speak, or (unless prevented by blindness or other physical cause) to read or write, the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House; or

(*h*) Is, in the case of an elected member, disqualified for election by any law for the time being in force in Sierra Leone by reason of his hiolding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election or the compilation or revision of any electoral register; or

(*i*) Is disqualified for membership of the House under any law for the time being in force in Sierra Leone relating to offences connected with the election of members.

Tenure of Office of Elected and Nominated Members

28. . . .

(2) Every elected and nominated member of the House of Representatives shall cease to be a member at the next dissolution of the House after he has been elected or nominated or previously thereto if his seat has become vacant under the provisions of this order.

(3) The seat of an elected member or a nominated member of the House of Representatives shall become vacant —

(*a*) If he is elected or appointed speaker; or

(*b*) If, in the case of an elected member, he is absent from two consecutive meetings of the House without having obtained from the speaker or, as occasion may require, the deputy speaker, before the termination of either of such meetings, permission to be or to remain absent therefrom; or

. . .

(*d*) If, being an elected member, he is appointed as a nominated member of the House of Representatives or, being a nominated member, he accepts nomination as a candidate for election to the House; or

(*e*) If he takes any oath, or makes any declaration or acknowledgment of allegiance, obedience or adherence to any foreign power or State; or does, concurs in or adopts any act done with the intention that he shall become a subject or citizen of any foreign power or State; or

(*f*) If he is adjudged or otherwise declared a bankrupt under any law in force in any part of Her Majesty's dominions; or

(*g*) If he becomes subject to any of the disqualifications specified in paragraph (*c*) of section 27 of this order; or

(*h*) If he becomes a party to any contract (the amount or value of the consideration for which exceeds one hundred pounds, or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds one hundred pounds) with the Government of Sierra Leone for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company, which is a party to any such contract:

Provided that, if in the circumstances it shall appear to them or him to be just to do so, the House may by resolution exempt any elected member and the Governor, acting in his discretion, may exempt any nominated member from vacating his seat under the provision of this paragraph, if such member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or as director or manager of a company), disclose to the House or to the Governor, as the case may be, the nature of such contract and his interest, or the interest of any such firm or company, therein; or

(*i*) If, under any law for the time being in force in Sierra Leone, he is adjudged to be of unsound mind or is detained as a criminal lunatic; or

(*j*) If he becomes disqualified for membership of the House under any law for the time being in force in Sierra Leone relating to offences connected with the election of members; or

(*k*) If, being an elected member, he is appointed to, or to act in, any public office; or

. . .

(*m*) If he otherwise ceases to possess qualification for election or appointment, as the case may be, under the provisions of this order.

(4) An elected member of the House may, by writing under his hand addressed to the speaker, and a nominated member of the House may, by writing under his hand addressed to the Governor, resign his seat in the House.

(6) A person whose seat in the House has become vacant may, if qualified, again be elected or appointed as a member of the House from time to time.

. . .

SINGAPORE

THE SINGAPORE (CONSTITUTION) ORDER IN COUNCIL, 1958

Made on 21 November 1958[1]

Whereas at a conference held in London in the months of March and April 1957 between representatives of Her Majesty's Government in the United Kingdom (in this order called "the Government of the United Kingdom") and representatives of the colony of Singapore, it was agreed that it was desirable that Singapore should bear the title "The State of Singapore", and that a new constitution should be established conferring upon the State of Singapore internal self-government under a Yang di-Pertuan Negara, and reserving to the Government of the United Kingdom responsibility for defence and external affairs:

. . .

And whereas it was further agreed at the said conference, and it is hereby expressly affirmed, that it shall be the responsibility of the Government of Singapore constantly to care for the interests of racial and religious minorities in Singapore, and in particular that it shall be the deliberate and conscious policy of the Government of Singapore at all times to recognise the special position of the Malays, who are the indigenous people of the island and are in most need of assistance, and accordingly, that it shall be the responsibility of the Government of Singapore to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interest and the Malay language:

. . .

Part I

PRELIMINARY

Interpretation

1. (1) In this order, unless it is otherwise provided or the context otherwise requires —

. . .

"The Assembly" means the Legislative Assembly established by this order, and includes the first Assembly;

. . .

"Citizen of Singapore" means any person who, under any law for the time being in force in Singapore, has the status of a citizen of Singapore;

. . .

"Singapore" means the State of Singapore;

"Sitting" means a period during which the Assembly is sitting continuously without adjournment, including any period during which the Assembly is in committee;

. . .

(5) For the purposes of this order a person shall not be considered as holding a public office by reason only that he is in receipt of a pension or other like allowance in respect of public service.

(6) If it is provided by any law for the time being in force in Singapore that an office shall not be a public office for the purposes of part V of this order, this order shall have effect accordingly as if that provision of that law were enacted herein.

(7) For the purposes of this order, a person shall not be considered as holding a public office by reason of the fact that he is in receipt of any remuneration or allowances (including a pension or other like allowance) in respect of his tenure of the office of speaker, deputy speaker, minister, assistant minister or member of the Assembly.

. . .

(14) In the interpretation of this order full regard shall be had to the duty of the Government of Singapore at all times to discharge the responsibilities which are recorded in the fourth recital of the preamble thereto (which relates to the special position of the Malays and the interests of other minorities) and which are hereby laid upon it.

. . .

Revocation

3. The Singapore Colony Orders in Council, 1955[1] and 1956,[2] are hereby revoked.

[1] Published as *Statutory Instruments* 1958, No. 1956, by H.M. Stationery Office, London. The provisions here quoted entered into force on 3 June 1959.

[2] See *Yearbook on Human Rights for 1955*, pp. 313-4.

[3] *Statutory Instruments* 1956, No. 223.

Part II

YANG DI-PERTUAN NEGARA

Office of Yang di-Pertuan Negara

4. (1) There shall be in and for Singapore a representative of Her Majesty to be known as the Yang di-Pertuan Negara.

. . .

Petitions

11. All petitions submitted to Her Majesty from any person or body in Singapore shall be so submitted through the Yang di-Pertuan Negara.

. . .

Part V

CONSTITUTION OF LEGISLATIVE ASSEMBLY

Legislative Assembly

34. (1) There shall be a Legislative Assembly in and for Singapore which shall consist of fifty-one members.

. . .

Members of the Assembly

39. Members of the Assembly shall be persons qualified for election in accordance with the provisions of this order and elected in the manner provided by or under any law for the time being in force in Singapore.

Qualifications for Membership

40. (1) Subject to the provisions of sections 41 and 111 of this order, any citizen of Singapore who —

(*a*) Is of or above such age and possesses such residence qualifications as may be prescribed by or under any law for the time being in force in Singapore; and

(*b*) Is able, with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly, to speak and, unless incapacitated by blindness or other physical cause, to read and write at least one of the following languages, that is to say, English, Malay, Mandarin and Tamil;

shall be qualified to be elected a member of the Assembly, and no other person shall be qualified to be so elected.

. . .

Disqualification for Membership

41. A person shall not be qualified to be elected as a member of the Assembly who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or State; or

(*b*) Is employed by any foreign power or State or by any organization wholly or principally owned or controlled by any foreign power or State; or

(*c*) Holds, or is acting in, any public office; or

(*d*) Is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any contract with the Government of Singapore for or on account of the public service, and has not, within one month before the date of election, published in the *Gazette* a notice setting out any such contract and his interest, or the interest of any such firm or company, therein; or

(*e*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(*f*) Under any law for the time being in force in Singapore, is a person adjudged to be of unsound mind or detained as a criminal lunatic; or

(*g*) Has been sentenced by a court in any part of Her Majesty's dominions to death or imprisonment (by whatever name called) for a term of or exceeding twelve months, and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(*h*) Is disqualified for membership of the Assembly under any law for the time being in force in Singapore relating to offences connected with elections; or

(*i*) Is disqualified for election by any law for the time being in force in Singapore by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register.

Tenure of Office of Members

42. (1) Every member of the Assembly shall cease to be a member at the next dissolution of the Assembly after he has been elected, or previously thereto if his seat becomes vacant under the provisions of this order.

(2) The seat of a member shall become vacant —

(*a*) If he ceases to be a citizen of Singapore; or takes any oath, or makes any declaration or acknowledgment of allegiance, obedience or adherence to any foreign power or State; or does, concurs in or adopts any act done with the intention that he shall become a subject or citizen of any foreign power or State; or

(*b*) If he enters into the employment of any foreign power or State or of any organization wholly or principally owned or controlled by any foreign power or State; or

(*c*) If he is appointed to or to act in any public office; or

(*d*) If he is adjudged or otherwise declared bankrupt under any law for the time being in force in any part of Her Majesty's dominions; or

(*e*) If he becomes a party to any contract with the Government of Singapore for or on account of the public service, or if any firm in which he is a partner, or any company in which he is a director or manager, becomes a party to any such contract, or he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that such member shall not vacate his seat under the provisons of this paragraph if, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contact (whether as a partner in a firm or as a director or manager of a company), he discloses to the speaker the nature of such contract and the interest of any such firm or company therein and the Assembly by resolution exempts him from the provisions of this paragraph; or

(*f*) If, by writing under his hand addressed to the speaker, he resigns his seat in the Assembly; or

(*g*) If, during two consecutive months in each of which sittings of the Assembly (or any committee of the Assembly to which he has been appointed) are held, he is absent from all such sittings without having obtained from the speaker before the termination of any such sitting permission to be or to remain absent therefrom; or

(*h*) If he becomes subject to any of the disqualifications specified in paragraphs (*f*), (*h*) and (*i*) of section 41 of this order.

(3)(*a*) Subject to the provisions of the following paragraph, if any member of the Assembly is sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term of or exceeding twelve months, he shall forthwith cease to exercise any of his functions as a member and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly signified by resolution.

(*b*) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Assembly shall not become vacant under the preceding paragraph and he may resume the exercise of his functions as a member.

(*c*) For the purposes of this subsection, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

(4) Any person whose seat in the Assembly has become vacant may, if qualified, again be elected as a member of the Assembly from time to time.

. . .

Part XIII

TEMPORARY AND TRANSITIONAL PROVISIONS

. . .

Preservation of Singapore Colony (Electoral Provisions) Order in Council, 1958

111. Nothing in part V of this order shall affect the continued operation of the provisions of the Singapore Colony (Electoral Provisions) Order in Council, 1958.

. . .

THE SINGAPORE COLONY (ELECTORAL PROVISIONS) ORDER IN COUNCIL, 1958

Made on 11 September 1958 [1]

. . .

And whereas it is proposed that there shall in due course be established a new constitution making provision, among other things, for a Legislative Assembly containing fifty-one elected members:

And whereas it is expedient that, if provision is so made, the Legislative Assembly so provided for should be constituted and summoned as soon as practicable after the day appointed for the said constitution to come into operation (in this order referred to as "the appointed day"); that elections for the said fifty-one members should therefore be held before that day: and that, for this purpose, provision should be made regulating the said elections and providing for the qualification and disqualification of persons for election to the Assembly first to be summoned under the said constitution (in this order referred to as "the first Assembly"):

. . .

Interpretation

1. (1) In this order —

"Citizen of Singapore" means any person who,

[1] Published as *Statutory Instruments* 1958, No. 1521, by H.M. Stationery Office, London. The order entered into force on 18 September 1958.

under any law for the time being in force in Singapore, has the status of a citizen of Singapore;

. . .

Holding of Elections

3. The Governor may, at any time after the commencement of this order but before the appointed day, cause elections to be held for the election of fifty-one members of the first Assembly.

. . .

Qualifications for Membership of First Assembly

5. (1) Subject to the provisions of sections 6 and 7 of this order, any citizen of Singapore who —

(*a*) Is of or above such age and possesses such residence qualifications as may be prescribed by or under the Singapore Legislative Assembly Elections Ordinance; and

(*b*) Is able, with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly, to speak and, unless incapacitated by blindness or other physical cause, to read and write at least one of the following languages, that is to say, English, Malay, Mandarin and Tamil;

shall be qualified to be elected in the aforesaid elections as a member of the first Assembly, and no other person shall be qualified to be so elected.

. . .

Disqualification for Membership

6. A person shall not be qualified to be elected in the aforesaid elections as a member of the first Assembly who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or State; or

(*b*) Is employed by any foreign power or State or by any organization wholly or principally owned or controlled by any foreign power or State; or

(*c*) Holds, or is acting in, any public office; or

(*d*) Is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any contract with the Government of Singapore for or on account of the public service, and has not, within one month before the date of election, published in the *Gazette* a notice setting out any such contract and his interest, or the interest of any such firm or company, therein; or

(*e*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(*f*) Under any law for the time being in force in Singapore, is a person adjudged to be of unsound mind or detained as a criminal lunatic; or

(*g*) Has been sentenced by a court in any part of Her Majesty's dominions to death or imprisonment (by whatever name called) for a term of or exceeding twelve months, and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(*h*) Is disqualified for membership of the first Assembly under any provisions of the Singapore Legislative Assembly Elections Ordinance which relate to offences connected with elections or is disqualified for membership of the Legislative Assembly of the colony of Singapore under any other law for the time being in force in Singapore which so relates; or

(*i*) Is disqualified by the Singapore Legislative Assembly Elections Ordinance for election to the first Assembly by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register, or is disqualified by any other law for the time being in force in Singapore for election to the Legislative Assembly of the colony of Singapore for election to the Legislative Assembly of the colony of Singapore by reason of his holding, or acting in, any such office.

Special Disqualification for Membership of First Assembly

7. (1) No person shall be qualified to be elected as a Member of the first Assembly if, at the date of his nomination for election,

(*a*) He is undergoing a sentence of imprisonment for any offence against the Sedition Ordinance; or

(*b*) He is detained under the provisions of the Preservation of Public Security Ordinance, 1955, and has not been granted a certificate under this section.

. . .

UNITED STATES OF AMERICA

DEVELOPMENTS IN NON-SELF-GOVERNING TERRITORIES

See page 250, 254, 255 and 256.

PART III

INTERNATIONAL AGREEMENTS

INTERNATIONAL LABOUR ORGANISATION

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958

CONVENTION NO. 111, ADOPTED ON 25 JUNE 1958 BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FORTY-SECOND SESSION [1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

ADOPTS this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Art. 1. 1. For the purpose of this Convention the term "discrimination" includes —

(*a*) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(*b*) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Art. 2. Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Art. 3. Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice —

(*a*) To seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(*b*) To enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(*c*) To repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(*d*) To pursue the policy in respect of employment under the direct control of a national authority;

(*e*) To ensure observance of the policy in activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(*f*) To indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Art. 4. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

[1] Published in appendix XIV to the *Record of Proceedings* of the International Labour Conference, Forty-second Session, Geneva, 1958.

Art. 5. 1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Art. 6. Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Art. 7. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Art. 8. 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. 9. 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. 10. 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications 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. 11. 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 and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Art. 12. 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. 13. 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 9 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.

Art. 14. The English and French versions of the text of this Convention are equally authoritative.

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) RECOMMENDATION, 1958

RECOMMENDATION NO. 111, ADOPTED ON 25 JUNE 1958 BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FORTY-SECOND SESSION [1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

[1] Published in appendix XIV to the *Record of Proceedings* of the International Labour Conference, Forty-second Session, Geneva, 1958.

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the Year one thousand nine hundred and fifty-eight the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958;

The Conference recommends that each Member should apply the following provisions:

I. Definitions

1. (1) For the purpose of this Recommendation the term "discrimination" includes —

(*a*) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(*b*) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II. Formulation and Application of Policy

2. Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organizations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:

(*a*) The promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;

(*b*) All persons should, without discrimination, enjoy equality of opportunity and treatment in respect of —

(i) Access to vocational guidance and placement services;

(ii) Access to training and employment of their own choice on the basis of individual suitability for such training or employment;

(iii) Advancement in accordance with their individual character, experience, ability and diligence;

(iv) Security of tenure of employment;

(v) Remuneration for work of equal value;

(vi) Conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connexion with employment;

(*c*) Government agencies should apply non-discriminatory employment policies in all their activities;

(*d*) Employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organization obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;

(*e*) In collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;

(*f*) Employers' and workers' organizations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should —

(*a*) Ensure application of the principles of non-discrimination —

(i) In respect of employment under the direct control of a national authority;

(ii) In the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(*b*) Promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as —

(i) Encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;

(ii) Making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;

(iii) Making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Appropriate agencies, to be assisted where

practicable by advisory committees composed of representatives of employers' and workers' organizations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular —

(*a*) To take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;

(*b*) To receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and

(*c*) To consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognized to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorites, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

III. Co-ordination of Measures for the Prevention of Discrimination in all Fields

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.

OTHER AGREEMENTS

CHARTER OF THE UNITED ARAB STATES of 8 March 1958[1]

Part I

THE UNION

Art. 1. A union named the United Arab States is hereby established, consisting of the United Arab Republic, the Mutawakkilite Kingdom of Yemen and the Arab States that agree to join it.

. . .

Art. 3. Citizens of the union have equal rights and duties.

Art. 4. Every citizen of the union has the right to work and to hold public office in the countries of the union without discrimination and within the limits of the law.

Art. 5. Freedom of movement in the union is guaranteed within the limits of the law.

. . .

[1] Text published in the *Official Journal* of the United Arab Republic, No. 2 *bis* of 9 March 1958, and kindly furnished by Mr. Adel El Tahry, correspondent of the *Yearbook on Human Rights* appointed by the government of the United Arab Republic. Translation by the United Nations Secretariat.

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS[1]

I. United Nations

1. *Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 484-6).

During 1958, Morocco,[2] Austria and Ghana became parties to the convention, by instruments of accession deposited on 24 January, 19 March and 24 December respectively.

2. *Convention relating to the Status of Refugees (Geneva, 1951)* (see *Yearbook on Human Rights for 1951*, pp. 581-8)

No states became parties to the convention during 1958.

3. *Convention on the Political Rights of Women (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 375-6)

During 1958, Haiti, Finland[2] and Indonesia[2] became parties to the convention, by instruments of ratification or accession deposited on 12 February, 6 October and 16 December respectively.

4. *Convention on the International Right of Correction (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 373-5)

El Salvador became a party to the convention by instrument of ratification deposited on 28 October 1958.

5. *Slavery Convention of 1926 as amended by the Protocol of 7 December 1953* (signed in New York) (see *Yearbook on Human Rights for 1953*, pp. 345-6)

During 1958, Hungary and Ceylon became parties to the convention as amended by the protocol, by instruments of ratification or accession deposited on 26 February and 21 March respectively.

6. *Convention on the Status of Stateless Persons (New York, 1954)* (see *Yearbook on Human Rights for 1954*, pp. 369-75)

Israel became a party to the convention by instrument of ratification deposited on 23 December 1958.

7. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Geneva, 1956)* (see *Yearbook on Human Rights for 1956*, pp. 289-91)

During 1958, Australia, Haiti, Italy, Hungary, Pakistan, Ceylon, United Arab Republic, Denmark, Yugoslavia, Czechoslovakia, Bulgaria, Albania, and the Ukrainian Soviet Socialist Republic became parties to the convention, by instruments of ratification or accession deposited on 6 January, 12 February, 12 February, 26 February, 20 March, 21 March, 17 April, 24 April, 20 May, 13 June, 21 August, 6 November and 3 December respectively.

8. *Convention on the Nationality of Married Women (New York 1957)* (see *Yearbook on Human Rights for 1957*, pp. 301-2)

During 1958, Sweden, Norway, Ceylon, the Union of Soviet Socialist Republics, China, the Ukrainian Soviet Socialist Republic, New Zealand and the Byelorussian Soviet Socialist Republic became parties to the convention, by instruments of ratification or accession deposited on 13 May, 20 May, 30 May, 17 September, 22 September, 3 December, 17 December and 23 December respectively.

The convention came into force on 11 August 1958.

II. International Labour Organisation

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 420-5).

No States ratified the convention during 1958.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 425-7).

No States ratified the convention during 1958.

3. *Freedom of Association and Protection of the Right to Organize Convention, 1948* (see *Yearbook on Human Rights for 1948*, pp. 427-30).

During 1958, the ratifications of Luxembourg, Italy, Panama and Yugoslavia were registered, on 3 March, 13 May, 3 June and 23 July respectively.

[1] Concerning the status of these agreements at the end of 1957, see *Yearbook on Human Rights for 1957*, pp. 305-7. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of the Organisation of American States and the Council of Europe was furnished by the International Labour Office, the Pan American Union and the Secretariat-General of the Council of Europe, respectively. The information concerning the Geneva Conventions of 12 August 1949 was taken from the *Annual Report, 1958*, of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depositary), the information concerning agreements adopted under the auspices of UNESCO was furnished by the secretariat of UNESCO.

[2] With reservation or reservations.

4. *Right to Organize and Collective Bargaining Convention, 1949* (see *Yearbook on Human Rights for 1949*, pp. 291-2)

During 1958, the ratifications of Luxembourg, Italy, Yugoslavia and Romania were registered, on 3 March, 13 May, 23 July and 26 November respectively.

5. *Equal Remuneration Convention, 1951* (see *Yearbook on Human Rights for 1951*, pp. 469-70)

During 1958, the ratifications of Iceland, Haiti, China, Panama, Indonesia and India were registered, on 17 February, 4 March, 1 May, 3 June, 11 August and 25 September respectively.

6. *Social Security (Minimum Standards) Convention, 1952* (see *Yearbook on Human Rights for 1952*, pp. 377-89)

The Federal Republic of Germany registered its ratification of this convention on 21 February 1958, as regards parts II-X thereof.

7. *Maternity Protection Convention (Revised), 1952* (see *Yearbook on Human Rights for 1952*, pp. 389-92)

No States ratified the convention during 1958.

8. *Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955* (see *Yearbook on Human Rights for 1955*, pp. 325-7)

During 1958, the ratifications of the Dominican Republic, El Salvador and the United Arab Republic were registered, on 10 February, 18 November and 18 December respectively.

The convention came into force on 7 June 1958.

9. *Abolition of Forced Labour Convention, 1957* (see *Yearbook on Human Rights for 1957*, pp. 303-4)

During 1958, the ratifications of Denmark, Haiti, Austria, Jordan, Israel, Norway, Cuba, Sweden, Ireland, the Dominican Republic, Switzerland, Poland, Honduras, Federation of Malaya, United Arab Republic, El Salvador and Ghana were registered on 17 January, 4 March, 5 March, 31 March, 10 April, 14 April, 2 June, 2 June, 11 June, 23 June, 18 July, 30 July, 4 August, 13 October, 23 October, 18 November and 15 December respectively.

10. *Discrimination (Employment and Occupation) Convention, 1958* (see pp. 307 above)

No States ratified the convention during 1958.

III. United Nations Educational, Scientific and Cultural Organization

1. *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 431-3)

No States became parties to the convention during 1958.

2. *Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (Lake Success, 1950)* (see *Yearbook on Human Rights for 1950*, pp. 411-15)

During 1958, Afghanistan, Austria and Jordan became parties to the agreement, by instruments of ratification or acceptance deposited on 19 March, 12 June and 31 December respectively. By a communication received on 7 April 1958, the Government of Ghana indicated that it assumes all obligations and responsibilities of the Government of the United Kingdom of Great Britain and Northern Ireland arising from the application of this Convention to the Gold Coast, and confirmed that it considers itself bound thereby.

3. *Universal Copyright Convention and Protocols thereto (Geneva, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 398-403)

During 1958, Ireland and Liechtenstein became parties to the convention, by instruments of ratification or accession deposited on 20 October and 22 October respectively. The ratification of Ireland referred also to protocols I, II and III, while the accession of Liechtenstein referred also to protocols I and II.

4. *Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto (The Hague, 1954)* (see *Yearbook on Human Rights for 1954*, pp. 380-9)

During 1958, the Holy See, Syria, Romania, Thailand, Italy, India, Brazil and Netherlands became parties to the convention by instruments of ratification or accession deposited on 24 February, 6 March, 21 March, 2 May, 9 May, 16 June, 12 September and 14 October respectively. In addition, Israel and Bulgaria acceded to the protocol on 1 April and 9 October respectively.

IV. Organization of American States

1. *Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works (Washington, D.C., 1946)* (see Pan American Union: *Law and Treaty Series*, No. 19)

No States became parties to the convention during 1958.

2. *Inter-American Convention on the Granting of Political Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 438-9)

Haiti became a party to the convention, by instrument of ratification deposited on 31 January 1958.

3. *Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 439-40)

No States became parties to the convention during 1958.

4. *Convention on Diplomatic Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 330-2)

Panama became a party to the convention, by instrument of ratification deposited on 19 March 1958.

5. *Convention on Territorial Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 329-30)

Panama became a party to the convention, by instrument of ratification deposited on 19 March 1958.

V. Council of Europe

1. *Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)* (see *Yearbook on Human Rights for 1950*, pp. 418-26)

Austria deposited an instrument of ratification of the convention on 3 September 1958, subject to reservations as regards articles 5 and 6.

2. *Protocol (Paris, 1952) to the Convention for the Protection of Human Rights and Fundamental Freedoms* (see *Yearbook on Human Rights for 1952*, pp. 411-12)

Austria deposited an instrument of ratification of the protocol on 3 September 1958, subject to reservation as regards article 1.

3. *European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 355-7)

During 1958, Italy and Luxembourg became parties to the interim agreement and the protocol, by instruments of ratification deposited on 26 August and 18 November respectively.

4. *European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 357-8)

During 1958, Italy and Luxembourg became parties to the interim agreement and the protocol, by instruments of ratification deposited on 26 August and 18 November respectively.

5. *European Convention on Social and Medical Assistance and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 359-61)

During 1958, Italy and Luxembourg became parties to the convention and the protocol, by instruments of ratification deposited on 1 July and 18 November respectively.

6. *European Convention on Establishment (Paris, 1955)* (see *Yearbook on Human Rights for 1956*, pp. 292-7)

No States became parties to the convention during 1958.

VI. Other Instruments

Geneva Conventions of 12 August 1949 (see *Yearbook on Human Rights for 1949*, pp. 299-309)

In 1958, the following ratified or acceded to the conventions, by deposit of instruments of ratification or notifications of accession on the dates indicated: Dominican Republic (22 January), Ghana (2 August), Indonesia (30 September), Australia (14 October), Cambodia (8 December), Mongolian People's Republic (20 December).

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