



YEARBOOK
ON
HUMAN RIGHTS
FOR 1972

UNITED NATIONS, NEW YORK, 1975

UNITED NATIONS PUBLICATION

Sales No. E.75.XIV.1

Price: \$U.S. 25.00
(or equivalent in other currencies)

CONTENTS

	<i>Page</i>
INTRODUCTION	xvii
PART I	
STATES	
ALGERIA.	
1. Order No. 72-2 of 10 February 1972 establishing the Code of Prison Organization and Rehabilitation (extracts)	3
2. Order No. 72-3 of 10 February 1972 concerning the protection of children and young people (extracts)	6
3. Order No. 72-7 of 21 March 1972 concerning the establishment and administrative and financial management of an Islamic cultural centre (extract)	7
AUSTRALIA	
I. Note on legislation	9
A. The principle of equal treatment	9
B. Equality before the law	9
C. Right to an effective remedy	9
D. Protection from arbitrary arrest	9
E. Protection of privacy	9
F. Right to social security	10
G. Right to social protection	10
H. Right to social services	10
I. Right to education	11
II. Court decisions	12
AUSTRIA	
Note on legislation	14
BAHRAIN	
Note on draft Constitution	16
BARBADOS	
Note on legislation	17
BELGIUM	
I. Note on legislation	18
1. Protection of specific groups of workers	18
2. Social security	18
3. Social security for miners	18
4. Sickness and disability insurance	18
5. Unemployment	19
6. Pensions	19
7. Family allowances	20
8. Handicapped persons	20
9. Annual vacation	21
II. Court decisions	21
BULGARIA	
Note on:	
I. Act concerning the conditions for, and the procedure governing, the revocation of the mandate of deputies and people's councillors and Regulations concerning the work of the National Assembly	22

	<i>Page</i>
II. Act amending and supplementing the Copyright Act	22
III. Act concerning residence by aliens in the People's Republic of Bulgaria	23
IV. Decree amending and supplementing the Higher Education Act	23
BYELORUSSIAN SOVIET SOCIALIST REPUBLIC	
1. Statement of 30 December 1972 by the Central Committee of the Communist Party of the Soviet Union, the Presidium of the Supreme Soviet of the Socialist Republics and the Council of Ministers of the USSR (extract)	24
2. Report by P. M. Masherov, Candidate for membership in the Politburo of the Central Committee of the Communist Party of the Soviet Union and First Secretary of the Central Committee of the Communist Party of Byelorussia, presented at the commemorative meeting held at Minsk on 15 December 1972 (extract)	25
3. Report of the Central Statistical Board of the Council of Ministers of the Byelorussian SSR on the results of fulfilment of the state plan for the economic development of the Byelorussian SSR in 1972 (extract)	27
4. Act of 27 December 1972 concerning the state plan for the economic development of the Byelorussian SSR in 1973 (extract)	28
5. Act of 27 December 1972 concerning the state budget of the Byelorussian SSR for 1973 (extracts)	29
6. Decision of 18 August 1972 of the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR concerning completion of the transition to universal secondary education for young people and the further development of the general education school (extracts)	29
7. Decision No. 314 of 6 October 1972 of the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR concerning the further improvement of the system of vocational-technical education (extract)	31
8. Decision of 23 June 1972 of the Supreme Soviet of the Byelorussian SSR concerning the full transition to universal secondary education for young people in the Byelorussian SSR (extracts)	31
9. Act of 23 June 1972 approving the Labour Code of the Byelorussian SSR (extract)	33
10. Labour Code of the Byelorussian SSR (extracts)	34
11. Act of 27 December 1972 approving the Water Code of the Byelorussian SSR (extract)	49
12. Water Code of the Byelorussian SSR (extracts)	49
13. Decree of 7 July 1972 of the Presidium of the Supreme Soviet of the Byelorussian SSR amending and supplementing the code of criminal procedure of the Byelorussian SSR (extracts)	50
CANADA	
Part I:	
A. Federal measures	52
B. Provincial measures	54
C. Territorial measures	57
D. Inter-governmental agreements	58
E. Judicial measures	58
F. Other developments	59
Part II:	
1. Order in Council, the Privy Council of Canada (PC 1972-2569), 9 November 1972	59
2. Note from the Office of the Minister of Justice, 24 August 1972	59
3. The Individual's Rights Protection Act, Statutes of Alberta, 1972, chapter 2	60
4. The Alberta Bill of Rights, Statutes of Alberta, 1972, chapter I	64
5. An Act to establish the Saskatchewan Human Rights Commission, Statutes of Saskatchewan, 1972, chapter 108	64
6. An Act to amend chapter 11 of the Acts of 1969, the Human Rights Act, Statutes of Nova Scotia, 1972, chapter 65	66
7. The Ombudsman Act, 1972, Statutes of Saskatchewan, 1972, chapter 87 (extracts)	66
8. Mental Health Act, part 3, Rights of patients. Statutes of Alberta, 1972, chapter 118	68
9. The Social Development Amendment Act, 1972, Statutes of Alberta, 1972, chapter 88	71
10. Constitution (guiding principles) of the Canadian Association of Statutory Human Rights Agencies, July 1972	72
CENTRAL AFRICAN REPUBLIC	
1. Ordinance No. 72/083 of 18 October 1972 amending certain provisions of the Penal Code of the Central African Republic and Ordinance No. 66/004 of 8 January 1966	73

	<i>Page</i>
2. Ordinance No. 72/085 of 28 October 1972 instituting a new system of compulsory military service (extracts)	73
CONGO	
Note on legislation	75
The Constitution of 31 December 1969 of the People's Republic of the Congo (extracts)	75
CYPRUS	
Note on:	
I. Social insurance law	78
II. Annual holidays with pay law	78
III. Termination of employment law	78
IV. Hotels (conditions of service) regulations	79
CZECHOSLOVAKIA	
Note on:	
1. Act No. 5/1972, Collection of Laws, on social security	80
2. Act No. 8/1972, Collection of Laws, on social security of co-operative farmers	80
3. Act No. 99/1972, Collection of Laws, on the increase of allowances for children and their upbringing	81
DENMARK	
Note on legislation	82
The Daily Cash Benefit (Sickness or Maternity) Act No. 262 of 7 June 1972 (extract)	82
ECUADOR	
1. Social Security Code (extract)	84
2. Law on the Status of Aliens (extract)	85
3. Law on Migration (extract)	87
4. Reform and codification of the 1947 Electoral Law (extracts)	92
FINLAND	
I. Note on legislation	106
1. Right to life, liberty and security of person	106
2. Equality before the law	106
3. Right to privacy	106
4. Right to take part in the Government; electoral rights	106
5. Right to work	107
6. The right to enjoyment of the highest attainable standard of physical and mental health	107
7. Right to education	107
II. Note on international agreements	107
FRANCE	
Development of human rights in 1970, 1971 and 1972	108
I. Civil and individual rights	108
1. Amnesty	108
2. Individual rights	108
3. Conscientious objectors	110
4. Action against racism	110
5. Family law—parental authority	110
6. Child welfare	110
7. Freedom of association	110
8. Action against crime	111
II. Social law	111
1. Part-time work	111
2. Temporary work	111
3. Régime for salaried employees	111
4. Vocational training and apprenticeship	111

	<i>Page</i>
5. Family allowances	111
6. Collective agreements	112
III. International conventions	112
Annex:	
A. Act 70-643 of 17 July 1970 (extracts)	112
B. Act 72-546 of 1 July 1972 (extracts)	113
GABON	
1. Act No. 14/72 of 29 July 1972 supplementing the Constitution	116
2. Ordinance No. 25/72/PR supplementing Act No. 6/70 of 12 June 1970 on conditional release	116
3. Act No. 15/72 of 29 July 1972 adopting part I of the Civil Code of the Gabonese Republic	117
GERMAN DEMOCRATIC REPUBLIC	
I. Measures taken for the implementation of human rights during the years 1956-1971	118
A. Constitution of the German Democratic Republic (extracts)	119
B. Other legislation	124
II. Measures taken in 1972 to further implement the right to social security and to increase the standard of living of the people	124
A. The raising of pensions and the improvement of social benefits	125
B. Measures to make life easier for working mothers and young married couples and to increase the birth rate	127
C. Measures to improve the housing conditions of workers and employees	128
GERMANY, FEDERAL REPUBLIC OF	
Survey of legislation, judicial decisions and international agreements	130
1. Protection of human dignity	130
2. The principle of equal treatment	131
3. Protection against arbitrary deprivation of liberty	133
4. The right to physical integrity	134
5. Judicial and administrative guarantees of due process	134
6. Due process in penal proceedings	135
7. Protection against interference with privacy	137
8. The right to freedom of movement and the right to emigration	139
9. The right of asylum; deportation, extradition	139
10. The right to a nationality	140
11. Protection of marriage and the family	140
12. Protection of property	141
13. Freedom of conscience and religion; freedom of religious practice	142
14. Freedom of opinion; freedom of information	143
15. Freedom of assembly and of association	145
16. Suffrage and the right of national self-determination	146
17. The right to choose and exercise a profession or occupation	146
18. The protection of rights in labour legislation	147
19. State care for persons in need of assistance	148
20. The right to education	149
21. Protection of industrial rights and copyright	149
22. International instruments for the protection of human rights	150
GUINEA	
Note on polygamy	151
HUNGARY	
Note on:	
1. Act No. I of 1972 on Amendments to Act No. XX of 1949 and on the single Text of the Constitution of the Hungarian People's Republic	152
2. Act No. II of 1972 on Public Health	153
3. Act No. IV of 1972 on the Courts	153

	<i>Page</i>
4. Act No. V of 1972 on the Public Prosecutor's Office	153
5. Law-decree No. 26 of 1972 of the Presidential Council of the Hungarian People's Republic on the Modification of the Civil Procedure	153
IRAN	
1. Act concerning the Execution of Financial Sentences (11 Tir 1351/2 July 1972)	154
2. Regulations governing the implementation of article 2 of the Act concerning the Execution of Financial Sentences (7 Azar 1351/28 November 1972)	155
3. Act governing Procedures for the Transfer of Land to Farmers subject to the Land Reform Laws and Regulations (21 Azar 1351/12 December 1972)	155
4. Act governing the Division of Land and Standing Property of Gardens subject to the Land Reform Laws and Regulations among Interested Owners and Farmers (19 Azar 1351/10 December 1972)	156
5. Regulations governing the working hours, rest periods, leave and wages or salaries of fishermen, sailors and other persons employed aboard seagoing vessels (5 Ordibehesht 1351/26 April 1972)	156
6. Regulations governing insurance premium rates, payment procedures and the scale and terms of insurance benefits (13 Tir 1351/4 July 1972)	158
7. Act concerning the Provision of Education for the Children of Workers (15 Aban 1351/6 November 1972)	159
8. Note on Act concerning the Amending Agreement between the Empire of Iran and UNESCO on the Establishment of the International Institute for Adult Literacy Methods (5 Khordad 1351/26 May 1972)	160
IRAQ	
Note on legislation	161
IRELAND	
Action taken with regard to Conventions and Recommendations of the International Labour Organisation	162
ISRAEL	
I. Note on legislation	163
1. Legal aid	163
2. Army ombudsman	163
3. Infants	163
4. Privacy	164
5. Labour relations	164
6. Unemployment insurance	165
7. Family maintenance	165
8. Consumer protection	165
9. Environmental Law	165
II. Judicial decisions	166
1. Fair hearing	166
2. Penalties	166
3. Freedom of religion and conscience	167
4. Freedom of expression	167
ITALY	
I. Note on legislation	169
II. Judicial decisions:	
1. The principle of equal rights	170
2. Judicial and administrative guarantees in respect of trial	170
3. Fair trial in criminal proceedings	171
4. Freedom of opinion; freedom of information	171
5. The protection of rights in labour legislation	172
6. Protection of industrial rights and copyright	172
III. International instruments and agreements	173
JAMAICA	
I. Note on legislation	174
II. Judicial decisions	174

	<i>Page</i>
JAPAN	
I. Note on:	
1. Law for the Establishment of the Co-ordination Commission on Environmental Pollution Disputes etc. (Law No. 52, enacted on 2 June 1972)	175
2. Law for Partial Amendment to the Air Pollution Control Law and the Water Pollution Control Law (Law No. 84, enacted on 22 June 1972)	175
3. Natural Environment Conservation Law (Law No. 85, enacted on 22 June 1972)	175
4. Law for Partial Amendment to the Law concerning the Welfare of the Aged (Law No. 96, enacted on 23 June 1972)	175
5. Law for Partial Amendment to the National Pension Law (Law No. 97, enacted on 23 June 1972)	175
6. Law for Partial Amendment to the Law concerning the Welfare of the Physically Handicapped (Law No. 112, enacted on 1 July 1972)	175
7. Women Workers' Welfare Law (Law No. 113, enacted on 1 July 1972)	175
II. Judicial decisions	176
III. Main developments	176
KENYA	
Note on legislation	178
KHMER REPUBLIC	
Constitution adopted by the Khmer people by the referendum of 30 April 1972 (extracts)	179
LAOS	
Act No. 57.32 of 19 October 1957 establishing the duties of Laotians	181
LIBERIA	
Amendment to the Constitution adopted on 4 April 1972	183
LUXEMBOURG	
I. International conventions and agreements concerning human rights	184
II. Note on national laws and regulations relating to human rights	184
MADAGASCAR	
1. Ordinance No. 72-013 of 4 August 1972 complementing article 129 of the Code of Criminal Procedure	185
2. Ordinance No. 72-014 of 4 August 1972 amending articles 169, 172 and 255 of the Penal Code and abrogating article 173 thereof	185
3. Ordinance No. 72-028 of 18 September 1972 complementing article 3 of the Ordinance of 1 September 1972 laying down regulations for referendums	185
4. Ordinance No. 72-049 of 26 December 1972 amending the old Constitution of 29 April 1959	186
MEXICO	
Note on legislation:	
I. Workers' conditions	187
II. The right to vote	187
III. Health and safety of citizens	188
IV. Agriculture	188
V. International co-operation	188
VI. Crime prevention	188
VII. Community development and improvement	188
MOROCCO	
Constitution	189
NETHERLANDS	
I. Note on legislation	
1. Freedom of education	195
2. Right to vote	195
3. Right to assistance in the event of unemployment, illness etc.	195
4. Equal pay for men and women	196
5. The right to fair remuneration	196

6. Right to rest and leisure	196
7. Right to form trade unions and right to strike	196
8. General Convention on Social Security between the Kingdom of the Netherlands and the Kingdom of Morocco	196
II. Judicial decisions	197
Freedom of expression	197
III. Other decisions and developments	197
1. Freedom of expression	197
2. Equal legal status for blue-collar and white-collar workers	197
3. Other spheres of labour law	197
NEW ZEALAND	
I. Note on:	
1. Accident Compensation Act 1972	199
2. Aviation Crimes Act 1972	199
3. Clean Air Act 1972	199
4. Electoral Amendment Act (No. 2) 1972	199
5. Equal Pay Act 1972	199
6. Factories Amendment Act 1972	199
7. Indecent Publications Amendment Act 1972	199
8. Judicature Amendment Act 1972	199
9. Mental Health Act Amendment 1972	199
10. Municipal Corporations Amendment Act 1972	200
11. National Housing Commission Act 1972	200
12. New Zealand Council For Educational Research Act 1972	200
13. Pacific Islands Polynesian Education Foundation Act 1972	200
14. Transport Amendment Act 1972	200
15. Traffic Regulations 1956, Amendment No. 22 (S.R. 1972/83)	200
16. Unit Titles Act 1972	200
17. Wool Marketing Corporation Act 1972	200
II. Judicial decisions	200
NIGER	
Note on legislation	202
NORWAY	
Note on statutes:	
1. Constitutional amendments of 30 May 1972 concerning sections 50, 51, 58 and 59 of the Constitution	203
2. Act of 21 April 1972 (No. 20) concerning the Public Referendum on the Question of whether Norway ought to be a Member of the European Communities	203
3. Act of 25 February 1972 repealing the Act of 20 June 1891 (No. 1) concerning Limitations on the Use of Corporal Punishment	203
4. Act of 21 April 1972 (No. 18) amending the General Civil Penal Code of 22 May 1902 (No. 10)	203
5. Act of 16 June 1972 (No. 60) amending the Act of 17 June 1966 concerning the National Insurance Scheme and certain other Acts	203
6. Act of 16 June 1972 (No. 64) concerning maternal and child health centres and health measures among children, etc	203
7. Act of 12 May 1972 (No. 27) amending the Act of 6 July 1957 concerning Joint Stock Companies	203
8. Act of 16 June 1972 (No. 47) concerning Marketing Control	204
PAKISTAN	
Note	205
A. Interim Constitution (extracts)	205
B. Note on court decisions	211
PHILIPPINES	
Note	212
I. Constitutional provisions	212
II. Laws enacted by the Philippine Congress	214

	<i>Page</i>
III. Presidential decrees	215
IV. Executive orders and proclamations on human rights promulgated by the President of the Philippines	216
POLAND	
I. Note on legislation	217
A. Article 23 of the Universal Declaration	217
B. Articles 22 and 25 of the Universal Declaration	217
II. Note on judgements of the Supreme Court	217
A. Protection of personal property	217
B. Protection of labour	218
ROMANIA	
Note on legislation	219
SAN MARINO	
Note on legislation	222
SENEGAL	
1. Act No. 72-25 of 19 April 1972 concerning Rural Communities (extracts)	223
2. Act No. 72-61 of 12 June 1972 concerning the Family Code (résumé)	224
3. Act No. 72-63 of 26 July 1972 establishing the Municipal Régime of the Chief Communes of Regions other than the Commune of Dakar	225
SUDAN	
Republican Decree No. 104 of 1972 concerning the establishment of the first People's Council, 1972 (extracts)	226
SWEDEN	
Note on legislation	229
SWITZERLAND	
List of Constitutional provisions adopted in 1972, legislation which entered into force in 1972 and decisions relating to human rights rendered by the Swiss Federal Court in 1972:	
A. Federal law	231
B. Cantonal law	231
C. Decisions of the Swiss Federal Court (ATF)	232
1. Protection of personal freedom	232
2. Equality before the law	232
3. Freedom of expression	232
4. Religious freedom	232
5. Non-retroactivity of criminal law	232
6. Acquisition of nationality	233
7. Guarantee of ownership	233
THAILAND	
Note	234
I. Constitution	234
II. Civil and political rights	236
A. Life, liberty and security of persons	236
B. Arrest, detention or exile	239
C. Fair trial	239
D. Freedom of movement	242
E. Right to a nationality	242
F. Right to own property	242
G. Right of association and assembly	245
H. Right to take part in government and public service	246
III. Economic, social and cultural rights	247
A. Protection of young persons	247
B. Right to work	248

TRINIDAD AND TOBAGO

- | | |
|---|-----|
| I. Note on legislation | 252 |
| 1. Industrial Relations Act, 1972 (summary) | 252 |
| 2. Industrial Relations (Amendment) Act, 1972 (extract) | 252 |
| II. Judicial decisions | 252 |

TUNISIA

- | | |
|---|-----|
| 1. Decree No. 72-259 of 31 August 1972, publishing the Treaty of Friendship between Tunisia and Iran (extract) | 253 |
| 2. Decree No. 72-260 of 31 August 1972, publishing the Cultural Agreement between the Government of the Republic of Tunisia and the Imperial Government of Iran (extract) | 253 |

UKRAINIAN SOVIET SOCIALIST REPUBLIC

- | | |
|-------------------------------|-----|
| Note on legislation | 254 |
|-------------------------------|-----|

UNION OF SOVIET SOCIALIST REPUBLICS

- | | |
|---|-----|
| 1. Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, of 25 December 1972, concerning the abolition of taxes on the pay, up to 70 roubles per month, of manual and non-manual workers and the reduction of the rates of taxes on pay of up to 90 roubles per month | 256 |
| 2. Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, of 17 December 1972, instituting the Order of the Friendship of Peoples | 256 |
| 3. Statute of the Order of the Friendship of Peoples established by decree of the Presidium of the Supreme Soviet of the USSR on 17 December 1972 | 256 |
| 4. Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, of 3 February 1972, amending article 22 of the Basic Principles of the Criminal Procedure of the USSR and the Union Republics | 257 |
| 5. Resolution of the Supreme Soviet of the Union of Soviet Socialist Republics on measures for the further improvement of nature conservation and the rational utilization of natural resources (extract) | 257 |
| 6. Law of the Union of Soviet Socialist Republics, of 20 September 1972, concerning the status of deputies to Soviets of Working People's Deputies in the USSR | 258 |

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Note on legislation:

- | | |
|---|-----|
| A. Article 2 of the Universal Declaration | |
| 1. Northern Ireland: future administrative structures | 264 |
| 2. Extension of race relations legislation | 264 |
| 3. Report of the Race Relations Board | 264 |
| 4. Report of the Community Relations Commission | 264 |
| B. Article 3 of the Universal Declaration | |
| Northern Ireland: detention of terrorists | 265 |
| C. Article 5 of the Universal Declaration | |
| Northern Ireland: interrogation procedures | 265 |
| D. Article 6 of the Universal Declaration | |
| Extended matrimonial relief | 265 |
| E. Articles 6 and 7 of the Universal Declaration | |
| The criminal law and mentally abnormal offenders | 265 |
| F. Article 7 of the Universal Declaration | |
| 1. Legal representation | 265 |
| 2. Legal advice and assistance | 265 |
| G. Article 8 of the Universal Declaration | |
| 1. Complaints system for local government | 266 |
| 2. Health Service Commissioner | 266 |
| 3. Northern Ireland: appeals against detention | 266 |
| H. Article 12 of the Universal Declaration | |
| Unlawful eviction or harassment | 266 |
| I. Article 15 of the Universal Declaration | |
| Admission of Uganda Asians to Britain | 266 |
| J. Article 17 (2) of the Universal Declaration | |
| Reparation by the offender | 266 |

	<i>Page</i>
K. Article 19 of the Universal Declaration Extensions to broadcasting services	267
L. Article 21 (2) of the Universal Declaration Eligibility for jury service (with certain limited exceptions)	267
M. Article 21 (3) of the Universal Declaration Northern Ireland	267
N. Article 22 of the Universal Declaration 1. Developments in the social services 2. Northern Ireland	267 268
O. Article 23 (1) of the Universal Declaration Employment	268
P. Article 23 (2) of the Universal Declaration Equal pay for equal work	268
Q. Article 23 (4) of the Universal Declaration Freedom to join trade unions	268
R. Article 25 (1) of the Universal Declaration Northern Ireland: financial assistance	269
S. Article 26 of the Universal Declaration 1. Educational expansion 2. Raising the school-leaving age	269 269
 UNITED REPUBLIC OF CAMEROON	
1. Constitution of the United Republic of Cameroon	270
2. Ordinance No. 72-4 of 26 August 1972 on judicial organization	274
3. Ordinance No. 72-5 of 26 August 1972 to establish Military Judicial Organization (extracts)	275
4. Ordinance No. 72-6 of 26 August 1972 to fix the organization of the Supreme Court (extract)	278
5. Ordinance No. 72-16 of 28 September 1972 to amend certain provisions of the Penal Code (extracts)	278
 UNITED STATES OF AMERICA	
A selective summary of principal developments in 1972 relating to the protection and advancement of human rights:	
I. New legislation	281
1. Constitutional amendment	281
2. Equal employment opportunity	281
II. Executive action—enforcement of civil rights	281
1. Employment	281
2. Housing	282
3. Education	282
4. Institutions and facilities	282
III. Judicial decisions—selected leading cases	
1. Freedom of speech, press and association	282
2. Freedom of religion	283
3. Search and seizure	283
4. Right to counsel and to a speedy trial	283
5. Capital punishment	283
6. Equal protection	283
 YUGOSLAVIA	
Note	285
A. Legislation	285
Law on basic rights deriving from pension insurance and disability insurance (extracts)	285
B. Decisions of the Constitutional Court of the Socialist Federal Republic of Yugoslavia	290
C. International agreements	291

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. TRUST TERRITORIES

Trust Territory of New Guinea

I. Note on legislation	295
A. Protection of human rights in general	295
B. Freedom from discrimination	295
II. Note on court decisions	296
Fair trial	296

B. NON-SELF-GOVERNING TERRITORIES

Territory of Papua	297
Note on legislation	297

PART III

INTERNATIONAL INSTRUMENTS

UNITED NATIONS

Declaration of the United Nations Conference on the Human Environment	301
---	-----

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Convention concerning the protection of the world cultural and natural heritage	304
Recommendation concerning the protection, at national level, of the cultural and natural heritage	310

COUNCIL OF EUROPE

European Convention on the Transfer of Proceedings in Criminal Matters (extracts)	316
European Convention on Social Security (extracts)	321
Judgements of the European Court of Human Rights:	
De Wilde, Ooms and Versyp Cases ("Vagrancy Cases")	326
Ringelsen Case	329

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS RELATING TO HUMAN RIGHTS

I. United Nations	333
II. International Labour Organisation	336
III. United Nations Educational, Scientific and Cultural Organization	337
IV. Organization of American States	338
V. Council of Europe	338
VI. Other instruments	339
INDEX	341

**YEARBOOK ON HUMAN RIGHTS
FOR 1972**

INTRODUCTION

This twenty-seventh volume of the *Yearbook on Human Rights* is the last one to be prepared on an annual basis. In 1972 the Economic and Social Council directed the *Ad Hoc* Committee on Periodic Reports of the Commission on Human Rights to examine the effectiveness of the present system of collecting and disseminating information about the realization of human rights, giving particular attention to the *Yearbook on Human Rights* and its relation to periodic reports on human rights. In the light of the *Ad Hoc* Committee's report, the Council, by its resolution 1793 (LIV) of 18 May 1973, decided henceforth to issue the *Yearbook on Human Rights* every two years, beginning with the *Yearbook* for 1973-1974.

Like the earlier volume, this *Yearbook* contains material originating from Governments, government-appointed correspondents and research work done within the United Nations Secretariat. Part I describes constitutional, legislative and judicial developments in 59 States. Part II reports on legislative and judicial developments in one Trust Territory and one Non-Self-Governing Territory. Part III reproduces the texts of, or extracts from, certain international agreements bearing on human rights.

Part I of the present volume contains extracts from a number of new constitutions adopted during 1972 that reflect certain of the principles set out in the Universal Declaration of Human Rights. The preamble of the new Constitution of Morocco, promulgated on 10 March 1972, contains a clause stating that the Kingdom of Morocco adheres to the principles, rights and obligations deriving from the charters of those organizations of which it is a member. The interim Constitution of Pakistan that entered into force on 21 April 1972 embodies a number of fundamental rights. The new Constitution of the Philippines, signed on 30 November 1972, contains broad provisions on human rights which conform with those enumerated in the Universal Declaration. In 1972, Thailand was governed by a National Executive Council until the promulgation of the Constitution on 15 December 1972 which sets out the functions of the legislative, executive and judicial powers. In the preamble of the Constitution of the United Republic of Cameroon of 2 June 1972, the people of Cameroon declare that the human being, without distinction as to race, religion, sex or belief, possesses inalienable rights and sacred freedoms, and affirm their attachment to the fundamental freedoms embodied in the Universal Declaration of Human Rights and the United Nations Charter.

A number of constitutional amendments and revisions adopted during 1972 are also reflected in this volume. The Constitutions of Liberia, Luxembourg, Mexico, the Netherlands and Norway were amended with regard to voting rights. Mexico also adopted an amendment relating to workers' conditions and the Netherlands adopted amendments dealing with freedom of education and other educational matters. Finland adopted an amendment regarding the right to work. Amendments to the Constitution of Hungary cover a number of fundamental rights and duties. In Switzerland, the Federal Constitution and the constitutions of a number of cantons have been revised. The federal revisions concern the promotion of housing construction and the protection of tenants; the cantonal revisions cover the political rights of women, legal protection and elections by universal suffrage. In the United States of America, congressional action was completed on a proposed amendment to the Constitution prohibiting the denial or abridgement on account of sex of equality of rights under the law. Supplementary articles to the Constitution of Gabon concern participation in government. In the Congo, a new draft Constitution was to be submitted to the people for approval by referendum. The Constitution of Madagascar of 1959 was amended, pending the adoption of a new constitution. Bahrein was considering a draft Constitution. Preparations were also being made in Yugoslavia for the adoption of a new constitution.

Extracts from the 1968 Constitution of the German Democratic Republic are also included as it had not been dealt with in previous issues of the *Yearbook*.

The entitlement to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without distinction of any kind, appeared to be the basis for legislation adopted in 1972 in a number of countries. A great deal of legislation was adopted in Canada, for instance, including the Individual's Rights Protection Act of Alberta, which sets out a "Code of Conduct" and establishes a Human Rights Commission to enforce its provisions; the Act prohibits discrimination on the basis of race, religious beliefs, colour, sex, age, ancestry or place of origin. In France, an Act of 1 July 1972 defines as a criminal offence or a correctional offence everything which,

through acts, writing, the spoken word, pictures and so on constitutes an incitement to discrimination, hatred or violence directed against persons because they belong to a given ethnic group, nation, race or religion. The Equal Pay Act, 1972, of New Zealand ensures that discrimination on the basis of sex is removed in setting rates of remuneration for employment in the private sector of the economy. Denmark, Finland and the United Kingdom also adopted legislation relating to the elimination of discrimination. In the United States of America, federal laws and executive orders concerning civil rights were enforced by the Department of Justice in such areas as employment, housing, education and public institutions.

Amendments were adopted to the Codes of Criminal Procedure of the Byelorussian SSR, France, Israel, Italy, Madagascar and Thailand; an amendment was adopted to the Basic Principles of the Criminal Procedure of the USSR and the Union Republics relating to the participation of defence counsel.

Several countries adopted legislation relating to the treatment of offenders and detainees, including Austria, Canada, France, Gabon, Iran, Jamaica, Sweden, Thailand and the United Kingdom. A Code of Prison Organization and Rehabilitation was established in Algeria by an order of 10 February 1972.

Amendments to the Penal Codes of Austria, Canada, the Central African Republic, Denmark, Finland, Luxembourg, Madagascar, Mexico and the United Republic of Cameroon were adopted during the year.

The right to privacy was the subject of legislation in several countries, including Australia, Canada, Denmark, Finland, France, Israel and Switzerland. The regulation of the use of modern technical devices and of the use of personal information collected for business or other purposes were among the aspects dealt with. In Sweden, draft legislation was prepared on the basis of reports by government committees relating to computers and credit information.

In connexion with the right to own property, amendments were adopted to the Land Code of Thailand, which dealt with such matters as registration of ownership of property and compensation for property expropriated for public use. Iran adopted legislation concerning aspects of the Land Reform Laws and Regulations. In the Philippines, the entire country was proclaimed a land reform area by presidential decree.

Legislation on the right to take part in government was adopted in Bulgaria, Madagascar, Niger, Norway, the Philippines, Senegal, the Sudan, Thailand and the USSR. The right to vote, specifically, was dealt with in Canada, Ecuador, Finland, Jamaica, Liberia, Luxembourg, New Zealand and Thailand.

In the area of social security and social services, legislation relating to such matters as unemployment insurance, pensions, welfare of the aged and the physically handicapped and health insurance was adopted in Australia, Belgium, Canada, Cyprus, Czechoslovakia, Denmark, Ecuador, Iran, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, the Philippines, Poland, Romania, San Marino, Switzerland and the United Kingdom. In the German Democratic Republic measures were adopted to increase pensions and social benefits, to make life easier for working mothers and young married couples and to improve housing conditions. Yugoslavia adopted the Law on Basic Rights deriving from Pension Insurance and Disability Insurance and three federal instruments concerning special categories of persons.

New Labour Codes were adopted in the Byelorussian SSR and Romania. Other legislation dealing with various aspects of the right to work and just and favourable conditions of work and remuneration was adopted in Barbados, Belgium, Cyprus, Iran, Iraq, Israel, Jamaica, Kenya, Mexico, the Netherlands, New Zealand, Romania, San Marino, Sweden, Switzerland, Thailand, Trinidad and Tobago and the United Kingdom. Ireland ratified three International Labour Organisation conventions during the year.

Legislation on public health was adopted in Finland, Hungary and the Philippines. A Water Code was approved in the Byelorussian SSR; other measures for the protection of the environment and control of pollution were adopted in Canada, Israel, Japan, Mexico, New Zealand, Switzerland and the USSR.

With respect to education, legislation was adopted by Australia, Bulgaria, the Byelorussian SSR, Denmark, Finland, Iran, Iraq, the Netherlands, New Zealand, Romania, Switzerland, the Ukrainian SSR and the United Kingdom. The aspects dealt with included the extension of the period of compulsory education, the improvement of vocational education and the subsidizing of scholarship programmes.

In Iraq, a decree was issued recognizing the cultural rights of the Syriac-speaking citizens. An Islamic cultural centre was established in Algeria. Bulgaria amended and supplemented its Copyright Act.

The present volume contains summaries of judicial decisions bearing on human rights rendered by various courts in Australia, Belgium, Canada, the Federal Republic of Germany, Israel, Italy, Jamaica, Japan, the Netherlands, New Zealand, Pakistan, Papua New Guinea, Poland, Switzerland, Trinidad and Tobago, the United States of America and Yugoslavia. The decisions relate *inter alia* to the principle of equal treatment, protection against arbitrary deprivation of liberty, equality before the law, the right to a fair hearing and trial, protection against interference with

privacy, the right to freedom of movement and the right to emigrate, the right of asylum, the right to a nationality, protection of marriage and the family, the right to own property, freedom of religion, freedom of opinion and expression, freedom of assembly and association, suffrage and the right of national self-determination, the right to free choice of employment, the protection of rights in labour legislation, the right to education, the protection of industrial rights and copyright.

Part II of the *Yearbook* contains information on developments relating to human rights in the Trust Territory of New Guinea and in the Non-Self-Governing Territory of Papua, under the administration of Australia. The important piece of legislation passed during the year, from the human rights point of view, was the Human Rights Ordinance 1971, applicable to both Territories, which are governed under an administrative union under the name of Papua New Guinea.

Part III contains the texts of the following international instruments: the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972; the Convention concerning the protection of the world cultural and natural heritage, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 16 November 1972; and the Recommendation concerning the protection, at national level, of the cultural and natural heritage, also adopted by the General Conference of UNESCO on 16 November 1972. Part III also includes extracts from two Conventions adopted by the Council of Europe: the European Convention on the Transfer of Proceedings in Criminal Matters, done at Strasbourg on 15 May 1972 and the European Convention on Social Security, done at Paris on 14 December 1972; also reproduced are two judgements given by the European Court of Human Rights on the question of the application of article 50 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Information on the status of certain international agreements relating to human rights appears in the last section of part III.

The index to the present volume is arranged according to the rights enumerated in the Universal Declaration of Human Rights.

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

PART I

STATES

ALGERIA

1. Order No. 72-2 of 10 February 1972 establishing the Code of Prison Organization and Rehabilitation¹

(Extracts)

TITLE I General provisions

Chapter I

PRELIMINARY PROVISIONS

Article 1. The enforcement of sentences is a means of social defence in that it protects public order and the interests of the State, ensures the safety of persons and goods and assists the offender in his rehabilitation and readjustment with a view to his reinstatement in his family, occupational and social environments.

The reform and rehabilitation of prisoners, which is the objective of the enforcement of sentences, shall be based on the constant raising of their intellectual and moral levels, their vocational training and their participation in work of public utility, *inter alia*.

Article 2. Persons serving sentences shall not be deprived, either in whole or in part, of the exercise of their rights, except to the extent necessary for the achievement of the objectives of the sentences and in accordance with the law.

Article 3. Sentences passed by the courts shall be enforced in implementation of this Order.

Article 5. For the purpose of this Order:

Prisoners are persons subject to a penalty deprivative of liberty;

An untried prisoner is any person against whom criminal proceedings have been instituted but who has not yet received a definitive sentence;

A convicted prisoner is any person who has received a definitive sentence.

Chapter II

SOCIAL DEFENCE INSTITUTIONS

Section 1

Co-ordination Committee

Article 6. Crime control calls for preventive and remedial action by society. The treatment of the offender, based on education, health care and work, requires concerted and planned action on the part of the relevant State services.

For the purposes of controlling delinquency and organizing effective social defence, an inter-

ministerial Co-ordination Committee shall be set up, the membership and terms of reference of which shall be established by decree.

Chapter III

PROCEDURE FOR THE ENFORCEMENT OF SENTENCES

Section 1

Execution of sentences

Article 8. A sentence may not be enforced until it has become definitive.

Section 2

Temporary suspension of the enforcement of sentences

Article 15. The enforcement of a penalty deprivative of liberty may be suspended temporarily in respect of a person not under detention at the time when the sentence against him became definitive.

Suspension of the enforcement of sentences may not be granted in respect of habitual offenders, prisoners who have been sentenced to rigorous imprisonment, or persons convicted of crimes against the security of the State or the national heritage.

Chapter IV

CLASSIFICATION OF PRISONERS AND THEIR COMMITMENT TO INSTITUTIONS

Section 1

Observation and screening

Article 22. The purpose of observation is to determine the causes of delinquency in a prisoner, his personality, his aptitudes, his intellectual and moral level and his occupational capacity.

Observation enables the prisoner to be channelled to an appropriate institution, in accordance with the principle of individualization.

One national and two regional observation and screening centres shall be set up for the purpose of individualizing penalties and treatment.

Annexes to the centres referred to in the previous paragraph may also be established.

¹ *Journal officiel de la République algérienne*, No. 15, 22 February 1972.

Section 2
Placement of prisoners

Article 23. Sentences deprivative of liberty shall be served in closed or open institutions or in outside areas which are under the administration of the courts or deemed to be of public utility.

Section 3
Classification

Article 24. Prisoners shall be committed to and classified in institutions in the light of their criminal record, the gravity of the offence for which they are imprisoned, their age, their personality and the extent to which they have reformed.

TITLE II
The closed institution régime

Chapter I
ORGANIZATION OF CLOSED INSTITUTIONS

Section 1
Closed prison institutions

Article 25. Closed institutions are characterized by enforced discipline, and the presence and constant surveillance of the inmates.

Article 26. Custodial facilities in the premises of the courts shall be set up under the jurisdiction of each court for the purpose of receiving untried prisoners, prisoners sentenced to terms of not more than three months' imprisonment prisoners who have sentences of not more than three months left to serve and persons liable to imprisonment.

A rehabilitation establishment shall be set up in the premises of each court for the purpose of receiving untried prisoners, prisoners sentenced to a term of less than one year's imprisonment, prisoners who have sentences of not more than one year left to serve, and persons liable to imprisonment.

Readjustment centres shall be set up to receive prisoners sentenced to terms of imprisonment of one year or more, prisoners sentenced to rigorous imprisonment and habitual offenders irrespective of the duration of their sentences.

Article 27. A specialized rehabilitation establishment shall be set up for dangerous prisoners and prisoners sentenced to rigorous imprisonment.

This establishment shall receive prisoners for whom the usual methods of rehabilitation have proved insufficient and undisciplined prisoners.

Article 28. Two categories of specialized centre shall be set up:

1. Specialized centres for women;
2. Specialized centres for minors.

Article 29. The specialized centres for minors shall receive untried and convicted prisoners under 21 years of age, subjected to exceptions expressly authorized by the Minister of Justice

The specialized centres for women shall receive untried and convicted female prisoners irrespective of the length of their sentences.

Section 2
Detention régimes

Article 32. The régime of communal detention, whereby prisoners live as a group, shall be applied in custodial and rehabilitation institutions.

Article 37. Dangerous or undisciplined prisoners may be placed in isolation.

Section 3
Prison conditions

Article 41. The hygiene and cleanliness of the buildings, quarters and halls of prison institutions, and of their outbuildings, shall be supervised and maintained.

Article 42. Prisoners shall be assigned to general duties in each institution for the purpose of carrying out the various tasks necessary for keeping the premises clean, maintaining the buildings and operating administrative or food services.

Article 43. Prisoners shall be entitled to free medical treatment on the premises, in the nearest hospital or in the general infirmary of the prison services.

Article 44. The food given to prisoners shall be healthy and sufficient.

Article 45. A prisoner shall be entitled to receive visits from his ascendants, his descendants, his spouse and his brothers and sisters.

Article 46. A prisoner may also receive visits from the father, mother, brothers and sisters of his spouse.

A prisoner may also receive visits from his guardian or the administrator of his property.

In exceptional cases and for legitimate reasons, he may be visited by other persons with the authorization of the penalty enforcement officer.

Article 47. Visitors' permits in respect of untried prisoners shall be issued for a specific period by the competent judicial officer.

Article 51. Duly selected or appointed counsel for the defence shall, in the performance of their duties and upon presentation of the relevant authorization issued by the judicial officer specified in article 47, freely communicate with untried prisoners in a specially equipped visiting-room, without the presence of custodial personnel.

Subject to exceptions based on urgent considerations, visits by counsel may take place on any day, at times specified by the internal regulations of the institution as communicated to the president of the national bar association.

Article 52. No interdiction or penalty of any nature shall extinguish or restrict the right of free communication between the untried prisoner and his counsel.

Article 53. It shall be a punishable offence for the administrative personnel responsible for the rehabilitation and social readjustment of prisoners and all persons in close proximity to the prisoners to influence either directly or indirectly the prisoners' defence or their choice of counsel.

Article 54. Prisoners who are foreign nationals may receive visits from the consular representative of their country, to the extent that the internal regulations of the institution allow and provided that reciprocity exists with the country of which they are nationals.

Article 55. Prisoners shall be entitled to correspond with their families and any other persons, provided that such correspondence does not prejudice their rehabilitation or lead to a breach of the peace.

Article 56. Correspondence sent under closed cover by prisoners to their counsel and correspondence addressed to them by the latter shall not be subject to inspection by the head of the institution in cases where it is clearly indicated on the cover that such correspondence is really intended for the counsel or comes from him.

Article 57. Prisoners may receive national newspapers and periodicals, the list of which shall be established by order of the Minister of Justice.

Article 58. The reception of parcels and objects for the use of prisoners shall be authorized subject to inspection by the head of the institution.

Article 59. Prisoners shall be entitled to attend educational discussion groups organized within the institution.

They shall be encouraged to fulfil the obligations of religious life; they may receive visits within the institution from an approved religious officer.

Article 60. Prisoners may, under the supervision of the penalty enforcement officer, make arrangements to ensure the defence of their property or family interests.

Article 61. An order from the Minister of Justice shall establish the procedure for protecting prisoners' possessions deposited with the clerk of the penal institution.

Article 62. A prisoner who is a foreign national may correspond with the consular authorities of his country, subject to reciprocity in the country of which he is a national.

Article 63. Where their rights are violated, prisoners may lodge a complaint with the head of the institution. The latter shall examine the complaint, check the accuracy of the alleged facts and take appropriate action.

Article 66. Prisoners are required to comply with the regulations governing the maintenance of order, security, hygiene and discipline within the institution.

Article 71. The administrative personnel responsible for the rehabilitation and social readjustment of prisoners may not use force against the latter except in self-defence, or in cases of

attempted escape or violent or passive resistance to commands.

Personnel who have occasion to resort to violence may not apply more than is strictly necessary.

Chapter II

REHABILITATION IN CLOSED INSTITUTIONS

Section 1

Organization and operation of rehabilitation and aid schemes for prisoners

Article 74. The purpose of rehabilitation work with prisoners shall be to create and foster in them the resolve and skills that will enable them to lead law-abiding lives, to provide for their needs honestly and to participate in the task of national construction.

Section 2

Literacy training, education and vocational training for prisoners

Article 100. Literacy training courses shall be organized in all institutions for prisoners who cannot read or write.

Section 3

Prison work in closed institutions

Article 110. Under the training and readjustment schemes, prisoners shall be obliged to do useful work consistent with their health, and with order, discipline and security in the institution.

Chapter III

READJUSTMENT OF MINORS

Article 121. Minors on whom definitive penal sentences deprivative of liberty have been passed shall serve their sentences in appropriate institutions known as specialized readjustment centres for minors.

Article 128. Lectures shall be given in the institution for educational purposes.

Subject to prior authorization by the head of the centre, minors may organize choirs and artistic and sporting events.

Article 129. Minors shall receive schooling within the institution.

Minors shall learn a trade consistent with their recognized capacity.

Their vocational training shall be governed by the legislation applicable to non-delinquent minors.

Minors shall not be given extra work and shall not be made to work at night.

Article 130. The director of the centre may grant minors . . . 30 days' annual leave with their families during the summer.

Such annual leave may be taken at a holiday resort.

TITLE III

Other institutions in the progressive grade system

Chapter I

THE RÉGIME OF WORK OUTSIDE THE PRISON, SEMI-FREEDOM AND OPEN INSTITUTIONS

Section 1

Common provisions

Article 143. The régime of work outside the prison connotes the employment of prisoners outside the prison, usually in groups or details, and under the supervision of the prison administration, on work of general utility on behalf of government departments or local authorities, government institutions and enterprises and the worker-managed sector, to the exclusion, however, of the private sector.

Section 2

Work outside the prison

Article 150. Prisoners eligible to work outside the prison shall be, on the one hand, those serving sentences deprivative of liberty of at least 12 months and, on the other hand, all those who fulfil the necessary conditions entitling them to be recommended for conditional release.

Prisoners serving a sentence deprivative of liberty of shorter duration may also be allowed to work outside the prison, but only at their own request.

Section 3

Semi-freedom

Article 159. The following may qualify for the system of semi-freedom:

1. Prisoners who have no more than 12 months of their sentence left to serve;
2. Prisoners who are eligible for conditional release.

Article 160. Under the system of semi-freedom, prisoners shall be subject to individual placement with enterprises.

They may also be employed in the open institutions provided for in article 170 below.

Prisoners may not leave the prison institution except to go to their place of work and must return to the institution every evening after finishing their work.

Section 4

Open institutions

Article 170. The open institutions shall be designated by order of the Minister of Justice.

Order and discipline in such institutions shall be governed by internal regulations.

Article 171. These institutions shall be agricultural centres or industrial enterprises.

Article 172. The régime shall be characterized by work and lodging on the premises, limited supervision and disciplinary rules freely agreed upon by the prisoners.

Chapter II

CONDITIONAL RELEASE

Article 179. Prisoners who show genuine evidence of good conduct and reform may be granted conditional release.

TITLE IV

Penalties and other measures

Chapter II

ENFORCEMENT OF THE DEATH PENALTY

Article 196. Prisoners sentenced to death shall be transferred to a prison institution which appears on a list drawn up by the Minister of Justice.

Prisoners sentenced to death shall be confined to their cells night and day.

Article 197. The death penalty may be enforced only after rejection of the appeal.

Article 198. All prisoners who are sentenced to death shall be shot.

2. Order No. 72-3 of 10 February 1972 concerning the protection of children and young people²

(Extracts)

Article 1. Minors under 21 years of age whose health, safety, morals or education is threatened or whose living conditions or behaviour could

jeopardize their future may be subject to measures of protection and educational assistance in the manner specified in the following articles.

Article 2. The judge of the juvenile court of the place of domicile or residence of the minor,

² *Ibid.*

of his parents or of his guardian or, in their absence, the judge of the juvenile court of the place where the minor was found, may hear a case upon the application of the father, mother or legal guardian, the minor himself, the *wali*, the *Procureur de la République*, the president of the people's assembly of the commune of residence of the minor or competent probation officers.

The judge of the juvenile court may also hear a case *ex officio*.

Where the *Procureur de la République* is not himself the applicant to the judge of the juvenile court, he shall be informed of such application without delay.

Article 3. The judge of the juvenile court shall advise the parents or guardian, provided that they are not applicants, and the minor himself, where appropriate, of the institution of the proceedings. He shall grant them a hearing and take note of their views concerning the situation of the minor and his future.

Article 4. The judge of the juvenile court shall order a study to be made of the personality of the minor, *inter alia*, by means of a social inquiry, medical, psychiatric and psychological examinations, observation of his behaviour and, where appropriate, a vocational aptitude test.

If, however, he has sufficient evidence on which to base a judgement, he may order none of the above measures or only some of them.

Article 5. The judge of the juvenile court may, by means of a temporary custodial order, take the following action with respect to the minor during the inquiry:

1. Commitment of the minor to the care of his family;
2. Commitment of the minor to the care of whichever of his parents does not exercise the right of custody, provided that the latter has not been deprived of that right;
3. Commitment of the minor to the care of another relative, in accordance with the procedures for the transmission of guardianship;
4. Commitment of the minor to the care of a reliable person.

Where the minor is subject to one of the temporary custodial measures referred to above, the judge may order that he be kept under surveillance in his family, school or vocational environment by an open régime service responsible for observation, education or rehabilitation.

Article 6. The judge of the juvenile court may also order the provisional placement of the minor:

1. In a reception or observation centre;

2. In a child welfare service;

3. In an educational, vocational training or child-care establishment or institution.

Article 7. The minor, his parents or his guardian may choose a counsel or request the judge of the juvenile court to appoint one *ex officio*. Such appointment must be made within eight days of the request.

Article 8. The provisional measures ordered by the judge of the juvenile court may at any time be modified or revoked by him, at the request of the minor, his parents or guardian or the *Procureur de la République*.

When he does not act *ex officio*, the judge of the juvenile court must reach a decision not later than one month following receipt of the request.

...

Article 10. The judge of the juvenile court shall pronounce judgement in the court chambers.

He may decide:

1. That the minor should stay with his family;
2. That the minor should be committed to the care of whichever of his parents does not exercise the right to custody, provided that the latter has not been deprived of that right;
3. That the minor should be committed to the care of another relative, in accordance with the procedures for the transmission of guardianship;
4. That the minor should be committed to the care of a reliable person.

In all the above cases, he may order that the minor be kept under surveillance and given all necessary protection and assistance in respect of his education, training and health by an open régime service responsible for observation, education or rehabilitation.

Article 11. The judge of the juvenile court may also make a definitive decision for placement:

1. In a reception centre;
2. In a child welfare institution;
3. In an educational, vocational training or child-care establishment or institution.

Article 12. In every case, the measures referred to in articles 10 and 11 above shall be for a specified period and shall not extend beyond the date on which the minor becomes 21 years of age.

...

Article 20. This Order shall be published in the *Journal officiel* of the Democratic and Popular Republic of Algeria.

3. Order No. 72-7 of 21 March 1972 concerning the establishment and administrative and financial management of an Islamic cultural centre³

(Extract)

Article 1. An Islamic Cultural Centre (CCI) shall be set up as a public establishment under

the auspices of the Minister of Classical Education and Religious Affairs.

The Islamic Cultural Centre shall have civil personality and financial autonomy and shall be

³ *Ibid.*, No. 24, 24 March 1972.

governed by the legislation in force and the provisions of the attached statutes.

Article 2. The purpose of the Islamic Cultural Centre shall be, *inter alia*, to promote the revival, expansion and dissemination of Islamic culture and to ensure that this culture is a means of fostering Islamic thinking in the nation.

Article 3. The headquarters of the Islamic Cultural Centre shall be at Algiers. Branches may be established within and outside the national territory, by order of the Minister of Classical Education and Religious Affairs.

...

AUSTRALIA

NOTE¹

I. Legislation

A. THE PRINCIPLE OF EQUAL TREATMENT (*Universal Declaration of Human Rights, articles 2, 6, 7, 22*)

The Natives (Citizenship Rights) Act Repeal Act 1971 (No. 26) of Western Australia repeals the last remaining statutory provisions that discriminated against aborigines.

B. EQUALITY BEFORE THE LAW (*Universal Declaration, article 7*)

The Legal Assistance Amendment Act 1971 (No. 44) of Queensland expands the legal assistance scheme by making legal aid available to a greater number of people and by extending it to types of actions not presently within its compass as well as to matters not involving litigation.

C. RIGHT TO AN EFFECTIVE REMEDY (*Universal Declaration, article 8*)

1. The Crown Proceedings Act 1972 (No. 41) of South Australia simplifies the conduct of proceedings against the Crown. It provides that proceedings by or against the Crown may be commenced and carried through in accordance with the ordinary practice and procedure appropriate to proceedings between subjects. The Crown is placed in the same position as an ordinary litigant in enforcing judgments in its favour. The liability of the Crown in contract and tort is assimilated to the liability of a private person. Any special privileges that the Crown may have in respect of the period of limitation in which proceedings in tort or contract must be brought, or in respect of notice of a claim in contract or in tort, are removed.

2. The Parliamentary Commissioner Act 1971 (No. 64) of Western Australia makes provision for the appointment of an ombudsman who will have power to investigate any decision or recommendation that has been made or any act or omission relating to a matter of administration which affects any person or body of persons in his or their personal capacity. The Parliamentary Commissioner will have all the powers of a Royal Commission.

D. PROTECTION FROM ARBITRARY ARREST (*Universal Declaration, article 9*)

The Crimes (Powers of Arrest) Act 1972 (No. 8247) of Victoria amends the Crimes Act 1958 and deals with the law relating to arrest without warrant and related matters. New section 457 displaces any common law powers of arrest without warrant and provides that henceforth the only such powers that will be available will be those conferred by the provisions in the Crimes Act or by the express provisions of some other act. The section extends also to the power of citizens to arrest without warrant.

New section 458 sets out the powers of both members of the police force and citizens to apprehend without warrant persons found committing offences or in certain other circumstances. The section provides that a person apprehended without warrant for a summary offence shall be held in custody only so long as one of the reasons specified in the section continues. It requires the person making the arrest to release the person apprehended, either with or without bail, where the reason for apprehension no longer continues.

New section 459 gives to a member of the police force, in addition to the powers conferred by section 458, power to apprehend without warrant a person who, he believes on reasonable grounds, has committed an indictable offence in Victoria or an offence elsewhere which, if committed in Victoria, would be an indictable offence.

New section 460 sets out the procedure for dealing with persons who have been arrested. They must be brought before a justice or a magistrates' court as soon as practicable after arrest.

E. PROTECTION OF PRIVACY (*Universal Declaration, article 12*)

1. The Listening Devices Act 1972 (No. 112) of South Australia is the first of a series of measures that will be introduced in the State to protect the individual's right to privacy. It largely prohibits the use of listening devices and imposes a total prohibition on the communication or publication of information obtained by the unlawful use of such devices.

2. The Invasion of Privacy Act 1971 (No. 50) of Queensland—

(i) Provides for the licensing and control of credit report agents;

(ii) Provides for the licensing and control of private inquiry agents; and

(iii) Regulates the use of listening devices.

¹ Note prepared by Mr. J. O. Clark, government-appointed correspondent of the *Yearbook on Human Rights*.

Credit reporting

Where a consumer is refused credit because of the contents of a credit report, the user of the report who refused credit must notify the consumer of the reason for the refusal and advise him that he has a right to request the name and address of the credit reporting agent who supplied the report.

The consumer then has the right to approach the credit reporting agent who supplied the credit report and he must then be informed of the nature and substance of all information contained in the credit report concerned.

If any of the information in the credit report is disputed by the consumer, the credit reporting agent must investigate the disputed information. If it is found to be inaccurate or cannot be verified, the information must be corrected, and any person who has received a credit report containing such information within the previous six months must be informed of the correction.

Private inquiry agents

The part of the act dealing with the licensing of private inquiry agents deals with ancillary matters such as advertising, charges and recovery of charges.

Listening devices

The act prohibits the use of listening devices, with certain exceptions specified in the act, and deals with questions arising from the use of records of conversations obtained by the use of listening devices.

F. RIGHT TO SOCIAL SECURITY

(Universal Declaration, article 22)

1. The Criminal Injuries Compensation Act 1972 (No. 8359) of Victoria sets up a scheme of compensation for persons who are injured as a result of a criminal act or omission. It establishes a Crimes Compensation Tribunal. Any person who is injured by or as a result of any act or omission of any other person which is punishable by imprisonment otherwise than for non-payment of a fine may apply to the Tribunal for compensation. In the case of the death of the injured person, his dependants may make such an application. The maximum compensation is \$3,000.

2. The Community Welfare Act 1972 (No. 51) of South Australia is designed to co-ordinate and revitalize welfare services and support and encourage welfare services already provided by voluntary agencies.

G. RIGHT TO SOCIAL PROTECTION

(Universal Declaration, article 23 (3))

The Consumer Protection Act 1972 (No. 8276) of Victoria:

(i) Introduces certain statutory controls in some areas of sales and marketing not previously controlled;

(ii) Amends several provisions of existing statutes dealing with consumer protection; and

(iii) Consolidates in one act various acts dealing with this topic.

H. RIGHT TO SOCIAL SERVICES

(Universal Declaration, article 25)

1. The Workmen's Compensation Ordinance 1972 (No. 11 of 1972), the Workmen's Compensation Ordinance (No. 2) 1972 (No. 30 of 1972) and the Workmen's Compensation Ordinance (No. 3) 1972 (No. 40 of 1972) of the Northern Territory are amending Ordinances which increase the rates of compensation payable and extend the provisions of the principal Ordinance to classes of workmen not previously covered.

2. The Social Services Act 1972 (No. 1 of 1972) of the Commonwealth increases rates of unemployment and sickness benefit payable.

3. The Social Services Act (No. 2) 1972 (No. 14 of 1972) of the Commonwealth increases age, invalid and widows' pensions and long-term sickness benefits.

4. The Social Services Act (No. 3) 1972 (No. 53 of 1972) of the Commonwealth makes it possible to pay certain Australian pensions overseas. It applies equally to persons who were born in Australia and to those who have settled in Australia and it makes no distinction between those settlers who have formally acquired Australian citizenship and those who have not.

5. The Social Services Act (No. 4) 1972 (No. 79 of 1972) of the Commonwealth increases the standard rate of pension for single persons and widows with children as well as the married rate of pension. It makes provision for a new pension replacing the wife's allowance to be called a wife's pension: this is to be paid to the wives of all age and invalid pensioners who do not qualify for a pension in their own right. Supplementary assistance, paid to married pensioner couples who are paying rent, is increased. Long-term sickness benefits are increased. Finally, the act substantially liberalizes the means test.

6. The Aged Persons Homes Act 1972 (No. 84 of 1972) of the Commonwealth increases the subsidy paid to non-profit homes caring for persons who are aged over 80 years.

7. The Aged Persons Hostels Act 1972 (No. 76 of 1972) of the Commonwealth will assist in the provision of additional hostel type accommodation for aged persons.

8. The Child Care Act 1972 (No. 121 of 1972) of the Commonwealth is concerned with child-care centres. It is designed to ensure the development of day-care facilities of good quality for children throughout the Commonwealth. It provides for assistance to non-profit organizations, including local governing bodies, to establish and operate centres which provide day care for children of working parents and sick parents and which give priority in admission to children in special need. Unmatched capital grants will be provided and made payable direct to eligible

organizations for the purchase, erection, extension or alteration of buildings and land for use as child-care centres and for the purchase of equipment for the centres.

9. The National Health Act 1972 (No. 114 of 1972) of the Commonwealth increases benefits payable for the chronically ill in nursing homes. It also makes provision designed to assist applicants caring for aged and chronically ill relatives who are living in the applicants' private homes but who otherwise would need to be admitted to nursing homes.

10. The Compensation (Commonwealth Employees) Act 1972 (No. 122 of 1972) of the Commonwealth provides for the payment of compensation at the rate of full sick pay to Commonwealth employees during total incapacity following a compensable injury for the first 26 weeks of a period or of the aggregate of periods up to 26 weeks in respect of any one injury. The act also increases weekly rates of compensation and the amounts of lump sum payments.

11. The Seamen's Compensation Act 1972 (No. 124 of 1972) of the Commonwealth increases various rates and amounts of workers' compensation payable to seamen and their dependants by shipowners.

12. The Workers' Compensation (Amendment) Act 1971 (No. 77) of New South Wales substantially increases the weekly rates of compensation payable under the act.

13. The Health Commission Act 1972 (No. 63) of New South Wales constitutes a statutory body (the Health Commission) with a broad charter to promote, protect, develop, maintain and improve the health and well-being of the people of the State to the maximum extent possible. The immediate and most important purpose of the act is to amalgamate the two main bodies now responsible for health administration in the State, namely, the Department of Health and the Hospitals Commission.

14. The Community Welfare Act 1972 (No. 31) of Western Australia establishes a Ministry of Community Welfare and combines the activities of the Child Welfare Department and the Native Welfare Department into a new department to be called the Community Welfare Department. The efforts of voluntary organizations engaged in the welfare field will also be encouraged and supported.

15. The Guardianship of Children Act 1972 (No. 77) of Western Australia clarifies and consolidates several existing acts dealing with this matter.

I. RIGHT TO EDUCATION

(*Universal Declaration, article 26*)

1. The Commonwealth Teaching Service Act 1972 (No. 13 of 1972) of the Commonwealth establishes a Commonwealth Teaching Service, which has become necessary because of the

growth of education in the Commonwealth mainland territories. (Until now, teachers in the Northern Territory were employees of the South Australian Government whilst teachers in the Australian Capital Territory were employees of the New South Wales Government.)

2. The States Grants (Independent Schools) Act 1972 (No. 7 of 1972) of the Commonwealth increases the *per capita* grants to both primary and secondary independent schools.

3. The States Grants (Capital Assistance) Act 1972 (No. 8 of 1972) of the Commonwealth authorizes the payment of grants totalling \$6.66 million to the States in 1971/72 for the purpose of financing capital expenditure on Government primary and secondary schools.

4. The States Grants (Schools) Act 1972 (No. 108 of 1972) of the Commonwealth authorizes payment to the States to implement a programme of unmatched capital grants for both government and non-government schools for a five-year period commencing on 1 July 1973.

5. The State College of Victoria Act 1972 (No. 8376) of Victoria provides a form of legislative machinery whereby teachers' colleges can enjoy the autonomy that is already enjoyed by their partners in the field of tertiary education, namely the universities and the colleges of advanced education. It incorporates the State College of Victoria, a co-ordinating body, which will be charged with the task of co-ordinating and fostering the development of the teachers' college system through a senate and an academic board.

6. The South Australian Board of Advanced Education Act 1972 (No. 47) of South Australia provides that the South Australian Board of Advanced Education, constituted by the act, will co-ordinate, rationalize and produce a balanced system of tertiary education outside the universities to meet the needs of the State for tertiary education and training. The act also removes the teachers' colleges from the control of the Education Department and establishes them as autonomous colleges in collaboration with the Board of Advanced Education.

7. The South Australian Institute of Technology Act 1972 (No. 57) of South Australia will enable the Institute (formerly the South Australian School of Mines and Industries) to award its own degrees.

8. The Colleges of Advanced Education Act 1972 (No. 121) of South Australia separately confers autonomy on four teachers' colleges.

9. The Torrens College of Advanced Education Act 1972 (No. 148) of South Australia combines the South Australian School of Art and the Western Traders' College under the new title of the Torrens College of Advanced Education and removes both from the jurisdiction of the Education Department.

10. The Griffith University Act 1971 (No. 38) of Queensland provides for the establishment and incorporation of a new University in Brisbane, to be known as the Griffith University.

II. Court decisions

RIGHT TO FAIR HEARING AND GUARANTEES FOR DEFENCE

(*Universal Declaration, articles 10, 11*)

A

Where, before a court of summary jurisdiction, an unrepresented defendant desires to plead guilty to a charge of an offence, the court should give careful attention to the following matters of practice and procedure:

(1) When the defendant answers to his name and the charge is read, before a plea is entered, the court should make sure that he understands the nature of the charge. When the explanation of the charge has been made, the court should satisfy itself that the explanation has been understood.

(2) The defendant should be made to appreciate that the plea is entirely a matter for his own independent decision, and that he is entitled to legal advice and representation; in particular, that he may ask for a reasonable adjournment to seek that advice or representation.

(3) If the question of bail arises, the defendant should be made clearly aware of what bail is and that he can apply for bail, and of what matters a court takes into account when an application for bail is made; he should also be told that he can make representations in support of his application.

(4) If the case is to be proceeded with, the defendant should be informed of the seriousness of the charge, and of the penalties that may be imposed—especially where the court has the power to impose disqualification from holding or obtaining a driver's licence, to make an order to pay compensation, to direct a forfeiture of property, or to record a term of imprisonment.

(5) It should be made clear that if a plea of guilty is offered and recorded, the defendant may put matters in mitigation either by unsworn statement or on oath and that he may call witnesses or produce other relevant material for the consideration of the court. Before the facts are placed before the court, the defendant should be informed that he is entitled to dispute or comment upon the facts alleged by the prosecutor (including any previous convictions alleged). If he proceeds to dispute any of those facts, he should be given an opportunity to give evidence and call witnesses, if he so desires, in support of his contention. The court should be quick to recognize any denials or explanations by the defendant that suggest that he should not have pleaded guilty.

(6) If, after hearing the defendant, the court feels that there are relevant areas that he has not covered, he should be invited to cover them. If the court is of opinion that the plea of guilty should not have been entered, the court should ask the defendant whether he adheres to his challenge of the material facts or to his explanation (as the case may be) that has led the court to its opinion as to the plea, and if the defendant

does so adhere, a plea of not guilty should be recorded.

Supreme Court of South Australia per Wells, *J. Cooling v. Steel* 2 S.A.S.R. 249

B

The accused was taken into custody and questioned by a police constable about the theft of a wallet. The constable cautioned the accused but proceeded to question the accused in a manner which made it clear to the accused that the constable considered that it was his duty to extract a confession from the accused and calculated to induce the accused to believe that he would not be released from custody until he confessed to the theft of the wallet. The accused was confronted by the constable with a scornful and forceful rejection of the accused's own statements as false and with conflicting statements allegedly made by an eye-witness. The accused was then further questioned by an inspector of police who was unaware of the circumstances of the constable's interrogation and who merely satisfied himself that the accused had been cautioned. The accused confessed to the inspector that the accused had taken the wallet with the intention of stealing it.

On the trial of the accused for the theft of the wallet,

Held, that it is not improper to question an accused person in custody after administering the usual caution. Such a proceeding provides the opportunity to the accused person to confess or make some statement either for or against himself. A police interviewing officer has a duty to be alert to note incriminating statements but it is not for him deliberately to attempt to obtain incriminating statements from the person in custody. It is quite improper to cross-examine an accused person in custody. If the statements of the accused are flung back in his teeth with expressions of disbelief, that is an improper form of cross-examination. If his statements are refuted by an intimation that some witness had stated to the contrary, this is an improper form of cross-examination. Whether or not it be regarded as cross-examination, the statement to the accused that particular witnesses say this or that against the accused in material particular, is an independent impropriety. If it is done to induce a confession it amounts to pressure on the part of a person in authority and is calculated to deprive any supervening confession of the quality of voluntariness. If an accused person in custody is given to believe by a person in authority that he should confess or suffer further restraint, that constitutes pressure from a person having authority over the body of the accused and will deprive a confession of the quality of voluntariness.

Held, accordingly, that the confession by the accused should not be admitted into evidence.

Supreme Court of the Australian Capital Territory. *R. v. Bankowski* 18 F.L.R. 179.

C

Owing to inadvertence on the part of his solicitor, a defendant was unrepresented upon the hearing in a court of summary jurisdiction of a

complaint against him for an offence. The court proceeded to hear the complaint *ex parte* and ordered the defendant to pay a fine. On appeal,

Held, that the Supreme Court had inherent jurisdiction, in such circumstances, to set aside the order and remit the complaint for rehearing in a court of summary jurisdiction.

Supreme Court of South Australia. *Kildowski v. McCallum* 2 S.A.S.R. 287.

D

The appellant was questioned by a detective concerning the receiving of a motor vehicle. The detective said to him "It would be in your own interest to tell us if you know because we have now recovered the vehicle and the only expense you would be put to is to pay for its restoration to its original condition". Soon thereafter the defendant wrote and signed a statement. Much later he wrote and signed a further statement.

The trial judge excluded the first statement but admitted the second because he was satisfied that any promise or inducement which might have affected the appellant in relation to the first statement did not operate in relation to the second.

On appeal,

Held: (1) That when the words of a person in authority may be considered as holding out an inducement or are such as could be reasonably be considered to do so, the court will not attempt, by fine analysis or the resolution of nice questions of construction, to minimise the effect of such words.

(2) That in order for the evidence to be otherwise admissible the court was to be satisfied upon the balance of probabilities that the statement had not operated at all upon the mind of the person to whom it was made.

(3) That the trial judge had correctly rejected the first confession.

(4) That merely because about 20 hours had passed, with circumstances of opportunity in the appellant to reconsider his earlier statement and the manner in which he had offered to correct the earlier statement, a sufficient basis did not exist for admission of the second statement on the ground that the original inducement had by then been dissipated.

Supreme Court of Queensland, *R. v. Plotzki* (1972) Qd.R. 379.

AUSTRIA

NOTE¹

I

It should be noted first of all that during the year 1972 Austria ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which entered into force for Austria on 8 June 1972. Under the Convention, the personal application of the right to equality before the law—a right long established under the Austrian legal system—is extended in that foreign nationals as well as Austrian citizens now enjoy this right in their mutual relations. It is true that this principle had already been laid down in article 14 of the European Convention on Human Rights, but its application was limited to the enjoyment of the rights set forth in that Convention. The International Convention on the Elimination of All Forms of Racial Discrimination therefore represents a significant broadening of the personal application of the principle of equality.

The constitutional regulations required in order to ensure the implementation in Austria of the International Convention on the Elimination of All Forms of Racial Discrimination are now being drafted.

II

With regard to freedom of the press, mention should be made of the Federal Act of 9 July 1972 concerning the encouragement of civic education work within political parties and through publications. Chapter II of the Act provides for financial incentives for periodical publications. At the present time, the annual amount legally available for the payment of subsidies to the publishers of periodicals is 5 million schillings. The granting of subsidies to deserving publications is the responsibility of the Federal Government, which, in doing so, must take account of the proposals submitted by an advisory committee. The Federal Government is required to submit an annual report to Parliament on how the subsidies are distributed.

The Act reflects the belief that freedom of the press and the latter's function as an information medium can be safeguarded only by the existence of a diversity of publications. In order to ensure this diversity, it is necessary to strengthen the financial position of the press as much as possible. The Act therefore seeks to guarantee through subsidies both the diversity of publications and the freedom of the press, which, in the final

analysis, is expressed through a diversity of opinions. By requiring the Government to submit a report to Parliament, the Act seeks to provide a means of overseeing this incentive programme and making certain that it is properly balanced.

III

The 1972 amendment to the Penal Code introduced new provisions in certain parts of the chapter relating to the treatment of persons held in custody pending trial. The salient points are as follows:

1. Article 187, paragraph 1, lays down the conditions under which the persons in question may receive correspondence and visits. Under the new provisions, they may correspond with, and receive visits from, any persons who are not deemed likely to interfere with the purposes of the custody. This right had previously applied only to certain categories of persons (e.g. parents, legal representatives, and priests).

2. In principle, the correspondence of persons held in custody pending trial is not subject to restrictions of any kind (article 187, paragraph 2). However, if such a person's correspondence is so heavy that it seems likely to interfere with the task of keeping him under surveillance, restrictions may be imposed, but only to the extent required to maintain normal surveillance. Letters addressed to a public representative body (normally, the Federal Parliament or a provincial legislature), to a court, to a government department or to the European Commission on Human Rights may not be detained.

3. Decisions as to those with whom persons held in custody pending trial may correspond and from whom they may receive visits, the surveillance of correspondence and visits, and all other decisions and instructions relating to such persons' contacts with the outside world are within the competence of the examining magistrate (article 188, paragraph 1). The assumption of responsibility for surveillance by a magistrate is intended to afford better protection of the rights of the persons concerned.

IV

The group of experts established by the Federal Government to draw up a set of reforms relating to fundamental rights dealt with the following matters in 1972:

1. Providing guarantees for the magistracy as a judicial body and granting each judge the fundamental rights required in order to ensure the

¹ Note furnished by the Government of Austria.

effectiveness of those guarantees; providing guarantees for the civil service as an administrative body and granting each civil servant the fundamental rights required in order to ensure the effectiveness of those guarantees.

2. The right to the free use of any language in private and professional life, and the right to use one's mother tongue before public authorities. The panel also discussed the related question of the rights of linguistic minorities (including the question of the rights granted to groups and individuals) as well as the right of any ethnic group to protection and to the practice of its customs and language.

3. Another matter dealt with at length was the right to equality before the law, particularly the

right to benefit on an equal basis from all subsidies and other incentives established by the Government as well as the right to protection against discriminatory economic measures by the Government. Consideration was also given to the effects which the International Convention on the Elimination of All Forms of Racial Discrimination will have on the recodification of fundamental rights.

4. Finally, the group of experts took up a fourth problem, namely that of fundamental social rights. It discussed first of all the question of the legal procedures for safeguarding fundamental social rights and then the right to work. The experts continued to deal with these topics in the course of their deliberations in 1973.

BAHRAIN ¹

The Constituent Assembly of Bahrain, which was inaugurated on 16 December 1972, is considering and voting on a draft Constitution submitted by the Cabinet. Accordingly, the articles in connexion with human rights are under consideration.

¹ Information furnished by the Government of the State of Bahrain.

BARBADOS ¹

During 1972, the only relevant enactment was the Wages Regulations (Shop Assistants) Order, 1972, which prescribes new rates of remuneration for shop assistants.

¹ Information furnished by the Government of Barbados.

BELGIUM

NOTE¹

I. Legislation

1. PROTECTION OF SPECIFIC GROUPS OF WORKERS

The Employment Act of 16 March 1971, which co-ordinated a number of laws, also introduced new measures along the lines of the EEC recommendation of 31 January 1967 specifically for the protection of juvenile workers.

A number of Royal Orders have been issued to implement the above-mentioned legal provisions.

Inter alia, the prohibition of certain underground work in mines and quarries has been extended to workers between 18 and 21 years of age (Royal Order of 17 April 1972).

In addition, underground work not carried out in mines and quarries is absolutely prohibited for juvenile workers under 16 years of age (Royal Order of 4 April 1972).

A derogation from the principle banning night work (8 p.m. to 6 a.m.) for juvenile workers has been introduced. Pursuant to the Royal Order of 4 April 1972, they may perform night work up to 11 p.m. for the purpose of participating as actors or performers in:

- (1) Cultural, scientific, educational or artistic events;
- (2) Shooting and recording sessions for the cinema, television and radio;
- (3) Fashion shows and presentations of clothes collections.

In the cases referred to in paragraphs 1 and 3 and during sports events, the Royal Order of 23 May 1972 also authorizes employment of juvenile workers on Sundays and holidays. At certain times of the year they may work on those days in specific enterprises situated in sea-side and health resorts and tourist centres, such as retail shops, hairdressing salons, entertainment and sports enterprises and firms engaged in renting books, chairs and means of locomotion. Employers who wish to exercise this option must give at least five days' advance notice thereof, in writing, to the Office of the Employment Inspector.

Finally, Royal Order of 10 July 1972 authorized the employment of juvenile workers in the hotel industry subject to certain conditions, namely that they be free every other Sunday and that the Office of the Employment Inspector be notified in writing.

2. SOCIAL SECURITY

With respect to self-employed persons, the Royal Order of 18 August 1972, amending the Royal Order of 19 December 1967 introducing general regulations in implementation of Royal Order No. 38 of 27 July 1967 establishing social security regulations for the self-employed, introduced a new presumption that those regulations are applicable to representatives of a profit-seeking legal company or *de facto* association. However, this presumption may be overturned if it is proved that the professional activity carried out is voluntary in nature.

3. SOCIAL SECURITY FOR MINERS

The Royal Order of 8 May 1972 (*Moniteur belge*, 26 October 1972), amending the Royal Order of 20 November 1970 which laid down the terms for the organization and operation of the Miners' National Pension Fund, is the only one that need be mentioned.

This Order extends the list of persons covered by the special miners' social security scheme mainly to workers in factories engaged in making coal by-products and to certain workers employed in the cooking plants attached to the mines.

4. SICKNESS AND DISABILITY INSURANCE

The Royal Order of 27 June 1972 (*Moniteur belge*, 9 August 1972) amending the Royal Order of 4 November 1963 implementing the Act of 9 August 1963 that introduced and set up a compulsory sickness and disability insurance scheme entitles any insured miner who is dismissed because of the closure of the enterprise to continued coverage for the period during which he receives a temporary allowance from the Ministry of Economic Affairs.

The Royal Order of 30 June 1972 (*Moniteur belge*, 14 July 1972) amending the Royal Order of 4 November 1963 implementing the Act of 9 August 1963 that introduced and set up a compulsory sickness and disability insurance scheme, extends the entitlement of the unemployed to health care. Under that Order, during times of controlled unemployment a salaried employee retains health care benefits even if he has been refused unemployment benefits owing to failure to declare that he has resumed work.

The Royal Order of 30 November 1972 (*Moniteur belge*, 28 December 1972) amending the Royal Order of 4 November 1963 implementing the Act of 9 August 1963 that introduced and set up a compulsory sickness and disability

¹ Note furnished by the Government of Belgium.

insurance scheme demonstrates the Belgian Government's constant concern for handicapped persons. It is well known that disability compensation is reduced when the person receiving it also receives a standard or supplementary allowance for handicapped persons (granted following the start of the disability). This reduction is such that the disability compensation is equal to the difference between 150 or 125 per cent—depending on whether or not the beneficiary has any dependents—of the disability compensation for persons with dependents and the rate of the allowance for handicapped persons. The aforementioned Royal Order of 30 November 1972 limits the deduction to 80 per cent of the allowance for handicapped persons in the case of handicapped persons suffering permanent 100 per cent disability and allows payment in full in the case of seriously handicapped persons who need assistance from a third party.

With regard to self-employed persons, mention should be made of the Royal Order of 22 November 1972 (*Moniteur belge*, 5 December 1972) concerning the payment to nationals of the United States of America of the disability compensation provided for in the Royal Order of 20 July 1971 introducing a disability insurance scheme for self-employed workers. This Order establishes an exception to the principle of territoriality for the insurance benefits of self-employed persons. In other words, the condition that disability can be recognized only if the beneficiary resides in Belgian territory is waived in the case of nationals of the United States of America.

5. UNEMPLOYMENT

Under the Royal Order of 25 October 1971 (*Moniteur belge*, 2 February 1972) amending the Royal Order of 16 August 1968, implementing the Act of 20 July 1968 concerning the granting of a temporary allowance to workers who lose their employment on the closure of certain undertakings, the advance notice of breach of contract in the period preceding the closing of the undertaking during which a worker receives temporary allowances is increased to 18 months in the case of office workers. However, that period remains 12 months for other workers.

In addition, the Administration Committee of the Fund to compensate salaried employees dismissed in the case of the closure of an undertaking may treat any interruption of the contract in anticipation or implementation of the closing of the firm as a breach of contract, if the employee has worked one year in the industry. The Committee may also decide to pay temporary allowances to salaried employees for whom execution of the labour contract is interrupted and who cannot resume work in the firm after the end of that interruption.

6. PENSIONS

The measures taken in this respect provide a good illustration of the desire to grant a full retirement pension.

The Act of 26 June 1972 (*Moniteur belge*, 30 June 1972), reducing the number of years of underground service in the coal-mines needed to obtain a full retirement pension, reduces the years of underground service required for entitlement to a full miner's retirement pension from 30 to 27.

The Royal Order of 25 October 1971 (*Moniteur belge*, 13 January 1972) amending the Royal Order of 23 June 1970 establishing the conditions in which certain prisoners of war and political prisoners to whom the nation has publicly expressed its gratitude may apply for a salaried employee's early retirement pension entitles former political prisoners of the 1914-1918 and 1940-1945 wars who were detained for at least 90 days to an early retirement pension without suffering any pension reduction.

Along the same lines, certain provisions take into account in calculating pensions periods of inactivity owing to performance of a trade union activity.

In particular, mention should be made of the Royal Order of 11 August 1972 (*Moniteur belge*, 19 August 1972—errata, *Moniteur belge*, 30 August 1972) amending the Royal Order of 21 December 1967 introducing the general regulations for the salaried employee's retirement and survivors' pension. Pursuant to this Order, periods of inactivity which are due to the periodic fulfilment of trade union obligations are classed as periods of wage-earning activity, provided they are considered as work for the purpose of calculating the vacation allowance.

In connexion with the miners' disability pension, mention should also be made of the Royal Order of 5 October 1972 (*Moniteur belge*, 14 October 1972) amending the Royal Order of 19 November 1970 concerning the miners' disability pension scheme. This Order classes periods during which a miner interrupts his work in order to perform the duties of an employee or permanent secretary of a miners' trade union as work in the mines.

Similar classifications are made in the case of periods during which miners receive an allowance charged to the budget of the Ministry of Economic Affairs, pursuant to the Royal Order of 12 May 1972 (*Moniteur belge*, 14 June 1972) amending the Royal Order of 21 December 1967 which laid down the general regulations for the salaried employee's retirement and survivors' pension scheme; and the Royal Order of 29 May 1972 (*Moniteur belge*, 3 June 1972) amending the Royal Order of 19 November 1970 concerning the miners' disability pension scheme.

The first of these Orders classes as periods of activity those periods during which a miner who is dismissed as a result of the closing of a coal-mine receives a temporary allowance charged to the budget of the Ministry of Economic Affairs for 1972.

The second Order modifies the miners' disability pension scheme in order to take account of periods during which a miner whose physical powers have been diminished received a disability allowance for disabled workers charged to the budget of the Ministry of Economic Affairs, in the case of closure of a coal-mine.

Mention should also be made of the provisions increasing pensions.

The Act of 30 March 1972 (*Moniteur belge*, 4 March 1972) increased the pensions of salaried employees; and the Royal Order of 28 February 1972 (*Moniteur belge*, 4 March 1972) increased the miners' disability pension. Under these two provisions salaried employees' pensions and miners' disability pensions were increased by 5 per cent as of 1 January 1972.

The miners' disability pension has increased by an additional 10 per cent as of 1 July 1972 under the Royal Order of 26 June 1972 (*Moniteur belge*, 30 June 1972) increasing the miners' disability pension.

Finally, the appropriations bill of 20 December 1972 for the budgetary year 1973 (*Moniteur belge*, 29 December 1972) again increased retirement and survivors' pensions payable under the existing scheme for salaried employees by 7.96 per cent as of 1 January 1973.

Within the framework of social security for self-employed persons, attention has also been paid to the lot of retired people.

The Act of 12 July 1972 (*Moniteur belge*, 14 July 1972, errata *Moniteur belge*, 25 August 1972) amending certain provisions relating to the social security regulations for the self-employed relaxed the means test. From now on earned income is no longer taken into account in the means test. In addition, this Act considerably increased annual benefits so that by 1 July 1975 the annual retirement pension for a couple will be 75,000 francs.

The Royal Order of 17 July 1972 (*Moniteur belge*, 28 July 1972), amending the Royal Order of 22 December 1967 laying down the general regulations concerning retirement and survivors' pensions for self-employed workers, applies the principle that pensions should be paid for the years after 1956 without any means test being applied, as stated in the Act of 9 June 1970 and, in addition, increased by an allowance for part of the career prior to 1957.

As regards the income guaranteed to old people, mention should be made of the Royal Order of 28 February 1972 (*Moniteur belge*, 4 March 1972), which increased this guaranteed income by 5 per cent as of 1 January 1972.

7. FAMILY ALLOWANCES

There has been no basic change in this sector in 1972. Nevertheless, mention should be made of the Royal Order of 15 May 1972 (*Moniteur belge*, 13 June 1972) amending articles 41 and 57 bis of the co-ordinated Acts relating to family allowances for salaried employees. This Order adds to the list of days which are classed as working days for the purpose of the application of the co-ordinated Acts, days during which a miner, dismissed because of the closing of the firm, receives a temporary allowance charged to the budget of the Ministry of Economic Affairs.

In addition, the Government decided, at the proposal of the Administration Committee of the National Bureau of Family Allowances for Salaried Employees, to grant an additional full month of family allowances in September instead of the half-month given in the two previous years (study allowance at the beginning of the school year).

Finally, in connexion with family allowances for self-employed workers, mention should be made of the Royal Order of 11 August 1972 (*Moniteur belge*, 28 August 1972) amending the Organic Royal Order of 22 December 1938 provided for under the Act of 10 June 1937 which extended family allowances to employers and non-salaried employees.

This concerns the implementation of a provision of the Act of 9 June 1970 which provided, *inter alia*, for the gradual equalization of the family allowances scheme for salaried employees and that for self-employed persons, with the exception of the family allowance for children in the first rank.

8. HANDICAPPED PERSONS

The most important measure is the Royal Order of 15 June 1972 (*Moniteur belge*, 20 June 1972) which specifies the conditions on which seriously handicapped persons may be granted benefits to pay for the assistance of a third party. The benefit introduced by this Order is, in fact, a new allowance which supplements the standard, supplementary and special allowances. It is granted to handicapped persons who are already receiving one of these three allowances and who are suffering from permanent 100 per cent disability and who cannot perform, on their own, certain basic acts essential to life. This benefit is not taken into consideration for purposes of income assessment to determine whether a person is entitled to a standard, supplementary or special allowance.

The standard, special and augmented special allowances have been increased. In this connexion, mention should be made of:

The Royal Order of 28 December 1971 (*Moniteur belge*, 19 April 1972) amending the Act of 27 June 1969 concerning the granting of allowances to handicapped persons and the Royal Order of 22 March 1971, which increased the rate of the special allowance provided for in article 11 of the Act of 27 June 1969 concerning the granting of allowances to handicapped persons;

The Royal Order of 28 February 1972 (*Moniteur belge*, 4 March 1972) amending the Royal Order of 17 November 1969 establishing general regulations for the granting of allowances to handicapped persons; and

The Royal Order of 28 February 1972 (*Moniteur belge*, 4 March 1972), increasing the rate of the special allowance provided for in article 11 of the Act of 27 June 1969 concerning the granting of allowances to handicapped persons, increased by the Royal Order of 22 March 1971.

9. ANNUAL VACATION

An interprofessional agreement of 15 June 1971 provides for the granting of two additional days' annual vacation.

Subsequent to that agreement and with a view to gradually introducing a fourth full week of vacation, several joint committees included the granting of these two additional days in collective labour agreements aside from the three weeks' legal vacation.

II. Court decisions

When court decisions refer to human rights they refer, with very few exceptions, to the various articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Following is a list of decisions taken during 1972 relating to certain articles of the European Convention:

(a) Ruling of the Court of Cassation of 11 February 1972 [violations of art. 5, para. 1 c (detention affected for the purpose of bringing a person before the competent legal authority); art. 5, para. 3 (right to be judged within a reasonable time); art. 6, para. 1 (right to a hearing by an

independent and impartial tribunal); and art. 6, para. 3 (fair trial)];

(b) Ruling of the Court of Cassation of 10 March 1972 [violation of art. 6, paras. 2 and 3 (the defendant shall be presumed innocent, fair trial)];

(c) Ruling of the Court of Cassation of 14 March 1972 [violation of art. 6, para. 3 c (right of the defendant to legal assistance of his own choosing)];

(d) Ruling of the Court of Cassation of 8 September 1972 relative to a matter in which the plaintiff claimed that article 6, paragraph 1 of the European Convention had been violated (right to a hearing by an independent and impartial tribunal);

(e) Ruling of the Court of Cassation of 27 September 1972 [violation of art. 6 (fair trial)];

(f) Judgement of 16 December 1972 of the Brussels Court of First Instance which quoted article 8 of the European Convention (respect for family life);

(g) Ruling of the Court of Cassation of 17 December 1972 quoting article 6, paragraph 3 a of the European Convention (right of the defendant to be informed promptly, in a language which he understands of the accusation against him).

BULGARIA

NOTE ¹

I. Act concerning the conditions for, and the procedure governing, the revocation of the mandate of deputies and people's councillors² and Regulations governing the work of the National Assembly³

These two pieces of legislation developed and extended, within Bulgarian domestic legislation, the sphere of application of the principle set out in article 21 (3) of the Universal Declaration of Human Rights ("The will of the people shall be the basis of the authority of government . . ."). This principle is the basis for several pieces of Bulgarian constitutional legislation: the Constitution (arts. 66, 67, 78 and 85); the Act concerning elections to the National Assembly of the People's Republic of Bulgaria; and the Act concerning People's Councils. The principle has now been further developed in various provisions of the Act concerning the conditions for, and the procedure governing, the revocation of the mandate of deputies and people's councillors, and in the Regulations governing the work of the National Assembly. The deputies express the will of the people and take part in formulating State policy. They are guided in all their activities by the interests of the people, and harmonize the interests of their electors with those of the whole people. Each deputy is required to promote the involvement of the workers in State government and administration. He seeks the views of his electors and of workers' collectives on matters which call for a decision by the National Assembly (art. 28 of the Regulations governing the work of the National Assembly).

The principle that deputies and people's councillors are elected, and that they are accountable to their electors, has been further developed: revocation of their mandate was provided for in the Act concerning conditions for, and the procedure governing, the revocation of the mandate of deputies and people's councillors, adopted in May 1972.

Deputies and people's councillors are accountable to their electors. Their mandate may be revoked before their term expires, if the electors of the constituency concerned so decide, if they have not justified the confidence placed in them or have betrayed the ideas and the programme on the basis of which they were elected, etc. A

proposal calling for a revocation of the mandate, accompanied by a statement of the reasons for it, must be drawn up by one third of the electors of the constituency concerned or by organizations and associations authorized to submit nominations for the election of deputies and people's councillors. As in the case of an election, the revocation of the mandate is decided upon by secret ballot among all the electors, with the use of two ballot papers—"in favour of revocation of the mandate" and "against revocation of the mandate"—which are placed in envelopes and deposited in ballot boxes. After the close of the poll, section and constituency committees, check the validity of the ballots and draw up a report giving the results of the vote (arts. 1 to 16).

II. Act amending and supplementing the Copyright Act⁴

The principle set out in article 27 (2) of the Universal Declaration of Human Rights, under which "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author", has been considerably elaborated, with respect to copyright, by the Act amending and supplementing the Copyright Act, which was adopted in 1972. The period of copyright covers the lifetime of the author and 50 years following his death. After the death of the author, the copyright passes to his descendants, spouse and parents. The author may also dispose of the copyright in his will, in conformity with the Act on Inheritance. The new changes in the Act also regulate copyright over cinema or television films. In this case, copyright is assigned to the undertaking which produced the film. Furthermore, persons who have made amateur films also enjoy copyright. Copyright is enjoyed by scriptwriters, composers, directors, chief cameramen, artistic advisers and the authors of any other works which appear in the film as an integral part of it, each holding copyright over his own work (arts. 16 and 18).

III. Act concerning residence by aliens in the People's Republic of Bulgaria⁵

Another principle of the Universal Declaration of Human Rights which is reflected in Bulgarian domestic legislation is the one set out in article

¹ Text prepared by Mr. Anguel Angueloff, government-appointed correspondent of the *Yearbook on Human Rights*.

² *Official Gazette* No. 35, 5 May 1972.

³ *Ibid.*, No. 36, 9 September 1972.

⁴ *Ibid.*, No. 35, 5 May 1972.

⁵ *Ibid.*, No. 93, 28 November 1972.

14, under which everyone has the right to seek and to enjoy in other countries asylum from persecution. Bulgarian law recognizes the right to asylum of all persons who are being persecuted for their defence of the interests of workers, for their participation in the national liberation struggle, for their progressive scientific, political or artistic work, for their struggle against racial discrimination or for the cause of peace. Furthermore, in order to protect the legitimate rights and interests of aliens residing in the country, the legislation of the People's Republic of Bulgaria accords them the same rights as are accorded to Bulgarian citizens (arts. 17 and 23).

IV. Decree amending and supplementing the Higher Education Act ⁶

The Higher Education Act enumerates the objectives of higher education in the People's

Republic of Bulgaria. Article 1 lays down that the aim of higher education is to train qualified specialists of a new type capable of settling, through their own efforts, the complex problems raised by the scientific and technological revolution and by developments in the country. This constitutes a development, by legislative means, of the principle set out in article 46 of the Constitution, under which the State takes care of the development of science, the arts and culture, by establishing institutions of higher education, access to which is guaranteed to citizens on the basis of their abilities and capacities, as provided for in article 26 of the Universal Declaration of Human Rights, which states that "higher education shall be equally accessible to all on the basis of merit".

⁶ *Ibid.*, No. 65, 18 August 1972.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

NOTE ¹

1. Statement of 30 December 1972 by the Central Committee of the Communist Party of the Soviet Union, the Presidium of the Supreme Soviet of the Socialist Republics and the Council of Ministers of the USSR

(Extract)

The Great October Revolution opened the way for the establishment of the world's first united multinational workers' State and emancipated the peoples of Russia from social and national oppression. The unification of the Soviet peoples in a single socialist State is inseparably linked with the name and work of the great revolutionary leader Vladimir Ilyich Lenin.

Practical experience made it urgently necessary to concert all the peoples' efforts for the reconstruction of society according to socialist principles and for the protection of the gains won by the Revolution. The workers of all the Soviet Republics freely consented to the unification of the State. On 30 December 1922, the First All-Union Congress of Soviets adopted a Declaration and approved the Treaty on the Formation of the Union of Soviet Socialist Republics. This historic act had a tremendous impact on the destinies of our country's nations and nationalities.

We observe the 50th anniversary of the Soviet Union as the magnificent balance-sheet of a concerted revolutionary struggle and of constructive labour, as a holiday honouring the friendship of peoples and as the triumph of proletarian internationalism and the Leninist nationalities policy of the Communist Party.

Through the heroic labour of the Soviet people a socialist society has been created, a real solution to the nationalities problem has been achieved and a majestic edifice of international brotherhood has been erected. National oppression and the national hostility, incited by the autocracy and the bourgeoisie have become a thing of the past. Full equality of rights and real equality of nations have been confirmed in practice.

Socialism has given powerful impetus to economic development. Modern industry and large-scale collectivized agriculture have been established throughout the country. The close co-operation between peoples and above all the efforts of the working class of Russia have made it possible for us to overcome very rapidly the age-old backwardness of the borderlands. Our unified economy, guided in accordance with an

over-all plan, is the pride of every socialist ethnic group and of the entire Soviet people and is the foundation of the power and greatness of our country.

Socialism has offered the broadest possible scope for the intellectual growth of millions of working people. A genuine cultural revolution has been accomplished. The working people have become the active builders of a new, socialist culture. The progress of science and the flowering of literature and the arts in all the Republics has been accelerated by the interaction and mutual enrichment of the cultures of our fraternal peoples.

Socialism has stimulated relations of comradely co-operation among the classes and social groups and the nations and nationalities of the country. Upon this foundation has been built a new historical community of people—the Soviet people. The great friendship of peoples has become the law governing relations between nationalities and has been a motive force in our development; a vital feature of the Soviet man's world is the organic unity of socialist patriotism and proletarian internationalism. Generations of convinced internationalists and determined fighters for the ideals of communism have grown up in our country.

The friendship of peoples, which all Soviet citizens proudly associate with the name of Lenin, strengthened us tenfold during the first five-year plans and was one of the most important factors ensuring our victory in the Great Patriotic War. The monolithic solidarity of the multinational Soviet people has played a signal role in the creation of an advanced socialist society. It has become the mighty force which has enabled us to realize the most ambitious plans for economic, social and cultural progress.

The 50th anniversary of the Union of Soviet Socialist Republics marks the jubilee of a great world Power which exerts a vast influence on the entire course of historical development. The experience of the Soviet State has clearly shown all the peoples of the world what propitious conditions the socialist system creates for the flowering and *rapprochement* of nations and for the development of friendly relations between nationalities and between States.

¹ Note furnished by the Government of the Byelorussian Soviet Socialist Republic.

2. Report by P. M. Masherov, Candidate for membership in the Politburo of the Central Committee of the Communist Party of the Soviet Union and First Secretary of the Central Committee of the Communist Party of Byelorussia, presented at the commemorative meeting held at Minsk on 15 December 1972

(Extract)

The heroic history of the Soviet people encompasses events of truly epochal significance which profoundly and clearly reveal the essence of the innermost aspirations of the people and their remarkable accomplishments. These events not only marked a fundamental turning point in the destiny of the peoples of our country but are bound up with the entire course of world social development. The Great October Revolution, which provided the starting point for the socialist chronology of world history, will never die. We quite rightly trace the formation of the Union of Soviet Socialist Republics in December 1922 back to the victorious October Revolution, which marked the beginning of a new era—the era of socialism. The formation of the Union was an event of universal historical import, a signal accomplishment of the genius of Lenin and the practical realization of the revolutionary Leninist programme regarding the nationalities question. The age-old dream of workers, envisaging a fraternal union of peoples free at exploitation and oppression, had become a reality.

The formation and successful development of the fraternal union of Soviet peoples furnishes incontrovertible proof that socialism alone offers a reliable way of overcoming hostility and mistrust among nations and at giving real expression to the working people's humanistic principle that man must join with man and people with people in friendship, comradeship and brotherhood.

Having established the dictatorship of the proletariat, the Soviets introduced public ownership of the means of production and thus set up—as/over against the old world of class and national oppression and of national discord and isolation—a new world of working people in which there is no place for the oppression of man by man or of one nation by another. Having demolished the "prison of peoples" of Tsarist Russia, the October Revolution brought emancipation to all the nations and nationalities dwelling in our country and guaranteed them complete freedom in determining their way of life and in achieving statehood on a truly democratic, revolutionary basis. A firm foundation was laid for the social, political and economic *rapprochement* of ethnic groups, their indestructible friendship and all-round co-operation and the establishment of the multinational Soviet State. The Communist Party united working people of the various nationalities of Russia on the basis of their class interests and the principles of the Leninist nationalities programme.

Soviet man does not view the friendship of peoples and international brotherhood as merely lofty ideals. They are the essence of our life, struggle and labour. But let us not forget what truly titanic efforts were needed to erect the

majestic edifice of friendship and fraternal co-operation which is unsurpassed in its beauty and durability. The process of uniting the peoples of our country in a single family was, as we all know, exceptionally complex. We had no teacher to guide us; the inexorable logic of class struggle left us no time to spare and required extraordinary exertions and a concentrated effort by the Party and the workers. We had to overcome fierce counter-revolutionary resistance from within and without, economic collapse and shocking cultural backwardness, famine and epidemics....

It was not enough to proclaim the new principles of relations among peoples. We had to melt the ice of mistrust left by centuries of landlord and capitalist oppression, by private ownership and the hostility resulting from partitions and repartitions; we had to remove from the peoples' life everything that had fostered national discord. A tremendous educational effort by the Party to imbue Soviet people with the spirit of internationalism was required in order to bolster the community at political, economic and social interests based on class.

It was not enough to proclaim freedom and the equality of peoples. We had to liquidate in actual fact the existing inequalities among nations and overcome the historically determined differences in their economic and cultural levels.

It was not enough to formulate a correct nationalities policy. The essential thing was to translate it into reality.

The achievement of advanced socialism means that our society has won an historic victory which has opened up inspiring prospects for further progress along the entire front of communist construction.

During the years of Soviet rule, a fundamentally new economic system has been created through the efforts of the Leninist Party and all the peoples of our country. It is indisputably superior to all previous modes of production in that it guarantees truly unlimited possibilities for steady economic and social progress in the interests of the broad masses of working people.

All the vast economic power of advanced socialism has been placed at the service of society and directed towards the improvement of standards of living and the creation of the most favourable conditions for all-round development of the capacities and creativity of Soviet man. No other system has done or could do as much for mankind and in the name of man as socialist society has done. For the first time in history, social production is not a means of profit-making by the parasitic classes but a means of ensuring the fullest possible satisfaction of the needs of the working people themselves. For the first time in

history, labour has become the basis and main criterion for the individual's social prestige and status in society.

Wages are steadily rising, and social consumption funds are increasing. Housing construction is under way on a vast scale throughout the country. During the years of Soviet rule, housing with a total (useful) floor space of nearly 2,700 million square metres has been constructed. In the Byelorussian Republic alone during the single year 1971, 85,900 apartments were built—a nearly twofold increase over the figure for 1950.

In the land of the Soviets, no effort is spared to ensure that every family and every worker can enjoy the benefits of socialism to an ever greater extent.

Unprecedentedly rapid economic and cultural progress in all the Republics has been achieved thanks to the gains and accomplishments of the country as a whole and as a result of the concerted, co-ordinated efforts of the working people and of the friendship and co-operation among the socialist nations.

Our Soviet Byelorussia too, is in full measure reaping the great rewards and benefiting from the wondrous might of socialist internationalism; it is developing dynamically within the fraternal family of peoples of the Soviet Union.

The volume of industrial output in the Republic in 1972 was 124 times as high as the pre-Revolutionary level and 15 times as high as the 1940 pre-war level. This was accomplished despite the tremendous losses and destruction which Byelorussia, like other parts of the country, sustained during the period of the civil war and foreign military intervention and in the dark days of the German fascist occupation.

Even more prominent features of the contemporary industrial structure of the Republic are automobile and tractor manufacturing, the petroleum extraction and processing industries, machine-tool production, and the manufacture of electronic equipment and precision instruments, inorganic fertilizers and synthetic fibres, i.e. those sectors which largely determine the pace of scientific and technological progress and the ability to put the latest advances in science and technology to effective use in the national economy.

Large-scale State assistance and the unflagging enthusiasm and industriousness of rural workers, coupled with the steadily increasing mechanization of agriculture and the broad application of scientific methods and up-to-date experience, have made possible during the period of Soviet rule a threefold increase in the average yield per hectare of cultivated land in the Republic. The industrial basis of communal animal husbandry is being strengthened. This vital sector of agriculture is raising output by means of greater specialization, all-round mechanization of animal husbandry and the fortification of livestock feeds.

Everything that has been created in the Republic—modern industry, advanced agriculture, progressive science and culture—is the result of the joint efforts of all nations and nationalities of our homeland without exception and is a living vivid testimonial to the fruitfulness of their co-operation.

The socialist way of life unites and ennobles working people and develops for the common good everything that is best in each people, each nation and each worker. Hostility and antagonisms have vanished from our life forever, and men are not oppressed by the fear of what tomorrow will bring, since work, education and health care—all the most important aspects of life from birth to old age—are, even at the present stage of social and economic development, under the trustworthy protection of the Soviet State and firmly guaranteed by the Constitution of the Union of Soviet Socialist Republics. Wherever a Soviet citizen works and whatever his nationality, he is secure in the knowledge that the labour he contributes to society and his abilities, energy, knowledge and experience will always be properly used and recognized. Our people know that the Communist Party does its utmost to ensure that each year the life of every family and every worker becomes intellectually richer, more meaningful and more secure.

Socialism has brought modern civilization to all of our country's national groups without exception and has given powerful impetus to the mutual enrichment and drawing together national cultures resting on the unshakable foundation of Marxist-Leninist ideology. Soviet Byelorussia, like the other Republics with which it is joined in a fraternal union, attained the heights of a true flowering of culture and intellectual life in an unprecedentedly short period of time. An impressive and truly revolutionary transformation from almost universal illiteracy to universal secondary education and swift scientific development was accomplished, and imposing educational and research centres were established; the Republic rose from an impoverished cultural life to a high level of professionalism in literature and art, from narrowly circumscribed intellectual horizons to an unprecedented development and flowering of the people's talents and the all-round development of the individual.

The victory of socialism greatly broadened the horizons of human awareness and enriched the life of working people with higher values, the outstanding creations of the mind and the achievements of our own and world culture. An inwardly unified and homogeneous culture, socialist in content and national in form, was established and is being fruitfully developed, a culture which represents a dialectically interacting synthesis of international and national elements. This culture is powerfully charged with socialist humanism and with a striving for the revolutionary renewal of the world; it calls for work and high achievement in order to ensure the triumph of the immortal cause of Leninism.

3. Report of the Central Statistical Board of the Council of Ministers of the Byelorussian SSR on the results of fulfilment of the state plan for the economic development of the Byelorussian SSR in 1972

(Extract)

The working people of the Byelorussian SSR, giving effect to the historic decisions of the Twenty-fourth Congress of the Communist Party of the Soviet Union and the Twenty-seventh Congress of the Communist Party of Byelorussia and having developed socialist emulation on a broad front as a fitting way of observing the fiftieth anniversary of the formation of the USSR, achieved further successes in the development of the Republic's economy, science and culture in the second year of the five-year plan. The programme for enhancing the well-being of the population was fulfilled in all respects.

The main indicators of the economic development of the Republic during the past year are the following:

	<i>1972 percentage increase over 1971</i>
National income produced	8
Industrial output	9.7
Agricultural production	2
Capital investment	9
Freight carried by all forms of transport	4.2
Number of manual and non-manual workers	3.3
Wage fund for the economy	7.4
Average take-home pay of manual and non-manual workers	4
Wages of collective farm workers	6.2
Social consumption funds	9.2
Real <i>per capita</i> income	7
Retail trade turnover	9
Communal services	15

RISE IN THE MATERIAL WELL-BEING
AND CULTURAL
LEVEL OF THE PEOPLE

The average number of manual and non-manual workers employed in the Republican economy in 1972 was 3.3 million, representing an increase of 105,000 over the previous year.

The average number of collective farm workers employed in the communal economy of the collective farms in 1972 was more than 1 million.

The Republic's economic growth made possible a continued rise in the material well-being and cultural level of the people.

Following the 1971 pay increase for rail transport workers, salaries were raised in 1972 for physicians, teachers and child care personnel in pre-school institutions, teachers in secondary specialized educational establishments and vocational technical schools and certain other categories of workers in educational institutions

as well as instructors in higher educational establishments without an academic degree. On the average, salaries paid to these workers rose by 20 per cent. The increase in wage rates for tractor operators/repair men employed by agricultural and forestry enterprises, which was initiated in 1971, was completed in 1972. The night differential in the light, food and tyre industries was increased.

The average monthly take-home pay for manual and non-manual workers amounted to 114.9 roubles in 1972 as compared with 110.6 roubles in 1971, representing an increase of nearly 4 per cent. Including payments and benefits provided from social consumption funds, the 1972 pay package amounted to 157 roubles as compared with 151 roubles in 1971.

Wages of collective farm workers in 1972 were 6.2 per cent higher than in 1971.

The size of the stipends granted to university students was substantially increased—an average of 25 per cent—and in the case of students at secondary specialized educational establishments and students at technical schools within the system of vocational-technical education the increase was 50 per cent. The standard benefits for food and medication costs in hospitals were increased.

Payments and benefits received by the population from social consumption funds totalled 2,500 million roubles, representing an increase of 208 million roubles over the previous year. These funds financed free education, free medical care, pensions, allowances and other forms of social security and social insurance, paid leave, students' stipends, free and reduced-rate passes to sanatoria and rest homes, the upkeep of kindergartens and crèches and other types of social and cultural services:

Eighty-six thousand, eight hundred new, well-equipped apartments and individual dwellings with a total floor space of 4,266,000 square metres were brought into occupancy with financing by the State, by collective farms and by individuals. During the past year, 416,000 persons improved their housing. In the towns and rural localities of the Republic, new general education schools with places for 52,800 pupils, pre-school institutions with places for 20,100 children, hospitals, polyclinics and other cultural and social facilities were brought into operation.

Further progress was achieved in the development of public education and culture. Approximately 2.9 million persons received education of one type or another. 1,858,300 students attended general education schools of all types. 191,300 students were graduated from eight-year schools and 122,600 completed secondary general education schools. In addition, 26,700 young men and

women received a secondary education at evening (shift) general education schools and vocational-technical schools.

Extended-day schools and groups enrolled 196,000 children—7.5 per cent more than in 1971.

Three hundred and four thousand children attended permanent pre-school institutions, i.e. 5.4 per cent more than in 1971. In addition, approximately 160,000 children attended seasonal children's institutions.

Enrolment in higher educational establishments totalled 145,700, or 2,900 more students than during the previous academic year; enrolment in secondary specialized educational establishments totalled 151,000 or 2,000 more than during the previous school year.

During the current school year, 31,100 students were admitted to higher educational establishments, including 19,800 enrolled in day courses. 46,200 students were admitted to secondary specialized educational establishments, including 29,700 in day courses.

In 1972, 61,200 specialists were graduated from higher educational establishments and *tekhnikums*, 23,400 of them having received a higher education and 37,800 a secondary specialized education.

Training and advanced training of manual and non-manual workers and collective farmers was carried out on a large scale. 59,200 young skilled workers were graduated from vocational-technical schools, and more than 69,000 were admitted to schools, including 7,000 admitted to those providing secondary education in addition to vocational training. Approximately 650,000 manual workers were trained for new trades or improved their skills through in-service training, receiving individual or group instruction, or taking courses; at enterprises, institutions, organizations and collective farms.

At the end of 1972, 6,700 cinema installations were operating in the Republic, and cinema attendance during the year totalled more than 132 million.

Medical services to the population improved during the year. The number of physicians of all kinds increased by 4.7 per cent, and the number of hospital beds rose by 1.9 per cent. During the summer, more than 864,000 children and young people spent time at Pioneer and school camps, children's sanatoria and holiday and tourist centres or spent their holiday at children's institutions in the country.

On 1 January 1973, the population of the Byelorussian SSR stood at 9.2 million.

4. Act of 27 December 1972 concerning the state plan for the economic development of the Byelorussian SSR in 1973

(Extract)

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

Article 1. To approve the State Plan for the Economic Development of the Byelorussian SSR in 1973 submitted by the Council of Ministries of the Byelorussian SSR, as amended by the Plan-Budget and Sectoral Commissions of the Supreme Soviet of the Byelorussian SSR.

Article 2. To approve the following main indicators for the State Plan for the Economic Development of the Byelorussian SSR in 1973:

	<i>Planned percentage increase over 1972</i>
National income (produced)	7
Industrial output	7.9
<i>including:</i>	
Output of capital goods	9.3
Output of consumer goods	5
Wage fund	6
Retail goods turnover in State and co-operative trade	6.3

Article 3. To achieve the following increases in 1973 as compared with 1972:

	<i>Planned percentage increase over 1972</i>
Real <i>per capita</i> income	6
Communal services	15.5

Total floor space of new housing, constructed through the use of all sources of financing	8.2
Number of children in pre-school institutions supported by the State budget	5.8
Admissions of students to vocational-technical educational establishments	7.3
Admissions of students to day courses in secondary specialized educational establishments	1.3
Admissions of students to day courses in higher educational establishments	2.6
Number of hospital beds	2.7

Article 4. To instruct the Council of Ministers of the Byelorussian SSR to carry out measures in 1973 for the further enhancement of material and cultural living standards in accordance with the Directives of the Twenty-fourth Congress of the Communist Party of the Soviet Union, the USSR Act concerning the State Five-Year Plan for the Economic Development of the USSR for the Period 1971-1975 and the Act of the Byelorussian SSR concerning the State Five-Year Plan for the Economic Development of the Byelorussian SSR for the Period 1971-1975.

5. Act of 27 December 1972 concerning the state budget of the Byelorussian SSR for 1973

(Extracts)

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

Article 1. To approve the State budget of the Byelorussian SSR for 1973 submitted by the Council of Ministers of the Byelorussian SSR, as amended on the report of the Plan-Budget and Sectoral Commissions of the Supreme Soviet of the Byelorussian SSR, providing for revenue and expenditure of 3,654,294,000 roubles.

...

Article 3. To allocate a total of 2,020,911,000 roubles under the State budget of the Byelorussian SSR for 1973 for the financing of the economy: continued development of heavy industry, construction, light and food industry, agriculture, transport, housing and municipal services and other sectors of the economy.

Article 4. To allocate a total of 1,528,708,000 roubles under the State budget of the Byelorussian SSR for 1973, including 318,118,000 roubles under the State social insurance budget, for social and cultural measures: general education schools, *tekhnikums*, higher educational establishments, research institutions, vocational-technical schools, libraries, clubs, theatres, the press, broadcasting and other educational and cultural measures; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

6. Decision of 18 August 1972 of the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR concerning completion of the transition to universal secondary education for young people and the further development of the general education school

(Extracts)

In Decision No. 463 of 20 June 1972 concerning completion of the transition to universal secondary education for young people and the further development of the general education school, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR noted that the measures adopted in recent years have greatly strengthened the general education school in its functions as a comprehensive, labour and polytechnic school. The network of secondary schools has expanded, the number of qualified teachers has increased and the teaching and instruction is being improved. The country is establishing all the conditions needed for completion of the transition to universal secondary education as one of the important preconditions for the further social, political and economic development of our society as it advances towards communism and for the growth of socialist consciousness and the culture of the working people. All this constitutes a major achievement in the field of public education.

In addition, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR noted that the practical implementation of the decisions of the Twenty-fourth Congress of the Communist Party of the Soviet Union relating to the economy, science and culture requires the further improvement of all aspects of the training and education

of the rising generation and improvement in the quality of the work of the general education school. In the present circumstances, it is especially important to adapt the work of the schools to the new tasks of communist construction and the requirements of scientific and technological progress.

In implementation of Decision No. 463 of 20 June 1972 of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR hereby decides:

2. For the purpose of completing the transition to universal secondary education, to require educational organs and Party, Soviet and public organizations to:

2.1. Adopt measures to ensure that a larger proportion of young people are brought within the scope of secondary education;

2.2. Develop and improve the general education school as a labour and polytechnic/school representing the basic type of general secondary education of young people;

2.3. Improve significantly the work of evening (shift) and external general education schools and create the necessary conditions for working young people to complete their secondary education;

2.4. Ensure, in co-operation with the organs of vocational-technical and secondary specialized education, a high standard of general educational training in secondary vocational-technical schools and secondary specialized schools; extend and consolidate the practice of continuing the general education of students in vocational-technical schools offering one- and two-year courses.

6. To require the executive committees of regional, town and district Soviets of Working People's Deputies, ministries and other Government departments of the Byelorussian SSR, enterprises, organizations and State and collective farms to extend the network of evening schools and their departments engaged in on-the-job instruction of young people and improve their position with regard to teaching staff, materials and equipment. To improve the quality of general educational training and educational work in evening (shift) and external schools and maintain the student intake quotas. To determine the annual plan targets for the enrolment of young manual, collective farm and office workers in the schools, specifying the numbers for each enterprise, State or collective farm, or institution.

7. Under the system of universal secondary education, the teacher acquires a responsibility to society for the training and education of the younger generation. In his general behaviour and in all his actions and activities, the teacher must set an example to the students and be a model of lofty communist morality, ideological conviction, culture, principled behaviour and wide learning. There shall be systematic assessment of teachers in general education schools with a view to encouraging constant improvement in the qualifications, teaching skills and creative initiative of teaching staff. Assessment boards shall be established under the Ministry of Education of the Byelorussian SSR and the regional and City of Minsk departments of public education. The teachers who achieve the best results in the assessments shall be awarded the title "Senior Teacher" or "Methods Teacher".

16. To require the executive committees of Soviets of Working People's Deputies to:

16.1. Carry out practical measures to ensure the rational distribution of the network of general education schools and secondary specialized and vocational-technical schools, taking account of the level of development and the distribution of productive forces, the number of inhabitants and the need to improve their access to general education schools; ensure the attainment of the annual targets for the secondary-school enrolment of young people and the development of extended-day schools and groups;

16.2. Improve the position of general education schools with regard to teaching staff, materials and equipment, rehouse schools at present occupying improvised accommodation and abolish the third shift in schools; strictly control the completion dates and the quality of the construction and maintenance of school buildings and boarding

accommodation and organize the provision of hot food in schools and the transportation to school of students who live in country areas.

17. To require the State Construction Administration of the Byelorussian SSR to prepare new standard designs for schools, incorporating the departmental system of instruction, school boarding-houses and accommodation for extended-day groups; in so doing it shall make provision for improving the functional qualities of school buildings in accordance with the requirements of the educational and teaching process and the need to improve the technical and economic indicators of school construction.

18. To require the State Planning Commission of the Byelorussian SSR to make provision, in the material and technological supply plans, for schools and children's out-of-school institutions to receive allocations of the materials and equipment needed for instructional purposes, out-of-class work, operation and maintenance, and the observance of sanitary, hygiene and safety regulations.

19. To require the Ministry of Trade of the Byelorussian SSR to supply annually to the Ministry of Education of the Byelorussian SSR, from the funds allocated for organs of public education, furniture with washable surfaces and kitchen, refrigeration, commercial and technological equipment in sufficient quantities to meet the requirements of newly opened schools, children's pre-school institutions and existing educational institutions.

20. To require the Byelorussian Council of Trade Unions and trade-union organizations to promote further improvement in the organization of teaching activities, in teachers' accommodation and living conditions and in their leave and leisure entitlements and facilities. To activate the commissions and councils for the promotion of the family and the school. To devote more attention to health work with children during school holidays.

21. To require the Ministry of Health of the Byelorussian SSR to improve the prophylactic work carried out in schools and the medical supervision students.

To define and develop, in co-operation with the Ministry of Education of the Byelorussian SSR, a system of measures ensuring the comprehensive development of students and the improvement of their health.

The Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR note that completion of the transition to universal secondary education is an endeavour involving the whole people. The active co-operation of all workers in the practical implementation of this important social undertaking will contribute to the successful attainment of the objectives set by the Twenty-fourth Congress of the Communist Party of the Soviet Union as regards the further progress of our country along the road to communism.

7. Decision No. 314 of 6 October 1972 of the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR concerning the further improvement of the system of vocational-technical education

(Extract)

The Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR note that the vocational-technical schools of the Republic are becoming the principal means of providing vocational training for young people and moulding a worthy new generation of the working class. Many of the young workers who received specialized training in vocational-technical schools have proved themselves progressive workers and have become rationalizers of industry and leaders of labour collectives. Secondary vocational-technical schools, in which young people receive both specialized training and a general secondary education, have been developing rapidly in recent years. This kind of vocational training of young people is becoming more and more important.

The present stage of development of productive forces and the objectives set by the Twenty-fourth Congress of the Communist Party of the Soviet Union for the development of the national economy and the technical re-equipment of industry call for further improvements in the vocational-technical education of young people and in the training of qualified workers.

In accordance with Decision No. 497 of 23 June 1972 of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR concerning the further improvement of the system of vocational-technical education, the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR hereby decides:

To recognize that, with a view to the further improvement of vocational-technical education, it is essential to:

Expand and strengthen secondary vocational-technical schools as the best long-term instrument for training the rising generation of the working class and ensure that they provide a high standard of vocational training and general secondary education for young people;

Develop technical schools providing work skills for young people who have completed the second-

ary general education course, build up their role in the system of vocational-technical education and in the training of a worthy new generation of the working class, and increase the access of young people to this important means of providing vocational training;

Improve the work of vocational-technical schools offering one- or two-year training courses for future workers in the mass occupations and establish the necessary conditions for students to continue their general education in evening (shift) schools for working young people. The heads of enterprises must do everything possible to ensure that young people taking up employment at factories, construction sites or State farms on leaving school complete their general secondary education.

Prepare and submit to the Council of Ministers of the Byelorussian SSR by 1 March 1973 a long-term plan for the development of the system of vocational-technical education in the Republic up to 1980; the plan shall make provision for:

- Measures to expand the training of qualified workers, especially for new and rapidly developing branches of industry and agriculture;

- Allocation of the resources of economic organizations, on a proportional basis, for the construction of specialized vocational-technical schools jointly sponsored by a number of Government departments;

- Development and optimal location of the network of secondary and technical schools by renovating existing vocational-technical schools, providing them with the necessary teaching staff, materials and equipment, and constructing new teaching facilities, workshops and dormitories;

- Expansion of the network of evening (shift) vocational-technical schools and of the evening (shift) departments and courses at existing vocational-technical schools.

Make provision for the building of vocational-technical schools in the designing of large enterprises, giving top priority to their entry into operation.

8. Decision of 23 June 1972 of the Supreme Soviet of the Byelorussian SSR concerning the full transition to universal secondary education for young people in the Byelorussian SSR

(Extracts)

The Supreme Soviet of the Byelorussian SSR notes that the working people of the Republic under the leadership of the Communist Party, carrying out the decisions of the Twenty-fourth

Congress of the Communist Party of the Soviet Union and preparing to celebrate in a fitting manner an important milestone in the life of the country—the fiftieth anniversary of the formation

of the Union of Soviet Socialist Republics—have made great progress in the development of the economy, science, culture and public education.

The Republic is establishing all the conditions needed for completion of the transition to universal secondary education of young people as one of the important preconditions for the further social, political and economic development of our society as it advances towards communism. Universal eight-year education for children and young people is being successfully put into practice. The network of secondary general education schools and secondary specialized and vocational-technical schools has been expanded, and their teaching staff, materials and equipment have been improved. The number of qualified teachers has been increased, and work has been carried out with them, on a planned basis, to improve their ideological and political awareness and their teaching skills.

Curricula are being brought into line with the contemporary level of development in science, technology and culture, the teaching and educational process is being improved and much is being done to educate the rising generation in the communist world view, inculcate a sense of moral and civil responsibility and prepare young people for life and work.

In addition, the Supreme Soviet of the Byelorussian SSR notes that the practical implementation of the decisions of the Twenty-fourth Congress of the Communist Party of the Soviet Union relating to the economy, science and culture and of the Decision of 20 June 1972 of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR concerning completion of the transition to universal secondary education for young people and the further development of the general education school calls for further improvement in the training and education of young people and a higher standard of work in educational establishments.

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

1. To require the Council of Ministers of the Byelorussian SSR, the Ministry of Education of the Byelorussian SSR, the ministries and other Government departments of the Byelorussian SSR having responsibility for secondary educational establishments, and the executive committees of local Soviets of Working People's Deputies to:

Adopt measures to ensure the full transition to universal secondary education of young people and improvement of the teaching and educational process, in accordance with the decisions of the Twenty-fourth Congress of the Communist Party of the Soviet Union relating to public education and the Decision of 20 June 1972 of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR concerning completion of the transition to universal secondary education for young people and the further development of the general education school;

Assign greater responsibility for completion of the transition to universal secondary education of

young people to public education organs, the governing bodies of vocational-technical schools and the heads of enterprises, State and collective farms, institutions and teaching establishments;

Ensure the implementation of unified plans for the admission of students who have completed the eight-year course in a general education school to vocational-technical and secondary specialized schools and to the ninth grade of secondary general education schools, taking due account of the need to train qualified workers for enterprises, construction sites and organizations and to complete the transition to universal secondary education of young people during the current five-year plan;

Carry out practical measures to ensure the rational distribution of the network of general education schools and secondary specialized and vocational-technical schools, taking account of the level of development and the distribution of productive forces, the number of inhabitants and the need to improve their access to general education schools;

Improve the position with regard to teaching staff, materials and equipment in general education schools, boarding schools, specialized schools, secondary specialized and vocational-technical schools and children's pre-school and out-of-school institutions, rehouse schools at present occupying improvised accommodation and abolish the third shift in schools;

Recommend enterprises, organizations, institutions, construction sites and State and collective farms to give the schools increased guidance in improving their position with regard to teaching staff, materials and equipment and establishing favourable conditions for the successful completion of the transition to universal secondary education of young people.

2. To require the executive committees of local Soviets of Working People's Deputies and the Ministry of Education of the Byelorussian SSR to:

Ensure that all children between the ages of 7 and 15 years pursue the eight-year course of education at the proper time;

Adopt specific measures for expanding the network of school boarding houses and extended-day schools and groups.

3. To require the ministries and other Government departments of the Byelorussian SSR having responsibility for secondary educational establishments and the executive committees of local Soviets of Working People's Deputies to:

Focus the efforts of teachers' collectives on improving the ideological and scholarly standard of teaching and the knowledge and skills of students and on making education more relevant to life and to the practice of communist construction. Make greater use of educational and out-of-class activities to mould the students' scientific materialist outlook, further their moral, aesthetic, atheistic and legal education, and instruct them in the communist attitude towards work, civilized behaviour, voluntary discipline and their obligation to society to study and work;

improve the instruction of the younger generation in the exemplary life and work of V. I. Lenin, in the revolutionary, fighting and labour traditions of the Communist Party and the Soviet people and in the spirit of Soviet patriotism, internationalism and friendship among peoples, and instil an irreconcilable attitude towards manifestations of bourgeois ideology; devote serious attention to improving the general educational training of students in rural schools and preventing repeated years and student drop-outs;

Constantly develop and improve out-of-class and out-of-school activities, technical and experimental work, optional activities and the participation of students in socially useful work; further in every possible way the development of their creative activities and involvement in the life of society and encourage their abilities and interests; increase the involvement in youth work of scientists, qualified economic experts, outstanding workers, active members of society and members of unions of creative artists; improve the co-ordination of the educational work carried out with children and young people in their homes;

Expand the arrangements for co-operation between the school, the family and public organizations in the education of young people, carry out systematic work with parents concerning teaching and educational questions; in co-operation with the "Knowledge" society, extend and revitalize the activities of lecture agencies and institutions organizing public evening classes and discussion groups on educational topics and increase the publication for parents of popular scientific literature on problems of family upbringing.

...

5. To require the Ministry of Education of the Byelorussian SSR, the Ministry of Higher and Secondary Specialized Education of the Byelorussian SSR, the State Committee on Industrial Trade Education of the Council of Ministers of the Byelorussian SSR, the State Committee on the Utilization of Manpower Resources of the Council of Ministers of the Byelorussian SSR and the executive committees of local Soviets of Working People's Deputies to:

Adopt measures for the radical improvement of the occupational and trade training and orientation of young people, taking account of

the interests of the students themselves and of the long-term requirements of branches of the national economy for trained workers, imbue school children with respect for manual occupations and familiarize them with the concept of labour and the traditions of workers' collectives;

Develop polytechnic teaching on the basis of the close integration of the study of school subjects and the fundamentals of modern production;

Strengthen the ties between schools and production collectives, make wide use of factory training units and school and interschool production training workshops in the occupational training of students, and develop and improve the organization of socially useful work among students.

6. To require the executive committees of local Soviets of Working People's Deputies, ministries and other Government departments of the Byelorussian SSR, enterprises, organizations, institutions and collective farm management boards to adopt additional measures for the further development and improvement of evening and external education, the establishment of favourable conditions for young people to study without needing release from their work, the maintenance of student quotas and improvement in the standard of the general educational training of working young people.

* * *

The Supreme Soviet of the Byelorussian Soviet Socialist Republic considers that the achievement of the full transition to universal secondary education and the preparation of the rising generation for life and work are matters which concern the whole people and the whole State; it is confident that local Soviets of Working People's Deputies, their executive committees and the ministries and other Government departments of the Byelorussian SSR, acting together with leaders in public life, will carry out the decisions of the Twenty-fourth Congress of the Communist Party of the Soviet Union relating to the education and training of young people and that they will greet the fiftieth anniversary of the formation of the Union of Soviet Socialist Republics with new successes in the further development of public education and socialist culture.

9. Act of 23 June 1972 approving the Labour Code of the Byelorussian SSR

(Extract)

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

Article 1. To approve the Labour Code of the Byelorussian SSR and bring it into force on 1 October 1972.

Article 2. To instruct the Presidium of the Supreme Soviet of the Byelorussian SSR to determine the procedure for the entry into force of the Labour Code of the Byelorussian SSR and to bring the legislation of the Byelorussian SSR into line with the Code.

10. Labour Code of the Byelorussian SSR

(Extracts)

The great October socialist revolution destroyed the structure of exploitation and oppression. For the first time after centuries of forced labour for the exploiters, the workers were able to work for themselves, for their society.

With the victory of socialism in the Soviet Union, the exploitation of man by man was liquidated completely and for ever. The foundation of the social organization of labour in the USSR, of which the Byelorussian Soviet Socialist Republic forms part on the basis of voluntary association and equality of rights with the other Union Republics, is socialist ownership, opening up a period of free labour on behalf of a better life for the working man. The freedom of labour from exploitation, guaranteed by the socialist structure, is the basic condition of genuine freedom of the personality.

In a socialist society, where there are no exploiters and exploited, the universality of labour is realized for all members of society, the possibility of work is secured to all citizens. In the USSR the socialist principle, "From each according to his ability, to each according to his work", is in effect; labour is the obligation and moral duty of every able-bodied citizen, in accordance with the principle, "He who does not work shall not eat".

The socialist structure of society gives people a material and moral interest in better results of labour, in the continuous development and improvement of social production. The growth of socialist production provides a firm basis for a steady improvement in the material welfare and cultural level of the Soviet people. The Soviet State is perfecting the forms of the material and moral stimulation of labour and promoting in every possible way the development of mass socialist competition among the workers and the communist attitude to labour.

A most important condition of the building of communism is the achievement of a higher productivity of labour, a raising of the efficiency of social production. For this purpose, it is necessary to have quicker scientific and technical progress throughout the economy, a steady growth in the cultural and technical training of the workers, and a higher level of organization and discipline in their labour.

In the USSR, scientific and technical progress is combined with full employment and is used for a radical lightening of labour, a shortening of the working week and the elimination of heavy physical work and all forms of unskilled labour. The development of scientific and technical progress is accompanied by a gradual process whereby brain work and physical labour are organically combined in the people's industrial activity. The large-scale realization of free special and vocational-and-technical education guarantees the free choice of type of work and occupation, with due regard to the interests of society.

The protection of the workers' health, the assurance of safe conditions of work and the liquidation of occupational diseases and industrial accidents are one of the main concerns of the Soviet State.

In Soviet society, the workers manage the enterprises, which are the property of the whole people (the State), through the Soviets of workers' deputies and the organs of State management created by them. The trade unions play an enormous part in involving manual and non-manual workers in the management of production.

In accordance with the Constitution of the USSR and the Constitution of the Byelorussian SSR, the citizens are guaranteed equality of rights in the sphere of labour, irrespective of nationality and race. Women have the same rights as men in the USSR to work, pay, leisure and social security.

The labour rights of the citizens are protected by law. The protection of labour rights is assured by State bodies, and also by the trade unions and other social organizations.

...

CHAPTER I

General provisions

Article 1. Purposes of the labour legislation of the Byelorussian SSR

The labour legislation of the Byelorussian SSR shall govern the labour relations of all manual and non-manual workers with the object of promoting increased labour productivity and efficiency in social production and on that basis raising the material and cultural living standards of the working people, of strengthening labour discipline and of gradually transforming labour for the common weal into the primary life necessity of every able-bodied citizen.

The labour legislation establishes a high standard in the labour conditions and the comprehensive protection of labour rights enjoyed by manual and non-manual workers.

Article 2. Fundamental labour rights and duties of manual and non-manual workers

The right of Soviet citizens to work is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises and the abolition of unemployment.

Manual and non-manual workers shall exercise their right to employment by concluding a contract of employment at an enterprise, institution or organization. They shall have the right to

a wage guaranteed by the State in proportion to the quantity and quality of labour contributed, the right to leisure and rest in conformity with the laws restricting the duration of the working day and working week and providing for annual paid leave, the right to healthy and safe working conditions, the right to free vocational training and training to improve their qualifications, the right to unite in trade unions, the right to take part in the management of production and the right to material maintenance in old age and in the event of sickness or disability at the expense of the State through State social insurance.

It is the duty of all manual and non-manual workers to observe labour discipline, to show care for public property and to fulfil the production quotas established by the State in consultation with trade unions.

Article 3. Regulations governing the labour of collective farm members

The labour of collective farm members is governed by the Rules of Collective Farms, approved on the basis of and in keeping with the Model Collective Farm Rules and the legislation of the USSR and the Byelorussian SSR.

...

Article 5. Nullity of terms of contracts of employment which are contrary to labour legislation.

Terms of contracts of employment providing for conditions for manual and non-manual workers which are inferior to those provided for by the labour legislation of the USSR and the Byelorussian SSR or which are in any other way contrary to the said legislation shall be considered null and void.

...

CHAPTER II

Collective agreements

Article 7. Conclusion of collective agreements

A collective agreement shall be by a factory, works or local trade-union committee on behalf of the manual and non-manual workers on the one hand, and by the management of an enterprise or organization on the other.

The conclusion of a collective agreement shall be preceded by discussion and approval of the draft agreement at meetings (conferences) of the manual and non-manual workers.

The collective agreement shall be concluded annually and shall enter into force on the date of its signature by the parties. The collective agreement concluded shall be brought to the knowledge of all workers in the enterprise or organization.

Article 8. Contents of the collective agreement

The collective agreement shall contain the fundamental provisions concerning questions of

labour and wages established for the given enterprise or organization in conformity with the legislation in force. It shall also contain provisions concerning hours of work, time of leisure and rest, remuneration of labour and material incentives and labour protection which have been drafted by the management and the factory, works or local trade-union committee within the scope of their powers. These provisions should be of a normative character.

The collective agreement shall establish the mutual obligations of the management on the one hand, and the manual and non-manual workers' collective, on the other, in the execution of production plans, the improvement of the organization of production and labour, the introduction of new equipment and the raising of labour productivity, the improvement of quality standards and lowering of production costs, the promotion of socialist competition, the strengthening of production and labour discipline, the raising of the level of workers' skills and the on-the-job training of supervisory personnel.

The collective agreement shall lay down the obligations of the management and the factory, works or local trade-union committee with respect to the involvement of manual and non-manual workers in the management of production, the improvement of labour norms, forms of remuneration of labour and material incentives, the protection of labour, the granting of special terms and advantages to advanced workers, the improvement of housing conditions and of cultural and other services offered to the working people, and the promotion of educational and mass-cultural work.

The provisions of the collective agreement shall not be at variance with the labour legislation.

...

CHAPTER III

The contract of employment

Article 15. Parties to and contents of the contract of employment

A contract of employment is an agreement between a worker, on the one hand, and an enterprise, institution or organization, on the other, according to which the worker undertakes to work in a specified occupation, trade, or post in conformity with the works rules, while the enterprise, institution or organization undertakes to pay the worker a wage and provide the conditions of work prescribed by labour legislation, a collective agreement and an agreement between the parties concerned.

Article 16. Guarantees on taking up employment

Unjustified refusal to give employment is illegal.

The Constitution of the USSR and the Constitution of the Byelorussian SSR prohibit any direct or indirect restriction of rights and the establishment of any direct or indirect privileges on account of sex, race, nationality or attitude

towards religion in connexion with the admission of a worker to employment.

...

Article 19. Unlawful to demand, on admission to employment, documents other than those prescribed by legislation

It is unlawful to demand from a worker, on admission to employment, any documents other than those prescribed by legislation.

...

Article 24. Unlawful to demand performance of work not stipulated in the contract of employment

The management shall not be entitled to require a manual or non-manual worker to perform work which is not stipulated in the contract of employment.

Article 25. Transfer to another post

Transferring a manual or non-manual worker to another post at the same enterprise, institution or organization, to another enterprise, institution or organization or to a different locality, even with the enterprise, institution, or organization, shall be permitted only with the consent of the person concerned save in the cases provided for in articles 26, 27 and 135 of this Code.

The transfer of a manual or non-manual worker to a different work place within the same enterprise, institution or organization, without any change of occupation, trade or post, or of rate of remuneration, privileges, advantages or other essential conditions of work, shall not be deemed to be a transfer to another post.

...

Article 28. Transfer to unskilled posts unlawful

In the event of interruption of production or temporary replacement of a missing worker, it shall be unlawful to transfer a skilled manual or non-manual worker to an unskilled post.

...

Article 31. Annulment of contract of employment concluded for an unspecified period on the manual or non-manual worker's initiative

A manual or non-manual worker shall have the right to annul a contract of employment concluded for an unspecified period, after giving the management two weeks' notice in writing. On the expiry of the above period of notice the manual or non-manual worker shall be entitled to leave his post and the management of the enterprise, institution or organization shall be bound to return his employment book to him and settle its accounts with him.

The worker and the management may decide by mutual agreement to terminate the control of employment without observing all of the two weeks' period of notice.

Article 32. Annulment of a fixed-term contract of employment on the worker's initiative

A contract of employment signed for a fixed term (art. 17, paragraphs 2 and 3) may be cancelled before the expiry of the term at the worker's request in the event of sickness or disablement preventing him from carrying out his work under the contract, or of infringement by the management of the labour legislation, the collective agreement or the contract of employment, or on other legitimate grounds.

...

Article 35. Annulment of a contract of employment on the initiative of the management is prohibited without consent of the factory, works or local trade-union committee

The management of an enterprise, institution or organization may not annul a contract of employment on its own initiative without the prior consent of the factory, works or local trade-union committee, except in the cases provided for by the legislation of the USSR.

Annulment of a contract of employment in violation of the terms of the first paragraph of this article is unlawful, and the worker thus discharged shall be reinstated in the post previously held (art. 217).

The management of an enterprise, institution or organization shall be entitled to annul a contract of employment not later than one month following the date on which it obtains the consent of the factory, works or local trade-union committee; in the case of dismissal on the grounds referred to in article 33, paragraphs 3 and 4, of this Code, it must do so within one month following the date on which the offence is reported.

Article 36. Severance pay

If a contract of employment has been terminated on the grounds stipulated in article 29, paragraphs 3 and 6, and article 33, paragraphs 1, 2 and 6 of this Code, or as a result of violation by the management of the labour legislation, collective agreement or contract of employment (art. 32), the workers shall be paid severance pay amounting to two weeks' average earnings.

Article 37. Annulment of contract of employment at the request of a trade-union body

At the request of a trade-union body (not below district level) the management shall be obliged to annul a contract of employment with a worker in authority, or to relieve him of his post, if he violates the labour legislation, fails to carry out his duties under the collective agreement or resorts to bureaucratic methods or tolerates red tape.

The worker in authority concerned or the management may appeal against the request of the next-higher trade-union body, whose decision shall be final.

...

CHAPTER IV

Hours of work

Article 41. Fixing of hours of work

The hours of work of all manual and non-manual workers shall be fixed by the State in consultation with the trade-unions.

The standard hours of work may not be modified by agreement between the management of the enterprise, institution or organization and the factory, works or local trade-union committee or the manual and non-manual workers concerned if such modification is not provided for by law.

Article 42. Normal hours of work

The normal working week for manual and non-manual workers employed in an enterprise, institution or organization shall not exceed forty-one hours. The duration of the working week shall be reduced as the necessary economic and other conditions are created.

Article 43. Reduced hours of work for manual and non-manual workers under 18

The hours of work shall be reduced as follows in the case of manual and non-manual workers under 18: between 16 and 18 years of age, thirty-six hours a week; between 15 and 16 years of age (art. 173), twenty-four hours a week.

Article 44. Reduced of work for manual and non-manual workers employed in posts where the conditions of work are detrimental to health

The working week shall not exceed thirty-six hours in the case of manual and non-manual workers employed in posts where the conditions of work are detrimental to health.

A list of branches of production, shops, occupations and posts where the conditions of work are detrimental to health and where employment gives entitlement to reduced hours of work shall be drawn up in the manner prescribed by law.

Article 45. Reduced hours of work for particular categories of workers

Reduced hours of work for particular categories of workers (teachers, doctors, etc.) are prescribed by the legislation of the USSR.

Article 54. Restriction of overtime

As a rule, overtime work shall not be allowed. "Overtime" shall be considered to mean work in excess of the fixed hours of work (arts. 46 and 52).

The management may resort to overtime only in the exceptional cases provided for in article 55 of this Code. Overtime may be performed only with the consent of the factory, works or local trade-union committee.

Overtime shall not be allowed for: pregnant women and nursing mothers; mothers of children

under one year; manual and non-manual workers under 18; workers attending training courses, without interruption of their employment, in general educational establishments and vocational and technical-training establishments, on work days; and other categories of workers specified by law.

Mothers of children between one and eight years of age and disabled persons may be put on overtime only with their consent and provided that it is not contrary to doctor's recommendations.

Article 55. Exceptional cases in which overtime is allowed

Overtime is allowed only in the following exceptional cases:

(1) The performance of work necessary for national defence, and for the prevention of social or natural calamities or break-down in production, or for averting their consequences without delay;

(2) The performance of work necessary in the public interest in connexion with water and gas supplies, heating, lighting, drainage and transport and communications for the purpose of correcting any accidental or unforeseen derangements of their normal functioning;

(3) Where necessary, the completion of work which has been started and which it has proved impossible for technical reasons to finish during the normal hours of work owing to an unforeseen or accidental delay, if the suspension of the work begun would entail any damage to or loss of State or public property;

(4) The carrying out of temporary work on repairing and putting in order machinery or plant whose defective operation means an interruption of work for a considerable number of workers;

(5) The continuation of work which must not be interrupted, if a relieving worker does not turn up; in these cases the management must take immediate steps to replace the relieving worker by another;

(6) In carrying out urgent goods-handling work and the connected transport to prevent or eliminate a transport bottleneck and the accumulation of goods at the points of dispatch and destination.

...

CHAPTER V

Rest periods

Article 57. Breaks for rest and meals

Manual and non-manual workers shall be entitled to a break for rest and meals not exceeding two hours. This break shall not be included in the working hours.

Article 58. Days off

Where the five-day working week is observed, manual and non-manual workers shall be entitled to two days off each week, and where the six-day working week is observed, to one day off.

Article 59. Weekly uninterrupted rest period

The weekly uninterrupted rest period shall be of not less than forty-two consecutive hours' duration.

...

Article 66. Annual leave

Every manual and non-manual worker shall be entitled to annual leave with retention of his place of work (job) and average pay (arts. 67 and 68).

Article 67. Duration of leave

Every manual and non-manual worker shall be entitled to at least fifteen working days' leave a year, to be gradually increased. The duration of the annual leave shall be calculated in the manner laid down in the delegation of the USSR.

Manual and non-manual workers under 18 years of age shall be entitled to one calendar month's leave per year.

Article 68. Additional leave

Additional leave shall be granted—

- (1) to manual and non-manual workers engaged in unhealthy work;
 - (2) to manual and non-manual workers in certain sectors of the national economy who have worked for a long time in the same enterprise or organization;
 - (3) to workers in employment where the length of the working day is not standardized;
 - (4) in other cases specified by legislation.
- ...

Article 70. Leave on grounds of temporary disablement or maternity, not included in annual leave

Leave granted in accordance with the rules on grounds of temporary disablement or maternity shall not be included in annual leave.

CHAPTER VI

Wages

Article 77. Payment according to work

In accordance with the Constitution of the USSR and the Constitution of the Byelorussian SSR, the work of manual and non-manual workers shall be remunerated according to quantity and quality. It is illegal to pay reduced rates on account of age, sex, race or nationality.

Article 78. Minimum wage

The monthly earnings of a manual or non-manual worker shall not be lower than the minimum rate fixed by the State.

Article 79. Wage standardization

Wages shall be standardized by the State in consultation with the trade unions.

...

Article 85. Manual and non-manual workers to be informed of the introduction of new conditions of remuneration or of the modification of existing conditions

The management of an enterprise, institution or organization shall give the manual and non-manual workers not less than two weeks' notice of the introduction of any new conditions of remuneration or of the modification of existing conditions.

...

Article 101. Material and cultural services for manual and non-manual workers to be paid for out of public consumer funds

In addition to their wage, manual and non-manual workers shall receive, paid for out of public consumer funds, State social insurance benefits and pensions, places in sanatoria, rest homes and holiday centres, and free medical care and vocational training, as well as other cash benefits and privileges. The above-mentioned funds shall also be used to finance the construction of dwellings, schools and cultural and medical establishments, to improve the cultural and material services for manual and non-manual workers and to provide the means of keeping children in pre-school establishments.

CHAPTER VII

Labour norms and piece-work rates

Article 102. Standard output quotas (standard time rates), standard service quotas and staffing standards

Standard output quotas (standard time rates), standard service quotas and staffing standards for manual and non-manual workers shall be determined according to the technological level achieved, the scientific organization of labour and production and advanced labour experience. These quotas, rates and standards shall be replaced by new ones as technical, economic and organizational improvements are introduced in industry to ensure a higher productivity of labour.

Article 103. Introduction of new and the revision of existing quotas rates and standards

The introduction of new and the revision of existing standard output quotas (standard time rates), standard service quotas and staffing standards for manual and non-manual workers shall be the responsibility of the management of the enterprise, institution or organization, acting in consultation with the factory, works or local trade-union committee.

Manual and non-manual workers shall be given not less than two weeks' notice of the introduction of new standard output quotas (standard time rates) and standard service quotas.

CHAPTER IX

Labour discipline

Article 127. Obligations of manual and non-manual workers

It is the duty of manual and non-manual workers to work honestly and conscientiously, to observe labour discipline, to carry out the management's orders promptly and accurately, to raise labour productivity, to improve the quality of the products, to observe the requirements of production techniques, labour protection and industrial safety and health regulations, and to protect and strengthen socialist property.

Article 128. Measures for ensuring labour discipline

The observance of labour discipline in enterprises, institutions and organizations shall be ensured by a conscientious attitude towards labour, by the method of persuasion and by the encouragement of conscientious work. Disciplinary measures and public pressure shall be brought to bear where necessary on individual careless workers.

Article 129. Responsibilities of management

The management of the enterprise, institution or organization shall be responsible for properly organizing the work of manual and non-manual workers, creating the conditions for an increase in the productivity of labour, ensuring labour and industrial discipline, strictly observing labour legislation and the labour protection regulations, carefully attending to the workers' needs and inquiries and improving their working and living conditions.

Article 131. Encouragement of successful work

The following encouragements shall be applied for exemplary work, success in socialist competition, raising labour productivity, improving the quality of products, irreproachable work over many years, innovation in labour and other achievements at work:

- (i) Expression of thanks;
- (ii) Payment of a bonus;
- (iii) Award of a valuable gift;
- (iv) Award of a diploma of honour;
- (v) Entry of the worker's name in the Book of Honour or on the Board of Honour.

Other forms of encouragement may be provided for in the works rules and disciplinary rules.

Article 133. Advantages and privileges for manual and non-manual workers who perform their work conscientiously and successfully

Manual and non-manual workers who perform their work conscientiously and successfully shall first of all be given advantages and privileges in the sphere of cultural and material services (accommodation at sanatoria and rest homes, improvement of housing, etc.). Such conscientious workers shall also be given preference for promotion.

Article 134. Rewards for outstanding achievements

For outstanding labour achievements, manual and non-manual workers may be recommended to higher authority for encouragement, the award of orders, medals, diplomas of honour and badges, or recommended for honorary titles including the title of "Outstanding Worker" in a given occupation.

CHAPTER X

Protection of labour

Article 139. Industrial health and safety standards

Good conditions of industrial safety and health shall be provided in all enterprises, institutions and organizations.

The provision of adequate industrial safety and health conditions of enterprises shall be the responsibility of the management institutions and organizations.

The management shall be responsible for introducing modern safety engineering to prevent industrial accidents and for providing conditions of sanitation and hygiene which will prevent the occurrence of occupational diseases among the manual and non-manual workers.

Article 140. Observance of requirements of the protection of labour in the construction and use of industrial buildings, structures and plant

These requirements shall include the rational utilization of the ground and industrial premises, the correct operation of plant and organization of technical processes, the protection of workers against the effects of unhealthy working conditions, the maintenance of industrial premises and work places in accordance with sanitary and hygienic standards and rules, and the provision of sanitary and welfare facilities.

The rules and standards respecting the protection of labour shall be observed in the design, construction and use of industrial buildings and structures.

Plans of machinery, machine tools and other production plant must conform to the requirements of occupational safety and health.

Article 141. Unlawful to bring into operation enterprises not meeting the requirements of the protection of labour

No enterprise, shop or production unit shall be accepted and brought into operation unless healthy and safe conditions of work are ensured in it.

No newly built or reconstructed industrial unit shall be permitted to go into operation without the authorization of the bodies responsible for the State sanitary and technical inspection, the trade-union technical inspectorate (art. 245) and the factory, works or local trade-union committee of the enterprise, institution or organization bringing the unit into operation.

Article 142. Unlawful to put into mass production prototypes of new machinery or other plant not meeting the requirements of the protection of labour

No prototype of a new machine, mechanism or other piece of industrial equipment may be put into mass production unless it meets the requirements of the protection of labour.

...

Article 147. Duty of management to conduct inquiries into, and keep a record of industrial accidents

The management of an enterprise, institution or organization, with the participation of representatives of the factory, works or local trade-union committee and, in certain cases prescribed by legislation, with the participation of other bodies as well, shall conduct a prompt and proper inquiry into industrial accidents, and keep a record of them.

The management shall issue to the person who suffered the accident, at his request, a certified copy of the report on the accident not later than three days following the date on which the inquiry into it is completed.

If the management refuses to draw up a report on the accident or if the injured person does not agree with the description of the circumstances of the accident as set out in the report, the injured person may appeal to the factory, works or local trade-union committee, whose decision shall be binding on the management with respect to the drawing up of a report on the accident or to the contents of the report.

Acting on the basis of the documents concerning inquiries into, and records of, industrial accidents, the management shall in good time take the necessary steps to eliminate the causes of industrial accidents.

Article 148. Resources for measures to ensure the protection of labour

Resources and the necessary materials shall be regularly allocated for measures to ensure the protection of labour. The use of these resources and materials for any other purpose shall be prohibited.

The procedure for the utilization of the said resources and materials shall be laid down in the collective agreements or in the agreements on the protection of labour concluded between the management and the factory, works or local trade-union committee.

Article 149. Issue of special clothing and other individual means of protection

Manual and non-manual workers employed in unhealthy working conditions, on work carried out in special temperature conditions, or on dirty work shall be provided free of charge with special clothing, special footwear and other means of individual protection in accordance with the established norms.

The management shall be responsible for the safekeeping, laundering, drying, disinfection, degassing, decontamination and repair of the special clothing and footwear and other personal protective equipment issued to manual and non-manual workers.

...

CHAPTER XI

Employment of women

Article 160. Work on which the employment of women is prohibited

It is unlawful to employ women on heavy or unhealthy work, or on work underground, except certain underground work which is non-manual or connected with sanitary and welfare services.

A list of the occupations involving heavy or unhealthy work on which it is unlawful to employ women shall be approved in the manner prescribed by law.

It is unlawful to require any woman to carry or move any load where weight exceeds the limits prescribed for women.

Article 161. Restrictions on employment of women on night work

It is unlawful to employ women on night work, except in economic sectors where there is a special need to do so and such employment is permitted as a temporary measure.

Article 162. Unlawful to require pregnant women, nursing mothers and mothers with children under one year of age to perform night work or overtime, or to be sent on mission

It is unlawful to employ pregnant women, nursing mothers and mothers with children under one year of age on night work, overtime, work on days off or on mission.

Article 163. Restrictions on overtime and mission work for mothers with children between one and eight years of age

It is unlawful to employ women with children between one and eight years of age on overtime

work or to send them on mission without their consent.

Article 164. Transfer of pregnant women, nursing mothers and mothers with children under one year of age to lighter work

In accordance with medical advice, a pregnant woman shall be transferred to lighter work for the duration of her pregnancy and shall continue to draw her former average wage.

Nursing mothers and mothers with children under one year of age shall, if they are unable to continue to perform their normal work, be transferred to lighter work, in which case they shall continue to draw their former average wage until their infants are weaned or reach their first birthday.

Article 165. Maternity leave

A woman shall be entitled, on the occasion of her pregnancy and confinement, to maternity leave as follows: fifty-six calendar days before her confinement and fifty-six days after her confinement. During this period she shall be paid State social insurance allowance. In the event of complications during childbirth or a multiple birth, the length of the post-natal maternity leave shall be extended to seventy calendar days.

Article 167. Additional unpaid leave for women with children under one year of age

In addition to maternity leave for pregnancy and confinement, a woman may, at her request, be granted additional leave without pay until her child reaches its first birthday. The woman worker's employment (post) shall be kept open for her during her absence on such leave.

The above-mentioned leave may be taken in full or in portions at any time until the child reaches its first birthday.

Such additional unpaid leave shall be included in the total period of uninterrupted service and in the period of employment in specialized work.

A period of additional unpaid leave shall not be included in the period of service giving entitlement to annual leave in the following year.

Article 170. Guarantees of engaging, and prohibition of discharging, pregnant women, nursing mothers and mothers with children under one year of age

It is unlawful to refuse to employ a woman or to reduce her wage on account of pregnancy or breast-feeding.

It is unlawful for the management to discharge pregnant women, nursing mothers or mothers of children under one year of age, except in the case of total liquidation of the enterprise, institution or organization, in which case discharge is permitted, but with the obligation to find alternative employment.

Article 171. Provision of accommodation for pregnant women in sanatoria and rest homes and the rendering of material assistance to them

The management of an enterprise, institution or organization, in agreement with the factory, works or local trade-union committee may, where the need arises, allot places in sanatoria and rest homes to pregnant women, either free of charge or at reduced rates, and also render them material assistance.

Article 172. Amenities for women employees of enterprises and organizations having a large female staff

Creches and kindergartens, feeding rooms for mothers with babies and women's rest rooms shall be provided in enterprises and organizations with a large female staff.

CHAPTER XII

Employment of young persons

Article 173. Statutory age for employment

It is unlawful to employ any person under 16 years of age.

In exceptional cases it is permissible, with the consent of the factory, works or local trade-union committees, to employ persons who have reached their fifteenth birthday.

Article 174. Rights of minors in the employment relationship

Minors (i.e. persons under 18 years of age) shall have the same rights in the employment relationship as persons of full age; with respect to the protection of labour, hours of work, leave and certain other conditions of work, they shall enjoy the privileges laid down in the Principles Governing the Labour Legislation of the USSR and the Union Republics, this Code and the other statutory instruments concerning labour matters.

Article 175. Work on which it is unlawful to employ persons under 18 years of age

It is unlawful to employ persons under the age of 18 on heavy, unhealthy or dangerous work, or on underground work.

A list of occupations involving heavy, unhealthy or dangerous work on which it is unlawful to employ persons under 18 years of age shall be approved in the manner prescribed by law.

It is unlawful to require a minor to carry or move any load whose weight exceeds the limits prescribed for minors.

Article 177. Unlawful to employ persons under 18 on night or overtime work

It is unlawful to employ persons under 18 on night work, overtime work or work on rest days.

Article 178. Leave for manual and non-manual workers under 18

Annual leave shall be granted to workers under 18 years of age (art. 67, second paragraph) in summer or, at their request, at any other time of the year.

Article 179. Output quotas for young workers

The output quotas for workers under 18 years of age shall be fixed on the basis of those for adult workers, in proportion to the reduced working day for persons under 18.

Article 180. Reduced output-quotas for young workers

In the case of young workers taken on in an enterprise or organization on leaving school (general education establishment, vocational and technical training establishment or course) and those who have received on-the-job training, reduced output quotas may be approved in the cases and subject to the limitations laid down by law, and for periods specified by law. Such output quotas shall be approved by the management of the enterprise or organization in agreement with the factory, works or local trade-union committee.

Article 181. Remuneration of manual and non-manual workers under 18 working a reduced working day

Manual and non-manual workers under 18 working a reduced working day shall be paid at the same rate as manual and non-manual workers in the same category working a full working day.

Manual and non-manual workers under 18 admitted to jobs paid at piece rates shall be paid the full piece rates prescribed for adult workers, with a supplementary payment, on the basis of the wage rate, to compensate for the period by which their working day is shorter in comparison with the full working day for adults.

Article 183. Plans for the placing of young people in employment

The district or urban soviets of workers' deputies shall approve the plans for the placing of school-leavers in employment and shall see to it that they are carried out by all enterprises, institutions and organizations.

Article 184. Guarantee of posts for young workers and young people trained in special skills who have completed their training in educational establishments, in work suitable to their training and skills

Young workers who have completed their training at vocational and technical schools and young persons who have completed their training in special skills in higher educational establishments and specialized secondary institutions shall be provided with employment in keeping with the skills and vocational training they have acquired.

Article 185. Restrictions on discharge of manual and non-manual workers under 18

The discharge of manual and non-manual workers under 18 on the initiative of the management shall be permissible only if the general rules concerning discharge are observed, and only with the prior consent of the district or urban Minors' Board. These conditions being observed, discharge on the grounds stated in article 33, paragraphs 1, 2 and 6, of this Code shall be allowable only in exceptional cases and only if alternative employment is found.

...

CHAPTER XIII

Privileges for manual and non-manual workers who combine work with study*Article 187. Organization of industrial training*

To provide opportunities of occupational training and advanced training for manual and non-manual workers, particularly young persons, the management of enterprises and organizations shall organize individual and group training and courses and other forms of industrial training at the expense of the enterprise, institution or organization.

Article 188. Training during working hours

Theoretical studies and industrial training for the on-the-job preparation of new workers through individual or group training and courses shall be carried out during the working hours established by the labour legislation for workers in the corresponding age groups, occupations and industries.

Article 189. Assignment of work corresponding to qualifications

On completion of his industrial training, the worker shall be given a qualification rating according to the list of pay rates and qualifications and shall be offered a post corresponding to the qualifications he has acquired and the category in which he has been placed.

Article 190. Provision of the necessary conditions for combining work and study

Manual and non-manual workers following industrial training or taking study courses at educational establishments without interrupting their employment shall be provided by the management with the necessary conditions to enable them to combine work and study.

Article 191. Incentives for manual and non-manual workers to combine work and study

In recommending a manual or non-manual worker for a more skilled post or for promotion, the worker's industrial training record, his general and vocational education and any higher or secondary specialized education he has received shall be taken into account.

Article 192. Privileges for manual and non-manual workers studying at general educational establishments and technical or vocational institutions

Besides enjoying other privileges, manual and non-manual workers who combine work with study at general educational establishments and vocational technical institutions shall be entitled to a shorter working week or day, while drawing their regular wage.

Article 193. Reduction of hours of work for those attending educational establishments

In the case of manual and non-manual workers who, without interrupting their employment, are successfully following courses in the IX-XI classes of schools for working youth—evening (shift-system) schools or general secondary correspondence schools—the working week shall be reduced, during the school year, by one working day or by an equivalent number of hours of work (by shortening the working day accordingly); and in the case of those attending the IX-XI classes of rural youth schools—evening (shift-system or seasonal) schools or general secondary correspondence schools—the working week shall be reduced by two working days or by an equivalent number of hours of work (by shortening the working day accordingly).

Those attending the IX-XI classes shall be released from work for not more than thirty-six working days during the school year in the case of a six-day week, or for an equivalent number of working hours. In the case of a five-day working week, the total number of working hours free from work shall be the same, but the number of working days free from work shall vary according to the length of the shift, and shall be 31.5 days for an eight-hour shift, or 31 days for shift lasting eight hours and twelve minutes.

During their time off from work, students shall be paid 50 per cent of the average wage for the principal place of work, or the fixed minimum wage, whichever is the greater.

The reduction in the hours of work for those attending the V-VIII classes shall be governed by the legislation of the USSR, and, subject to the limits laid down therein, by the legislation of the Byelorussian SSR.

Provided it does not adversely affect production, the management of the enterprise, institution or organization shall have the right to give those attending the IX-XI classes of schools for working youth and schools for rural youth one or two additional working days a week free from work, if they so desire, but without pay.

Article 194. Leave in connexion with attendance at schools of general education

Manual and non-manual workers who, without interrupting their employment, are attending schools for working or rural youth—evening (shift-system or seasonal) schools or general secondary correspondence schools—shall be entitled to 20 working days' leave for the period of the final examination in the XI class, and

to 8 working days' leave in the VIII class, with pay at the tariff or wage rates for the principal place of work.

Article 197. Leave in connexion with attendance at vocational and technical training establishments

Manual and non-manual workers who, without interrupting their employment, are successfully attending evening (shift-system) occupational and technical training establishments shall be released from work for thirty days a year to prepare for and take their examinations; with pay at the rate of 50 per cent of the average wage for the principal place of work.

Article 198. Leave for taking entrance examinations to specialized higher and secondary educational establishments

Manual and non-manual workers admitted to the entrance examinations for specialized higher and secondary educational establishments shall be granted leave without pay.

Manual and non-manual workers admitted to the entrance examinations for higher educational establishments (including factories placed on the level of higher technical training establishments) shall be given fifteen calendar days' leave and, in the case of secondary specialized educational establishments, ten calendar days' leave, plus travel time to and from the educational establishment concerned.

Article 199. Privileges for manual and non-manual workers attending higher and secondary specialized educational establishments

Manual and non-manual workers taking the evening or correspondence courses of higher and secondary specialized educational establishments shall be given paid leave in connexion with their studies in accordance with the established procedure, and also other privileges.

Article 200. Reduction of working hours for those taking the evening or correspondence courses of specialized higher and secondary educational establishments

Students taking the evening or correspondence courses of higher educational establishments and those taking the evening or correspondence courses of specialized secondary educational establishments shall be entitled, for a period of ten academic months before beginning work on the graduation project or thesis, or before taking the State examinations, to one day free of work a week, for a six-day week, on half the wage received, but not less than the minimum wage, for the purpose of preparing their studies. For a five-day week, the number of free days shall vary according to the length of the shift, the number of hours free of work remaining the same.

The management of the enterprise, institution or organization shall have the right to grant students and pupils, should they so wish, one or

two additional days free of work a week, but without pay, during the above-mentioned 10-month period.

Article 201. Leave in connexion with the taking of the evening or correspondence courses of higher and secondary specialized educational establishments

Students successfully following evening courses in higher educational establishments shall be entitled, during periods in which they are engaged in laboratory work or in taking tests or examinations, to twenty calendar days' leave a year for the first and second years and to thirty calendar days' leave for the third and subsequent years. Pupils successfully following evening classes in specialized secondary educational establishments shall be entitled, during periods in which they are engaged in laboratory work or in taking tests or examinations, to ten calendar days' leave a year for the first and second years, and to twenty calendar days for the third and subsequent years.

Students and pupils successfully following the correspondence courses of specialized higher and secondary educational establishments shall be entitled, during periods in which they are engaged in laboratory work or in taking tests or examinations, to thirty calendar days' leave a year for the first and second years, and to forty calendar days' leave for the third and subsequent years.

Students and pupils following the evening and correspondence courses of specialized higher and secondary educational establishments shall be entitled, during periods in which they are taking the State examinations, to thirty calendar days' leave.

During the period in which they are preparing and defending a graduation project or thesis, students taking the evening or correspondence courses of higher educational establishments shall be entitled to four months' leave, and pupils following the evening or correspondence courses of specialized secondary educational establishments shall be entitled to two months' leave.

For the duration of leave granted in connexion with the taking of the evening or correspondence courses of specialized higher and secondary establishments, manual and non-manual workers shall continue to receive their pay, but not at more than the fixed rate.

Article 202. Leave for gaining knowledge of work in the chosen trade or branch and for preparing material

The management of the enterprise, institution or organization, on the recommendation of the educational establishments concerned, shall have the right to grant pupils taking the final evening or correspondence courses of specialized higher or secondary educational establishments an additional month's leave without pay, for the purpose of gaining knowledge, on the job, of work in the chosen trade or branch, and of preparing material for the graduation project. The students and pupils concerned shall qualify on general terms for a scholarship for the duration of such leave.

...

Article 204. Payment of travel expenses to correspondence schools

The management of the enterprise, institution or organization shall pay to students following the correspondence courses of specialized higher and secondary educational establishments part of the cost of travelling to and from the place where the establishment is situated for the purpose of doing laboratory work or taking tests or examinations; payment shall be made once a year at the rate of 50 per cent of the expenses incurred.

The same contribution shall be made towards travelling expenses incurred in connexion with the preparation and defence of a graduation project or thesis and the taking of State examinations.

CHAPTER XIV

Labour disputes

Article 205. Bodies considering labour disputes

Labour disputes shall be considered by:

- (1) Labour disputes boards;
- (2) Works, factory, or local trade-union committees;
- (3) The district or urban People's courts.

Labour disputes involving certain categories of workers shall be heard by superior bodies (art. 224).

...

Article 210. Procedure for the taking of decisions by the labour disputes board

The decisions of a labour disputes board shall be taken by agreement between the representatives of the factory, works or local trade-union committee and the representatives of the management of the enterprise, institution or organization. The board's decisions are binding and not subject to any confirmation.

Article 211. Consideration of a labour dispute in the case of failure to reach agreement in the labour disputes board. Appeal against the representatives of the trade-union committee and the representatives of the management

If, during the consideration of a dispute by the labour disputes board, agreement has not been reached, the manual or non-manual worker concerned shall have the right to apply, within five days of his receiving an extract from the minutes of the board's meeting, to the factory, works or local trade-union committee for a settlement of the dispute.

A manual or non-manual worker shall have the right to appeal within the same time limit to the factory, works or local trade-union committee against a decision by the labour disputes board.

Should a manual or non-manual worker be in disagreement with a decision on a labour dispute taken by a board consisting of the trade-union organizer and the director of the enterprise, institution or organization, or should such board fail to reach agreement, the said manual or non-

manual worker may within the same period apply for a settlement to the district or urban People's court.

Article 212. Consideration of labour disputes of factory, works or local trade-union committees

The factory, works or local trade-union committees shall consider labour disputes at the request of the manual or non-manual workers if agreement has not been reached between the parties in the labour disputes board, or if the manual or non-manual workers appeal against the board's decisions.

In considering a labour dispute on which agreement has not been reached in the board, the factory, works or local trade-union committee shall pronounce on the substance of the dispute.

In considering an appeal against a decision of the labour disputes board, the factory, works or local trade-union committee may either uphold the decision of the board or annul it and pronounce on the substance of the dispute.

The factory, works or local trade-union committee shall consider a labour dispute within the seven days following the date on which the application or appeal is filed with it.

The factory, works or local trade-union committee may, on its own initiative or on an objection lodged by the public prosecutor, annul a decision of the board which is contrary to current legislation, and pronounce on the substance of the dispute.

Article 213. Cases in which a labour dispute considered by a factory, works or local trade-union committee may be referred to court

Should a manual or non-manual worker not be in agreement with the factory, works or local trade-union committee's pronouncement on a labour dispute, he may, within ten days of receiving notice of the committee's pronouncement, apply to the district or urban People's court for consideration of the dispute.

The management of an enterprise, institution or organization may, within the same time limit, apply to the district or urban People's court for settlement of a labour dispute if it considers that the factory, works or local trade-union committee's pronouncement thereon is contrary to current legislation.

Article 214. Consideration of labour disputes by district or urban People's courts

The district or urban People's courts shall consider labour disputes—

(1) On application by manual or non-manual workers when they are not in agreement with the factory, works or local trade-union committee's pronouncement, or on application by the management if it considers that the factory, works or local trade-union committee's pronouncement is contrary to current legislation;

(2) On application by manual or non-manual workers when they are not in agreement with the decision of a labour disputes board composed of

the trade-union organizer and the manager of the enterprise, institution or organization or board, or when there is no factory, works or local trade-union committee or trade-union organizer in the enterprise, institution or organization.

In addition, the district or urban People's courts shall consider labour disputes directly, without reference to the labour disputes board and the factory, works or local trade-union committee:

(1) On application for reinstatement by manual or non-manual workers discharged by the management of an enterprise, institution or organization, except for disputes involving workers holding posts enumerated in a special list (art. 224);

(2) On application by the management for compensation from manual or non-manual workers for loss or damage caused to the enterprise, institution or organization.

The district or urban People's courts shall also consider directly a labour dispute between a manual or non-manual worker and a management concerning a question arising out of the application of the labour legislation which has previously been decided with respect to such worker by the management in agreement with the factory, works or local trade-union committee, within the limits of the rights conferred on them.

Article 216. Exoneration from legal costs of manual or non-manual workers who bring labour matters to court

Manual or non-manual workers who institute proceedings before the courts respecting claims arising from the employment relationship shall be exempted from payment of State legal costs (State taxes and judicial costs).

Article 217. Reinstatement

In the case of unlawful dismissal or non-observance of the prescribed procedure for dismissal, or in the case of unlawful transfer to another post, a manual or non-manual worker shall be reinstated in his previous post by the body considering the labour dispute.

Article 218. Compensation for enforced idleness or work in a lower-paid post

A manual or non-manual worker discharged unlawfully and reinstated in his previous post shall be awarded by court decision his average earnings for the period of enforced idleness from the date of his discharge, but not for more than three months. The same compensation for enforced idleness shall be paid, by decision of the court, in cases where an incorrectly stated reason for discharge, entered in his employment book, has prevented the worker from finding new employment.

A manual or non-manual worker may also be paid his average earnings, but not for more than three months, during the period of his enforced idleness by decision of the labour disputes board

or pronouncement of the factory, works or local trade-union committee.

By decision or pronouncement of the labour-disputes body, a manual or non-manual worker who is transferred unlawfully to another post and reinstated in his previous post shall be paid, but not for more than three months, his average earnings during the period of enforced idleness or the difference in pay during the time of his employment in the lower-paid post.

Payment for the period of enforced idleness due to unlawful discharge or transfer, and of the wage difference during employment in a lower-paid post, may be made by the management of the enterprise, institution or organization in the absence of a decision or pronouncement by the labour-disputes body.

Article 220. Immediate execution of certain decisions and pronouncements on labour matters

A decision or pronouncement by a labour-disputes body regarding the reinstatement of an unlawfully discharged or transferred worker shall be subject to immediate execution. If the management delays the execution of such decision or pronouncement, the worker concerned shall be paid his average earnings or the difference in pay during the period between the date of the decision or pronouncement and the date on which it is put into execution.

Court judgments awarding payment of wages to a manual or non-manual worker, but not for more than one month, shall also be subject to immediate execution in accordance with article 204 of the Code of Civil Procedure of the Byelorussian SSR.

CHAPTER XV

Trade unions. Participation of manual and non-manual workers in the management of production

Article 228. Manual and non-manual workers' right to form trade unions

The right of manual and non-manual workers to form trade unions is guaranteed by the Constitution of the USSR and the Constitution of the Byelorussian SSR.

The trade unions shall act in conformity with the statutes they adopt themselves; they shall not be subject to registration with any State bodies.

State bodies, enterprises, institutions and organizations shall give every assistance to trade unions in their activities.

Article 229. Rights of trade unions

In accordance with the Principles Governing the Labour Legislation of the USSR and the Union Republics, the trade unions shall represent the manual and non-manual workers' interests in

the fields of production, labour, welfare, living conditions and culture.

The trade unions shall participate in drawing up and implementing the State economic development plans, and in dealing with questions of the distribution and utilization of material and financial resources; they shall give manual and non-manual workers a say in the management of production; they shall organize socialist competition and creative activity in the technical sphere among the masses; and they shall help to promote industrial and labour discipline.

Enterprises, institutions and organizations and their superior bodies, together or in agreement with the trade unions, shall establish conditions of work and pay, apply the labour legislation and utilize public consumer funds in cases specified by the legislation of the USSR and the Byelorussian SSR and by decisions of the Council of Ministers of the USSR and the Council of Ministers of the Byelorussian SSR.

The trade unions shall exercise supervision and control over the observance of labour legislation and labour protection regulations; they shall also exercise control over the housing and welfare services provided for manual or non-manual workers.

The trade unions shall be responsible for the management of State social insurance and shall administer the sanatoria, dispensaries and rest homes and the cultural and educational, touristic and sports establishments in their charge.

The trade unions of the Byelorussian SSR, represented by the Byelorussian Republican Trade Union Council, shall have the right to initiate legislation.

Article 230. Right of manual and non-manual workers to participate in the management of production

Manual and non-manual workers shall have the right to participate in discussing and taking decisions on questions concerning the expansion of production, and to submit proposals respecting the improvement of the work of enterprises, institutions and organizations, and the provision of social, cultural and welfare services.

Article 232. Obligation of management to provide conditions ensuring the participation of manual and non-manual workers in the management of production

It is the duty of the management of enterprises, institutions and organizations to create conditions ensuring the participation of manual and non-manual workers in the management of production.

The officials of enterprises, institutions and organizations shall give prompt consideration to criticisms and proposals by the manual and non-manual workers, and shall inform the latter of the action taken thereon.

Article 233. Rights of the factory, works or local trade-union committee

The rights of the factory, works or local trade-union committee and its relations with the management of the enterprise, institution or organization are laid down in the USSR Act respecting the rights of factory, works and local trade-union committees.

The factory, works or local trade-union committee shall:

- Represent the interests of the manual and non-manual workers of the enterprise, institution or organization in the field of production, work, everyday life and culture;

- Together with the management, distribute on established lines the material incentives fund and the fund for social and cultural measures and housing construction; approve estimates of expenditures from these funds; and determine the amount of bonuses and other incentives, material aid and rewards for annual achievements in the work of the enterprise, institution or organization, to be paid out of the material incentives fund;

- Hear reports from the management of the enterprise, institution or organization respecting the achievement of the production plan, the fulfilment of obligations under the collective agreement, and the taking of steps in connexion with the organization and improvement of conditions of work and welfare and of cultural facilities and services for the workers; and require the elimination of the shortcomings thus brought to light;

- Participate in dealing with matters of work and wages subject by law to settlement by the management together with, or with the agreement, of the factory, works or local trade-union committee;

- Carry out control to ensure the observance by the management of the enterprise, institution or organization of the labour legislation and of the rules and standards regarding occupational safety and industrial sanitation; and the correct application of the established conditions of pay;

- Investigate complaints against decisions of the management respecting compensation by the enterprise, institution or organization for prejudice to manual or non-manual workers due to mutilation or other impairment of health connected with work;

- Apply the State social insurance system for manual and non-manual workers and determine the social insurance benefits; jointly with the management, draw up the documents necessary for the grant of pensions to manual and non-manual workers and their families and designate persons to whom pensions are to be granted; send manual and non-manual workers to sanatoria, dispensaries and rest homes; and supervise the organization of the medical service for manual and non-manual workers and their families;

- Allocate, jointly with the management and according to fixed rules, the living space in the housing of the enterprise, institution or organization, and the living space made available in other housing; check the housing and living conditions provided.

In appointing workers to responsible posts, the management of the enterprise, institution or organization shall take the opinion of the factory, works or local trade-union committee into account.

Article 234. Powers of trade-union organs in checking compliance with labour legislation and the housing and living conditions provided for manual and non-manual workers

For the purposes of checking compliance with the labour legislation and the labour protection regulations, observance of collective agreements and provision of suitable housing and living conditions for manual and non-manual workers, the members of factory, works or local trade-union committees and of the superior trade-union bodies, and other competent representatives of those bodies shall have power to:

- Visit and inspect without hindrance shops, departments, workshops and other work places in the enterprise, institution or organization;

- Require the management of the enterprise, institution or organization to produce any document or provide any necessary information or explanation; check wage accounts;

- Check the work of trading and public catering enterprises of polyclinics, creches and kindergartens, and of hostels, public baths and other enterprises providing communal services for manual and non-manual workers.

In appropriate cases the trade-union organs shall bring before the competent organizations proposals for disciplinary action against workers in authority who violate the labour legislation or the labour protection regulations, or the established arrangements for providing manual and non-manual workers with housing and services. The organizations concerned shall inform the trade-union organ within a month of the action taken.

...

Article 238. Additional guarantees to elected trade-union officers

A manual or non-manual worker who is elected to a factory, works, local or shop trade-union committee and who is not released from his employment shall not be transferred to another post or have any disciplinary action taken against him without the prior consent of the factory, works or local trade-union committee, and in the case of the chairmen of such committees and the trade-union organizers, the prior consent of the next higher trade-union body shall be required.

The chairmen and members of factory, works or local trade-union committees who have not been released from their employment may be discharged on the initiative of the management, the general rules respecting discharge being observed, only with the consent of the next higher trade-union body. Trade-union organizers may be discharged on the initiative of the management only with the consent of the next higher trade-union body.

CHAPTER XVI

State social insurance

Article 239. All manual and non-manual workers covered by social insurance

All manual and non-manual workers shall be covered by compulsory State social insurance.

Article 240. Financing of social insurance

The State social insurance of manual and non-manual workers shall be financed by the State.

The social insurance contributions shall be paid by the enterprise, institution or organization without any deduction from the manual and non-manual workers' wages. Non-payment of the insurance contributions by an enterprise, institution or organization shall not deprive the manual and non-manual workers of the right to State social insurance coverage.

Article 241. Forms of social insurance coverage

Manual and non-manual workers, and, in appropriate cases, the members of their families, shall be provided with the following state social insurance benefits:

- (1) Temporary disablement allowances and also, for women, maternity allowances;
- (2) Birth and burial allowances;
- (3) Old-age and disablement pensions; pensions for loss of breadwinner; and length-of-service pensions (in the case of certain categories of workers).

The State social insurance funds shall also be used for the therapeutic treatment of manual and non-manual workers at sanatoria and health resorts, for the provision of dispensaries and rest homes and dietary food, for the maintenance of Young Pioneer Camps and for other State social insurance measures.

The State social insurance funds may be used only for the purposes for which they are directly allocated.

Article 242. Temporary disablement allowances

Temporary disablement allowances are paid in the event of sickness or injury, temporary transfer to another post on account of illness, care of a sick member of the family, quarantine, treatment at a sanatorium or health resort and the fitting of a prosthetic appliance; these allowances may amount to the full wage of the worker concerned.

In the case of sickness or injury, the allowance shall be paid until the capacity for work has been restored, or until disablement has been established.

Article 243. Maternity allowances

The maternity allowance shall be paid for the entire period of maternity leave; it may amount to between two-thirds and the whole of the full wage.

Article 244. Old-age, permanent-disablement and loss-of-breadwinner pensions

Old-age and permanent-disablement pensions shall be granted to manual and non-manual workers and loss-of-breadwinner pensions to members of their families, in accordance with the State Pensions Act of the USSR.

CHAPTER XVII

Supervision and control to ensure observance of the labour legislation

Article 245. Bodies responsible for supervision and control to ensure observance of the labour legislation

In accordance with the Principles Governing the Labour Legislation of the USSR and the Union Republics, supervision and control to ensure observance of the labour legislation and the labour protection regulations shall be exercised by:

- (1) Specially authorized State bodies and inspectorates, which shall act independently of the management of enterprises, institutions and organizations and their superior bodies;
- (2) The trade unions and the technical and legal labour inspectorates under their jurisdiction, in accordance with the rules governing the activities of these inspectorates as approved by the All-Union Central Council of Trade Unions of the USSR.

The Soviets of Working People's Deputies and their executive and administrative bodies shall exercise control to ensure observance of the labour legislation in accordance with the procedure laid down by the legislation of the USSR and the Byelorussian SSR.

The Ministries and departments shall exercise internal departmental control to ensure observance of the labour legislation as regards the enterprises, institutions and organizations under their jurisdiction.

Supreme supervision to ensure the exact execution of the labour laws by all Ministries and departments, enterprises, institutions and organizations and their officials in the territory of the Byelorussian SSR shall be exercised both directly by the Attorney-General of the USSR and through the Attorney-General of the Byelorussian SSR.

Article 250. Responsibility for violation of the labour legislation

Officials guilty of violating the labour legislation and the labour protection regulations, failing to carry out obligations under collective agreements and labour protection agreements, or obstructing the trade unions, shall bear responsibility (disciplinary, administrative and criminal) in accordance with the procedure established by the legislation of the USSR and the Byelorussian SSR.

11. Act of 27 December 1972 approving the Water Code of the Byelorussian SSR*(Extract)*

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

Article 1. To approve the Water Code of the Byelorussian SSR and bring it into force on 1 July 1973.

Article 2. To instruct the Presidium of the Supreme Soviet of the Byelorussian SSR to determine the procedure for the entry into force of the Water Code of the Byelorussian SSR and to bring the legislation of the Byelorussian SSR into line with the Code.

12. Water Code of the Byelorussian SSR*(Extracts)***PART 1. GENERAL PROVISIONS****CHAPTER 1****Basic provisions***Article 1. Purpose of the water legislation of the Byelorussian SSR*

The purpose of the water legislation of the Byelorussian SSR is to regulate the management of water resources in order to ensure their rational utilization for the needs of the population and the national economy and protect them from pollution, contamination and depletion, prevent and eliminate water hazards, improve the condition of water facilities, protect the rights of enterprises, organizations, institutions and citizens and strengthen the legal basis for water resource management.

...

Article 3. State ownership of water resources

Under the Constitution of the USSR and the Constitution of the Byelorussian SSR, water resources are owned by the State, i.e. they are public property.

Water resources in the USSR are owned exclusively by the State and are available only for use. Any actions overtly or covertly violating the law of State ownership are prohibited.

...

CHAPTER 3**Participation of public organizations and citizens in the implementation of measures for the rational utilization and conservation of water resources**

Article 9. Assistance to State organs in the implementation of measures for the rational utilization and conservation of water resources

Trade unions, youth organizations, nature conservation societies, scientific societies and other public organizations as well as citizens shall assist

State organs in the implementation of measures for the rational utilization and conservation of water resources.

Article 10. Procedure for the participation of public organizations in measures for the rational utilization and conservation of water resources

Public organizations shall, in accordance with their charters (statutes) and with the legislation of the USSR and the Byelorussian SSR, participate in activities designed to ensure the rational utilization and conservation of water resources.

Article 11. Arrangements for the participation of citizens in the implementation of measures for the rational utilization and conservation of water resources

Citizens shall assist State organs in the implementation of measures for the rational utilization and conservation of water resources by taking a direct part in the execution of necessary work, submitting proposals for improvement of the utilization and conservation of water resources, reporting any violations of the regulations for the utilization and conservation of water resources which may come to their notice, and so on.

...

PART II. WATER UTILIZATION**CHAPTER 6****Water users, water facilities and types of water utilization***Article 18. Water users*

State, co-operative and public enterprises, organizations and institutions and citizens of the USSR may use water in the Byelorussian SSR.

In the cases provided for in the legislation of the USSR, other organizations and persons may also use water.

...

CHAPTER 7

Procedure and conditions for the establishment of water facilities

Article 25. Priority given to the public supply of drinking water and water for other communal needs

Water facilities shall be established primarily to provide a public supply of drinking water and water for other communal needs.

Article 26. Free water utilization

Water utilization shall be free.

...

CHAPTER 10

Utilization of water facilities to provide a public supply of drinking water and water for communal and other needs

Article 47. Water facilities for the provision of a public supply of drinking water and water for communal and other needs

Water facilities shall be established to provide a public supply of drinking water and water for communal and other needs; the quality of the water must meet existing public health standards.

...

CHAPTER 11

Utilization of water facilities for medical and sanitary purposes and for health resorts

Article 51. Water facilities listed in the medical category to be used as a matter of priority for medical purposes and for health resorts

Water facilities officially listed in the medical category shall be used primarily for medical purposes and for health resorts. In exceptional cases, the organs responsible for regulating the utilization and conservation of water resources may, by agreement with the appropriate public health and health resort management organs, authorize the utilization for other purposes of water facilities listed in the medical category.

Article 52. Prohibition of the discharge of waste water into water facilities listed in the medical category

The discharge of waste water into water facilities listed in the medical category shall be prohibited.

...

PART III. CONSERVATION OF WATER RESOURCES AND PREVENTION OF WATER HAZARDS

CHAPTER 24

Conservation of water resources

Article 94. Protection of water resources from pollution, contamination and depletion

All water resources (water facilities) shall be protected from any pollution, contamination or depletion prejudicial to the health of the population or likely to cause a reduction in fish stocks or damage to the water supply or producing other harmful effects as a result of changes in the physical, chemical or biological properties of the water, impairment of its capacity for self-purification or violation of the hydrological or hydrogeological water regulations.

Article 95. Implementation of measures to ensure the conservation of water resources

Enterprises, organizations and institutions whose activities influence the condition of water resources shall be required to carry out technological, forest-improvement, agrotechnical, hydrotechnical, sanitation and other measures to ensure the protection of water resources from pollution, contamination and depletion as well as improvement of the condition and régime of water resources; these measures shall be determined by agreement with the organs responsible for regulating the utilization and conservation of water resources, the executive committees of local Soviets of Working People's Deputies, the organs responsible for State sanitary inspection and the conservation of fish stocks, and the other State organs concerned or on the instructions of duly authorized State organs.

Article 96. Planning of water conservation measures

State plans for national economic development shall make provision for water conservation measures.

13. Decree of 7 July 1972 of the Presidium of the Supreme Soviet of the Byelorussian SSR amending and supplementing the Code of Criminal Procedure of the Byelorussian SSR

(Extracts)

The Presidium of the Supreme Soviet of the Byelorussian SSR hereby decides:

1. To amend articles 49, 51, 52, 147, 223 and 227 of the Code to read as follows:

Article 49. Participation of defence counsel in criminal proceedings

Defence 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. By a decision of the procurator, defence counsel may be permitted to participate in the case from the time when the charge is preferred.

In cases in which no preliminary investigation is conducted, defence counsel shall be permitted to participate from the time when the accused is committed for trial.

Lawyers and representatives of trade unions and other public organizations may act as defence counsel.

By a decision of the court or a ruling of the judge, close relatives and legal representatives of the accused, or other persons, may act as defence counsel.

The same person may not act as defence counsel for two accused persons if the interests of the defence of one accused person conflict with the interests of the other.

...

Article 51. Obligatory participation of defence counsel

The participation of defence counsel in court proceedings shall be obligatory in:

(1) Cases in which a procurator or community accuser (*obshchestvenny obvinitel*) is participating;

(2) Cases of minors;

(3) Cases of dumb, blind, deaf or other persons who by reason of their physical or mental disabilities are not themselves able to exercise their right to defence;

(4) Cases of persons who do not know the language in which the court proceedings are conducted;

(5) Cases of persons brought to trial for crimes for which the death penalty may be imposed;

(6) Cases of persons whose interests conflict and at least one of whom has a defence counsel.

In the cases provided for in subparagraphs (2) and (3) of this article, participation of defence counsel shall also be obligatory in the preliminary investigation from the time when the charge is preferred in the cases provided for in subparagraphs (4) and (5) of this article, participation of defence counsel shall be obligatory 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.

If, in the cases provided for in this article defence counsel is not engaged by the accused himself, by his legal representative or by other persons upon his instructions, the court or the investigator or procurator, as the case may be, must ensure the participation of defence counsel in the proceedings.

Article 52. Waiver of the right to defence counsel

The accused shall be entitled to waive the right to defending counsel at any stage of the proceedings. Such waiver shall be permitted only on the initiative of the accused himself and may not constitute an obstacle to the continued participation in the proceedings of the procurator or community accuser or of counsel for other defendants.

In the cases provided for in article 51 (2)-(5) of this Code, waiver of the right to defence counsel shall not be binding on the court or on the investigator or procurator.

...

CANADA

NOTE ¹

Introduction

The report of Canada for the year under review includes legislation to extend the protection of human rights, with specific reference, among other matters, to the prohibition of discrimination on the grounds of age, sex or marital status. There have been a number of amendments to legislation, and directives under existing legislation, to improve the social and economic welfare of citizens in the provinces and territories of Canada.

The report describes in part I the intent and substance of these changes, dealing in turn with action taken (a) by the Federal Government, (b) by Provincial and Territorial Governments, (c) through inter-governmental consultation, and (d) by important commissions of investigation as in the study of law reform. In part II the more extended texts of legislation, directives and official regulations are appended

PART I

A. Federal measures

1. In 1972, the Government of Canada deposited with the International Labour Organisation the instruments of ratification of two conventions: Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (27 March 1972), and Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (16 November 1972).

2. In November 1972, a Minister of State was appointed to assume responsibility for programmes related to multiculturalism. Policies have been developed arising largely from the recommendations of the Royal Commission on Bilingualism and Biculturalism which, in its final report, drew attention to the need to recognize the diverse cultures of many ethnic groups in Canada, in addition to the two main cultures, English and French. Under the new Minister, a programme was initiated to provide funds for projects which meet these criteria:

- “(i) They will assist the development of a Canadian ethno-cultural group or groups which have demonstrated their desire and ability to develop their culture within the Canadian context and to contribute to modern Canadian society, as well as a clear need for assistance.
- “(ii) They are designed to share a cultural heritage with other Canadians.
- “(iii) They will promote an awareness of Canada’s cultural diversity.
- “(iv) They have the participation and financial

support of the community to which they are directed.

- “(v) They assist immigrants to become full participants in Canadian society.”

Along with the allocation of grants to promote cultural activities, Canada’s multicultural programme engages in research and in extensive information and publicity services. Assistance is given to parent groups to produce school texts and teaching aids in diverse languages, for use in privately operated schools. Considerable encouragement is given to the ethnic press.

3. In May 1972, the House of Commons passed an Act to amend the Criminal Code which removed vagrancy as an offence as applied to prostitutes and to other persons:

(i) Section 164(1) (c) (which in the Revised Statutes became 175(1) (c)) was repealed. This section was as follows: “Everyone commits vagrancy who, being a common prostitute or night-walker is found in a public place and does not, when required, give a good account of herself”.

A new section of the Criminal Code states: “195.1 Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.”

Thus, merely having been known to the police as a prostitute and being found in a public place is no longer an offence in itself; and prostitution is no longer an offence which applies only to females.

(ii) Further, the section of the Criminal Code having to do with vagrancy, Section 164(1) (a) (which in the Revised Statutes became Section 175(1) (a)) was repealed. It is no longer consider-

¹ Note furnished by the Government of Canada.

ed a crime in Canada merely to be "loitering" and unable to justify one's presence in a particular place, except with evidence of criminal intent. The former section stated: "Everyone commits vagrancy who not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found".

4. In May 1972, the Canadian Parliament passed an Act to amend the Old Age Security Act, affording increased protection against poverty for people over the age of 65.

The amendment ensured that the incomes of elderly people would be adjusted to keep pace with any inflationary rise in consumer prices. A 2 per cent ceiling on such escalation was removed, allowing the universal pension, paid to all at 65, to rise in line with the rise in the Consumer Price Index maintained by Statistics Canada. In addition, a flat increase was made in the supplement paid to old age pensioners whose additional private income is negligible or non-existent, bringing the maximum pension-plus-supplement to \$150 a month for a single person; \$285 a month for a married couple, effective from January 1972. The measure also provided for the annual escalation of both pension and supplement in line with future rises in the cost of living.

5. Regulations under the Canadian Penitentiaries Act were amended in 1972 in two respects:

(i) A regulation which permitted the use of corporal punishment as a disciplinary measure in penitentiaries was revoked. This brought the regulation into conformity with existing practice, while it precluded any possibility of corporal punishment being imposed in the future.

(ii) Effective 27 September 1972 the regulation prohibiting inmates from conducting business operations while in custody was amended to permit such operations provided that approval was first obtained from the appropriate authority of the Canadian Penitentiary Service.

6. Regulations under the Canada Assistance Act were amended to meet the growing demand for community child care services, especially for the children of working mothers. An announcement of the changes was made in July 1972 by the Minister of Health and Welfare. Assistance to day-care centres is greatly extended, with the provision of federal funds on a cost-sharing basis with the provinces toward costs of equipment, materials and other operational expenditures. Assistance had been provided formerly to share in staff costs. Additional costs to the Federal Government in the fiscal year 1972/73 as a result of the expanded programme were estimated at between 2 and 4 million dollars. The expanded programme resulted in part from the recommendations of the Royal Commission on the Status of Women in Canada, and in part from the recommendations of a special day-care survey which reported earlier in the year. The Minister's announcement pointed out: "This change reflects the Federal Government's interest in the development of community services to support the family as the basic social unit of society. Day care of children is considered an important element in such services. The Canada Assistance

Plan provisions are directed particularly to low-income families who are most vulnerable to disruptive influences in modern society."

7. In November 1972, an Order in Council was issued empowering the Federal Public Service Commission to investigate complaints in regard to discrimination in hiring. Previously any such complaints were registered with the Fair Employment Practices Branch of the Canada Labour Department. Pursuant to the Order in Council, the Public Service Commission has established an Anti-Discrimination Branch to enquire into complaints against alleged discrimination on the basis of race, religion, colour, national origin, or sex (see part II. 1).

8. In April 1972, the Minister of Justice announced a funding programme to assist community projects which provide legal services to disadvantaged persons. The projects are expected to have the support of the provincial law society or local bar association, although they may be operated in part by non-professional staff. Grants of \$198,000 have since been approved for 18 legal assistance community clinics during the fiscal year 1972/73.

9. In August 1972, the Minister of Justice announced a proposal by the Federal Government which will extend legal aid services and ensure compensation to victims of crime. The Federal Government will pay into provincial programmes a 50 cents *per capita* grant for legal aid, and a 5 cents *per capita* grant for compensation to victims of crime, up to 90 per cent of the provincial expenditures in these areas. The provinces determine the usual method of extending aid to defendants, whether through payment of fees or by providing a public defender, but under the plan those charged with serious crimes are entitled to choose their own lawyers (see part II, 2)

10. Late in 1972 an interdepartmental committee was established at the Federal level of government, for the express purpose of co-ordinating the implementation of programmes of legal assistance to native people. The most substantial of these programmes is designed to provide court workers to assist native people in conflict with the law. Another programme will provide funds to assist native people to enter the legal profession. The committee represents the Departments of Health and Welfare, Indian Affairs and Northern Development, Justice, Manpower and Immigration, the Secretary of State and the Solicitor General. Most of the work of the committee will be in the four western provinces, and will result in an extension of court-worker programmes now operating on a limited scale.

11. Funding has been undertaken by the Department of the Secretary of State (Citizenship Branch) to provide financial assistance to citizens' committees operating community information and referral services. In the fiscal year 1971/72, such aid was extended to 5 information centres, and in the fiscal year 1972/73 to an additional 12 centres, with a combined expenditure of \$97,942.

12. Special measures to promote the advancement of women to senior positions in the public service were implemented following a directive from the Cabinet in April 1972 to deputy ministers of all departments, directing them to "take steps to encourage the assignment and advancement of more women into middle and upper echelon positions". The Cabinet directive provided a policy framework and resulted in the establishment of an interdepartmental committee to co-ordinate the implementation of this policy. Twenty-three departments are represented on the committee. Following this directive, a number of appointments were made to promote women to the level of directors and senior officers. An inventory has been compiled of qualified women within the public service who would be suitable candidates for senior executive posts, and a roster has been prepared of capable women not in the public service who might become candidates for senior positions. Such training schemes as the Career Assignment Programme have taken special measures to enrol women candidates for training leading to advancement in the public service.

13. To ensure that consideration is given to equal status and opportunities for women in society generally, special female advisors have been attached to several departments, notably the departments of Justice, the Solicitor General, and Health and Welfare, to advise in the development of legislation and policy.

14. In July 1972 the Minister of National Health and Welfare announced an expenditure of funds to begin immediate operation of a leisure-activity programme for older people, New Horizons. Following the pattern of earlier employment programmes for youth, the allotted funds would go to "self-generated" projects, proposed by groups of retired citizens. The New Horizons projects, however, would have as their objective not the earning of income for the participants but their recreational and social needs.

Announcing the programme, the Minister said:

"The New Horizons programme is designed to substantially improve the quality of life for the retired in our country. Through participation in self-help and other community activities, the barriers which cause social isolation and feelings of loneliness among those Canadians over 65 will begin to be removed.

"Projects could range from self-help and service-oriented programmes to activities of a cultural nature. The senior citizens themselves will formulate and plan activities which are in accordance with their interests. To cite illustrations, physical fitness and travel aid projects may be created for the specific benefit of the retired themselves, while programmes such as a foster grandparents plan and a counselling service for first offenders might be implemented for the benefit of other groups.

"Those who pioneered this country represent a great cultural heritage which needs to be preserved. Projects which have a historical dimension will enable the retired to relate this heritage to other Canadians."

15. The Recreation Canada section of the Department of National Health and Welfare announced a co-ordinating programme with an initial budget of \$300,000 to facilitate the development of recreational projects for native people. The funds will be managed by the Indian Brotherhood organizations of the four western provinces. Individual grants to Indian bands for recreational purposes have been made over some years, but a much more extensive approach is being made through this decision of Recreation Canada.

16. To further assist people of moderate means to acquire housing, a Regulation under the Central Mortgage and Housing Act was introduced in August 1972 to authorize the granting of loans on the basis of the total combined income of husband and wife. Section 129(1) of the Regulations establishes the conditions of borrowing, under which debts cannot be incurred which represent more than 27 per cent of the annual income of the borrower for a single family dwelling; 39 per cent for a duplex or semi-detached dwelling. The annual income may now include all money earned by both husband and wife, for purposes of calculating this debt ratio. The effect is to make loans available to many more families. This change came into effect through Order in Council PC 1972-1836.

B. Provincial measures

(i) Human rights legislation

The Province of Alberta replaced the Human Rights Act with more comprehensive legislation. The province passed the Individual's Rights Protection Act (see part II, 3) and the Alberta Bill of Rights (see part II, 4). The first is designed to protect persons from discriminatory acts and practices in society at large; it sets out a "Code of conduct" and it establishes a Human Rights Commission to enforce its provisions. The second serves as a check on the public authority and prevents discrimination in any statute or regulation of the government of Alberta, taking precedence over all other provincial legislation.

The Individual's Rights Protection Act Prohibits discrimination on the basis of race, religious beliefs, colour, sex, age (defined as age 45 to 65), ancestry or place of origin.

The "Code of conduct" under this Act refers to publishing or display, to accommodation, and to employment practices. It prohibits notices, signs, symbols or other representations which indicate discrimination or an intention to discriminate. Exceptions are made for notices identifying facilities customarily used by one sex; there is an exception for a statement of purposes or a membership qualification in a non-profit organization which is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin; and there is an exception for advertisements based on a *bona fide* occupational requirement. But in all these cases, the representation must appear in terms that are not derogatory, offensive or otherwise improper.

In regard to accommodation practices, discrimination is prohibited with respect to any accommodation, services or facilities customarily available to the public. (This clause has been broadened from the earlier Act, so that it covers, for instance, the selling practices of route salesmen and the offering of scholarships.) In renting, the definition of accommodation included under the Act is extended to include any commercial unit or self-contained dwelling unit.

As to employment practices, discrimination is prohibited, as under former legislation in rates of pay for male or female employees doing substantially similar work. Those who initiate complaints under the Act are protected from reprisals. Special classes of employees not included under anti-discriminatory clauses are domestics in private homes and farm employees who live in the homes of their employers. However, non-profit organizations as employers are no longer exempt from the legislation, and must abide by its anti-discrimination features. There is also a change from previous legislation in that the prohibition against discrimination in granting membership in an association is broadened to include any "occupational association", meaning any organization in which membership is a prerequisite to carrying on a trade, occupation or profession.

The establishment of an Alberta Human Rights Commission under the Individual's Rights Protection Act brings to seven the total of such provincial commissions. Like the others, the Alberta Commission has an educational function, and it is empowered to act on the receipt of a complaint and also to take action where an infringement is believed to exist. The Commission is required to inform the respondent of a complaint against him; the complaint is to be filed within six months of the occurrence, and the Commission has the authority to dismiss frivolous complaints. A board of enquiry under a judge of the Alberta Supreme Court is provided for in the Act, in cases where a settlement cannot be reached by the Commission. Both the complainant and the respondent also have the right of appeal from the decisions of this board.

The Province of Saskatchewan also established a Human Rights Commission under a new Human Rights Commission Act (see part II, 5) and empowered it to act as the enforcement agency for the Saskatchewan Fair Employment Practices Act, Fair Accommodation Practices Act and the Saskatchewan Bill of Rights. Oral or written complaints from either the aggrieved person or from a person on his behalf require action by the Commission: the action is mandatory. An order from the Commission carries heavy penalties for non-compliance: \$100 to \$500 for individuals and \$400 to \$2,000 for corporations and other legal entities.

The Province of Ontario broadened the function of its Human Rights Commission. The Commission may now initiate special programmes designed to increase employment opportunities for members of a class or group of persons, such as women or minority ethnic groups, and these programmes are deemed to be non-discriminatory. The former Women's Bureau, established under the Women's Equal Employment Opportunity

Act, has now become a division of the Human Rights Commission.

The Ontario Human Rights Code was broadened to absorb matters formerly dealt with under the Women's Equal Employment Opportunities Act and the Age Discrimination Act. Sex, marital status and age (belonging to an older category, defined as age 40 to 65), are recognized throughout the Code as factors which cannot be used as grounds for discrimination. The Code was also broadened in its application to accommodation in any form of housing, whether or not it is strictly self-contained.

The Province of Nova Scotia also amended its Human Rights Act to prohibit discrimination on the grounds of sex (see part II, 6). This was applied to employment and accommodation practices and included job application forms and advertisements except where a *bona fide* occupational qualification based on sex exists.

The Saskatchewan government passed an Ombudsman Act (see part II, 7) whose provisions, on the whole, are similar to those of the six other Ombudsman Acts in Canada. The Ombudsman is empowered to hear complaints even against decisions of the Human Rights Commission.

(ii) *Age of majority*

In New Brunswick, the age of majority was reduced from 21 to 19.

The age of majority is now 18 in the federal jurisdiction; 18 in Manitoba, Ontario, Saskatchewan, Quebec and Prince Edward Island; and 19 in Alberta, British Columbia, Nova Scotia, Newfoundland, New Brunswick, and the Yukon and Northwest Territories.

(iii) *Rights of mental patients*

A revised Mental Health Act was passed by the Province of Alberta. In part 3 it delineated the rights of patients held in custodial care. The patient has a right to apply to a review board for cancellation of his admission to a treatment facility, or of a renewal of that admission, or of a certificate of incapacity. He and his closest relative must be clearly informed of this right, by means of an interpreter if required, and must be assisted if they wish to make application to the review board. The chairman of the review board is obligated to conduct an enquiry, and the applicant and his representative have the right to be present at the enquiry. The patient has the right to send mail and to receive visitors without obstruction, and he has a right to counsel at any time (see part II, 8).

(iv) *Confidentiality of information regarding social allowance recipients*

The Province of Alberta amended the Social Development Act of that province, which provides for the maintenance of persons in special circumstances through social allowances. A new feature of the Act has to do with confidentiality, and prohibits disclosure of personal information regarding an applicant for a social allowance to any unauthorized person, that is, any person not

acting within a defined official capacity, (see part II, 9).

(v) *Increasing the role of the Family Court*

The Province of British Columbia amended the Family Relations Act, and introduced a number of new sections. The Family Relations Act now incorporates provisions formerly contained in the Divorce and Matrimonial Causes Act, the Equal Guardianship of Infants Act, the Parents' Maintenance Act, the Reciprocal Enforcement of Maintenance Orders Act, the Wives' and Children's Maintenance Act, and certain sections of the Supreme Court Act. It establishes responsibility for maintenance of children, of spouses, and of parents. It provides for property settlements following dissolution of marriage or judicial separation. It establishes the authority of the court to hold hearings and make orders in these matters.

(vi) *Compensation to victims of crime*

The Province of British Columbia passed the Criminal Injuries Compensation Act in March 1972 providing for payments of money, medical aid, and rehabilitation measures to victims of crime. Formerly such compensation was made to law enforcement officers injured in the course of duty, but the specific legislation authorizing this compensation, the Law Enforcement Officers Assistance Compensation Act, is now repealed.

Those who may benefit under the new Act are defined in section 2:

2. (1) Every victim of crime is, or, if he has been killed, his dependents are, entitled to apply, in the manner provided in the Act, to the board for compensation.

(2) For the purpose of this Act, a victim of crime is a person injured or killed in the Province by an act or omission of another resulting from:

(a) The commission of an offence within the description of a criminal offence mentioned in the schedule, except an offence arising out of the operation of a motor-vehicle, but including assault by means of a motor-vehicle; or

(b) The lawful arrest or attempt to arrest an offender or suspected offender, or assisting a peace officer in making or attempting to make an arrest; or

(c) The lawful prevention or attempt to prevent the commission of a criminal offence or suspected offence, or assisting a peace officer in preventing or attempting to prevent the commission of such offence or suspected offence.

(3) The board, upon application as prescribed by the board or by the regulations, shall determine whether the applicant is a victim of crime or the dependent of a deceased victim of crime, and may award compensation to the victim or his dependents as provided by this Act.

(4) The board may award compensation to a mother who is herself maintaining a child born to her as a result of a scheduled offence and, if the mother dies, compensation may be paid

to any person who, in the opinion of the board, is maintaining the child.

(5) Compensation awarded to an applicant under this Act shall be paid out of the Consolidated Revenue Fund in the same manner as moneys are paid under the Workmen's Compensation Act, 1968, where a workman, employed by the Crown, is injured or killed in the course of his employment.

(vii) *Probation measures*

The Province of Prince Edward Island in 1972 passed the Probation Act, setting out the terms and conditions of probation under provincial law. Probation may be granted up to a period of two years at the discretion of the judge when an accused person has been found guilty of an offence. While on probation, the accused is required to keep the peace and be of good behaviour, support his family and make every reasonable effort to find and maintain employment, reporting to a Probation Officer or to the Judge as required.

(viii) *Rights under garnishment*

A revision of the Garnishee Act and Regulations was passed by the Province of Prince Edward Island, ensuring that a garnishee may retain enough of his wages or salary to provide for himself and his dependents. A new section 17 was introduced, requiring the protonotary or clerk of the Court to calculate the amount of the exemption with reference to similar calculations under the Welfare Assistance Act. The Regulations state the maximum monthly amounts to be retained for items of basic need, based on the number of people in the household, and the payment of taxes, insurance and other charges on the family home. Board and lodging in a private boarding house may be included in the calculation up to a maximum of \$80 a month for a single person; \$120 a month for a couple. An allowance for health care services may be included if required.

(ix) *Rights of landlords and tenants*

The mutual obligations of landlords and tenants in respect to residential tenancy were set out in an amendment to the Landlord and Tenant Act of Prince Edward Island, passed in April 1972. The new part (part V) of the Act governs agreements or leases, a notice to quit or a notice to terminate, security deposits and permissible rent increases. It states that the landlord has an obligation to maintain the premises in a state of good repair, and may enter the premises only in certain circumstances. The tenant has an obligation to keep the premises clean and sanitary and to repair damage caused by him.

(x) *Increases in basic income*

Several of the provinces of Canada amended statutes and regulations in 1972 to improve the economic welfare of their citizens. British Columbia passed a General Minimum Wage Order pursuant to the Minimum Wage Act, raising the basic

minimum wage for adults from \$1.50 to \$2.00 an hour. The increase went into effect on 4 December 1972. There were provisions for additional increases in the successive years, to a minimum wage of \$2.50 an hour in June 1974.

British Columbia also increased the pensions paid to the elderly and to handicapped persons, to the highest level of pensions paid in Canada: \$200 a month. The increase was effected in the passing of the Handicapped Persons Income Assistance Act and the Guaranteed Minimum Income Assistance Act. The pension to the elderly begins at age 65; provinces determine the amount of the "guaranteed income supplement" paid in addition to the basic old-age security pension.

Assistance to the elderly in paying for accommodation was also provided under legislation passed in 1972 in the provinces of British Columbia and Alberta.

(xi)

New legislation was passed in the Province of British Columbia to assist in establishing business enterprises dealing in native Indian arts, crafts and industries. The First Citizens of British Columbia Corporation Act established the corporation and set out its objectives and powers. It is designed:

"(a) To carry on the business of wholesalers, distributors and retailers of and dealers in the works of native Indian artists and craftsmen of the Province;

"(b) To encourage the development of native Indian arts, crafts, and industries in the Province;

"(c) To adopt and use trade and certification marks and secure registration thereof under the laws of Canada and apply certification and trade marks to identify and indicate the approval of the corporation of works of native Indian artists and craftsmen purchased by the corporation."

The corporation operates under the authority of the provincial government and is required to submit an annual report. Directors of the corporation are named from six Indian organizations, listed in schedule A under the Act: the Native Brotherhood of British Columbia, the Union of BC Indian Chiefs, the BC Indian Homemakers' Association, the BC Association of Non-Status Indians, the North American Brotherhood of BC and the British Columbia Native Women's Society.

(xii) *Report on the administration of justice in northern Quebec*

Late in 1972, the Province of Quebec published a major study of the administration of justice in its northern regions, which are sparsely settled and have a predominantly Indian and Eskimo population. The report was published in French, English, Cree and Eskimo.

Recommendations of the report included these proposals:

1. To form a single judicial district in northern Quebec;
2. To establish an appropriate information

system to apprise Indians and Eskimos of their rights and of existing laws.

3. To control the entry, sale and consumption of alcoholic beverages in northern Quebec, in consultation with native communities, and to develop an educational and rehabilitative programme on alcoholism.

4. To take steps to ensure that the residents of unorganized territories can exercise their right to vote.

5. To increase the number of police stations in relation to the population, establishing posts in communities not adequately served hitherto.

6. To enrol greater numbers of Indian and Eskimo constables, adjusting selection requirements where necessary to meet this objective.

7. To improve the system of custodial institutions, in order that fewer convicted people will be sent south to serve their sentences, and to develop an improved system of probation and rehabilitation, especially in regard to alcoholism.

8. To arrange for regional Court hearings.

9. To make legal aid available to all northern citizens regardless of their income status or native origin.

(xiii) *Minimum Wage Order*

A Minimum Wage Order under the Minimum Wage Act of Newfoundland and Labrador was introduced in 1972 to eliminate the differential between minimum wages paid to male and female employees.

(xiv) *Non-discrimination in residential leases*

The Quebec National Assembly introduced a bill respecting practices of leasing, which prohibits discrimination (article 1665f):

"Every clause that is discriminatory by reason of the race, creed, sex, color, nationality, ethnic origin, place of birth or language of a lessee is without effect."

This article establishes, at the contractual level, rules generally admitted in comparative law, in Quebec jurisprudence and in several laws of the Province of Quebec.

(xv) *Council on the Status of Women*

In 1972 the Quebec National Assembly introduced a bill to establish a Council on the Status of Women which will have the dual function of research and consultation. It will advise the Prime Minister on any question he submits to it respecting the equality and respect of the rights and status of women; it may also carry out studies and research respecting the equality and respect of the rights and status of women, receive and hear suggestions from individuals and groups and make recommendations it considers appropriate to the Prime Minister.

C. Territorial measures

1. In 1972, two Federal Government Acts relating to control against pollution in the inland

waters of the northern Territories and in Arctic coastal waters came into force.

In August 1972, regulations were passed under the Arctic Waters Pollution Prevention Act establishing liability for damage due to pollution.

In September 1972, regulations were passed under the Northern Inland Waters Act designating water management areas, specifying the industrial and agricultural uses to which water could be put, and regulating the issuing of licences and the deposit of waste.

2. In the Yukon Territory, an Ordinance was enacted on 30 March 1972, establishing the rights of landlords and tenants in residential premises. Among other provisions, there was a section relating to access to the building by candidates for public office.

"Section 73 (1). No landlord, his servant, or agent shall impose any special restrictions on access to the rented premises by candidates, or their authorized representatives, for election to the House of Commons, the Territorial Council or any office in a municipal government for the purpose of canvassing or distributing election material."

The tenant was protected against eviction by reason of any complaint made by him against violation of health or safety standards:

"Section 87 (2). In any proceeding by the landlord for possession, if it appears to the judge that:

(a) The notice to quit was given because of the tenant's *bona fide* complaining to any governmental authority of the landlord's violation of any statute or municipal bylaw dealing with health or safety standards, including any housing standard law, or

(b) The notice to quit was given because of the tenant's attempt to secure or enforce his legal rights, the judge may refuse to grant the order."

A similar provision in regard to attempted eviction was included in the Northwest Territories' Landlord and Tenant Ordinance, enacted on 13 October 1972.

3. The Commissioner of the Yukon Territory, by and with the consent of the Territorial Council, enacted an Age of Majority Ordinance on 11 February 1972. It reduced the age of majority from 21 to 19.

4. In March 1972, a Municipal Elections Ordinance was enacted in the Yukon Territory. It set forth the procedure for elections common to most such legislation in Canada, including provisions against bribery, corruption or impersonation, and provisions for a petition against an election, to declare it invalid. The electors and taxpayers were defined as follows:

"5 (1). Every person is entitled to vote at an election who:

(a) Is a Canadian citizen or other British subject,

(b) Has attained the age of 19 years on the day on which the poll is taken, and

(c) Has established residence and resided in the municipality for one year prior to the day of the poll.

"6 (1). All taxpayers are qualified to vote on a money bylaw submitted by the council for their assent pursuant to section 76 of the Municipal Ordinance.

(2) In this section, taxpayer means any person or the spouse of any person who:

(a) Pays a property tax of at least 25 dollars annually to the municipality, or

(b) Is a corporation paying a property tax to the municipality of at least 25 dollars."

A later section established the qualifications for candidates:

"8. (1) To be eligible to become an alderman or mayor, a person must on the day of his nomination be:

(a) Of the full age of 19 years;

(b) A Canadian citizen or other British subject;

(c) A resident of the municipality for 12 consecutive months immediately preceding nomination day;

(d) Eligible to vote as an elector for the election in which he is nominated and is not disqualified pursuant to section 9 of the Municipal Ordinance."

"9. (1) A person is not eligible to become a member of the council of a municipality if he:

(a) Is a judge of a court of civil jurisdiction;

(b) Is an undischarged bankrupt;

(c) Is a surety for an officer or employee of the municipality;

(d) Is the auditor of or an officer or employee of the municipality;

(e) Is indebted to the municipality for a debt in default exceeding 50 dollars, but not including any indebtedness for current taxes;

(f) Is a party to a subsisting contract with the municipality under which money of the municipality is payable or may become payable for any work, service, matter or thing;

(g) Has a pecuniary interest, whether direct or indirect, in any subsisting contract with the municipality under which money is payable or may become payable for any work, service matter or thing."

5. A further Ordinance of the Yukon Territory established a Mediation Board to deal with disputes related to taxation of land.

D. Inter-governmental agreements

1. Progress toward a uniform minimum age of marriage under provincial legislation across Canada, was made in a recommendation of the Conference of Commissioners on Uniformity of Legislation on 22 August 1972. The Conference recommended that the minimum age for marriage be fixed at 16 for both sexes and that consent be required prior to the marriage of persons under 18 years of age.

2. In May 1972, the Canadian Association of Statutory Human Rights Agencies was formed to promote co-operation among those commissioned to implement human rights legislation. Founding the organization were representatives of the Fair Employment Practices Branch of the Canada Labour Department and government agencies of

Prince Edward Island, Nova Scotia, New Brunswick and Quebec; other provinces have since confirmed their participation. The organization will meet annually to discuss administrative and policy matters and will circulate information. The constitution of the Association was approved in July (see part II, 10).

E. Judicial measures

1. A judgement of the Supreme Court of Canada given on 18 October 1972 (*Jackson v. Jackson*) held that maintenance may be ordered as a charge on the parent on behalf of children over the age of 16 who are attending school or university.

This legal decision has been adopted generally by family courts in Canada.

2. The Manitoba Attorney General issued an order on 17 July 1972, confirming the action of the Manitoba Human Rights Commission in the case of dismissal of two women employees of McGavin Toastmaster Ltd. The plaintiffs had charged that dismissal was on the basis of sex, and in spite of the fact that they had seniority of tenure over male employees; a charge was laid against the Union as well as the Company. The Commission ordered the reinstatement of the employees with the payment of lost wages. When the Company did not comply, the Commission made recommendations to the Attorney General, who upheld the decision of the Commission and imposed fines of \$500 for each female employee to be paid separately by the Company and by the Union.

F. Other developments

In August 1972, the Law Reform Commission of Canada submitted its first annual report, in compliance with the terms of its establishment which described its purpose as being: "to study and keep under review on a continuing and systematic basis the statutes and other laws comprising the laws of Canada with a view to making recommendations for their improvement, modernization and reform".

The Federal Commission complements existing Law Reform Commissions in eight provinces; there is legislative provision for commissions in

the remaining two provinces, Newfoundland and Saskatchewan.

A formal programme of research had been submitted by the Law Reform Commission in March 1972. Areas of research were determined following consultation with the public, and these included questions of criminal law, of evidence, and of family law. Projects were subsequently initiated on the aims and purposes of criminal law; prohibited and regulated conduct; criminal procedure; and sentencing and disposition. Further projects dealt with the law of evidence and with family law.

The law of evidence project included studies on the competency and compellability of witnesses; the manner of questioning witnesses; character evidence; attacking and supporting credibility.

As the study of the aims and purposes of criminal law progresses, attention is being given to such matters as: the identification of the types of conduct that should be made subject to the criminal law; the analysis of the objectives to be obtained by the imposition of criminal sanctions; the finding of alternative techniques for regulating conduct without resorting to the criminal law; and the studying of the effectiveness of the adversary system.

A study of the impact of criminal law on disadvantaged groups in society has been undertaken.

A major project has to do with general principles of the criminal law: one of these is the question of direct responsibility; another is corporate criminal liability; another has to do with the effects of mental illness and intoxication on criminal responsibility. Under the heading of prohibited and regulated conduct a study will be undertaken to enact a more comprehensive criminal code reflecting contemporary values, with reference to such matters as homicide; sexual misconduct; obscenity; contempt; conspiracy; and dishonest acquisition of property.

Anticipated research undertakings will relate to criminal procedure, covering 10 specific topics ranging from police arrest procedures to costs after acquittal; sentencing and disposition; and, in co-operation with provincial Law Reform Commissions: costs of divorce; jurisdiction to grant divorce and recognition of foreign divorce and nullity decrees; property settlements in divorce and nullity proceedings; nullity of marriage; and the concept of a unified family court.

PART II

1. Order in Council, the Privy Council of Canada (PC 1972-2569), 9 November 1972

His Excellency the Governor General in Council, on the recommendation of the President of the Treasury Board and the Secretary of State, pursuant to paragraph 5 (f) of the Public Service Employment Act, is pleased hereby to assign to the Public Service Commission the duty to investigate any complaint of alleged discrimination on the grounds of sex, race, national origin, colour

or religion, in respect of the application or operation of the Act.

2. Note from the Office of the Minister of Justice, 24 August 1972

Legal aid and compensation for victims of crime

Ottawa, 24 August 1972 . . . Proposed federal assistance for legal aid and compensation for victims of crime effective 1 January 1973 were

announced today by Federal Attorney General, Otto Lang. The Federal Government, with special responsibility in the area of criminal law will offer to pay to provinces on the basis of total population up to 50 cents per person for legal aid and 5 cents per person for compensation of victims of crime but not more than 90 per cent of the provincial expenditures in these areas.

Draft copies of proposed agreements with the provinces are in the mail to the provincial Attorneys General.

Details of the proposed plans

The provinces are to be free to determine the way in which legal aid is offered to defendants—whether through payment of fees, provision of a public defender, etc.—however it is proposed that individuals charged with offences punishable by imprisonment for more than 10 years (or death) will be entitled to choose their own lawyer.

Legal aid will be offered to any accused who is unable to hire a lawyer without going into substantial debt or who would be forced to sell modest necessary assets to pay him. However, a defendant will be required to pay a portion of the costs if he is able.

Legal aid will be offered to eligible individuals who run afoul of an act of Parliament punishable by way of indictment, or the Juvenile Delinquents Act, of when the agency feels that a conviction for a lesser offence would still lead to imprisonment or the loss of a job. It would also apply to proceedings under the Extradition Act, the Fugitive Offenders Act, appeals by the crown or any of the above, meritorious appeals by the accused, or where the court requests that a lawyer be appointed on behalf of the defendant.

Compensation may be paid to the victim of a crime, or to anyone looking after the victim or, if the victim has died, to the victim's dependants.

It will be paid if injury or death has occurred in the province as the result of one of 40 specific Criminal Code offences, or when arresting a suspected offender or when preventing an offence. It will also be paid if injury or death occurred while assisting the police in any of these.

Compensation will take into account reasonable expenses, total or partial work disability, mental or nervous shock, income loss or damages incurred by dependants, care of a child conceived by rape, other compensation which would normally be recoverable as the result of the offence.

As in the legal aid plan, the recipients of compensation will be expected to repay the agency up to the amount the agency spent on their behalf, if they have received money from other sources as a result of the crime.

Defendants and victims will be entitled to assistance even though they are not normally residents of the province in which they are charged or the crime occurred.

Fee schedules for legal aid lawyers and compensation rates will be set by the province. Federal allocation of funds will depend upon the provincial Attorney General's annual report submitted by 31 May each year to the Federal Attorney General.

Although the Federal Government wishes to have a representative on each provincial agency and the financial terms of each agreement will be reviewed each three years, should there be any unresolvable disagreement it will be settled by the Federal Court of Canada. The schedule of crimes for which compensation may be paid may be amended at any time by mutual consent of the two levels of government.

The Department of Justice and the government of the Northwest Territories have had a comprehensive legal aid scheme since August 1971.

Mr. Lang said that "the underlying purpose of the federal initiative is to assure adequate representation for all in criminal cases in Canada and a basic system of compensation for victims of crime. Our offer of funds in an area in which we have special responsibility should help the development of adequate plans in all provinces and yet by decentralizing the operation we give the provinces full scope for their own experiments, and for the combining of criminal and civil legal aid plans for effective local administration."

3. The Individual's Rights Protection Act, Statutes of Alberta, 1972, Chapter 2

(assented to on 22 November 1972)

...

1. (1) Unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act.

(2) In this Act, "law of Alberta" means an Act of the Legislature of Alberta enacted before or after the commencement of this Act, any order, rule or regulation made thereunder, and any law in force in Alberta at the commencement of this Act that is subject to be repealed, abolished or altered by the Legislature of Alberta.

Code of conduct

2. (1) No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of the race, religious beliefs, colour, sex, age, ancestry or place of origin of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject.

(3) Subsection (1) does not apply to:

(a) The display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one sex, or

(b) The display or publication by or on behalf of an organization that:

(i) Is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin, and

(ii) Is not operated for private profit, of a notice, sign, symbol, emblem or other representation indicating a purpose or membership qualification of the organization or

(c) The display or publication of a form of application or an advertisement that may be used, circulated or published pursuant to section 7, subsection (2),

if the notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.

3. No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall:

(a) Deny to any person or class of persons any accommodation, services or facilities customarily available to the public, or

(b) Discriminate against any person or class of persons with respect to any accommodation, services or facilities customarily available to the public, because of the race, religious beliefs, colour, sex, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

4. No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall:

(a) Deny to any person or class of persons the right to occupy as a tenant, any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or

(b) Discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling units,

because of the race, religious beliefs, colour, sex, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

5. (1) No employer shall employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work.

(2) Work for which a female employee is employed and work for which a male employee is employed shall be deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar.

(3) A difference in the rate of pay between a female and male employee based on any factor other than sex does not constitute a failure to comply with this section if the factor on which the difference is based would normally justify such a difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which she is entitled under this section, she is entitled to recover from her employer by action the difference between the amount paid and the amount to which she was entitled, together with her costs, but

(a) The action shall be commenced within 12 months from the date upon which the cause of action arose, and not afterward,

(b) The action applies only to the wages of an employee during the 12-month period immediately preceding the termination of her services or the commencement of her action, whichever occurs first,

(c) The action may not be commenced or proceeded with where the employee has made a complaint to the Commission in respect of the contravention of this section, and

(d) No complaint by the employee in respect of the contravention shall be acted upon by the Commission where an action has been commenced by the employee under this section.

6. (1) No employer or person acting on behalf of an employer shall:

(a) Refuse to employ or refuse to continue to employ any person, or

(b) Discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, sex, marital status, age, ancestry or place of origin of that person or any other person.

(2) The provisions of subsection (1) relating to age and marital status shall not affect the operation of any *bona fide* retirement or pension plan or the terms or conditions of any *bona fide* group or employee insurance plan.

(3) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a *bona fide* occupational qualification.

7. (1) No person shall use or circulate any form of application for employment or publish any advertisement in connexion with employment or prospective employment or make any written or oral inquiry of an applicant,

(a) That expresses either directly or indirectly any limitation, specification or preference as to the race, religious beliefs, colour, sex, age, ancestry or place of origin of any person, or

(b) That requires an applicant to furnish any information concerning race, religious beliefs, colour, ancestry or place of origin.

(2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a *bona fide* occupational qualification.

8. Sections 6 and 7 do not apply with respect to:

(a) A domestic employed in a private home, or

(b) A farm employee who resides in the private home of the farmer who employs him.

9. No trade union, employers' organization or occupational association shall:

(a) Exclude any person from membership therein, or

(b) Expel or suspend any member thereof, or

(c) Discriminate against any person or member, because of the race, religious beliefs, colour, sex, marital status, age, ancestry or place of origin of that person or member.

10. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against any person because that person has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

11. (1) The prohibitions contained in this Act apply to and bind the Crown in right of Alberta and every agency and servant thereof.

(2) The Lieutenant Governor in Council may by regulations require that contracts designated or classified in the regulations and entered into by

(a) The Crown in right of Alberta or a member of the Executive Council of Alberta acting for and on behalf of the Crown;

(b) A municipal corporation in Alberta;

(c) The board of trustees of a school district or school division in Alberta;

(d) The board of a hospital as defined in The Alberta Hospitals Act;

shall contain such provisions as may be specified in the regulations, in such form and terms as the regulations may provide, for the purpose of securing the observance, as far as possible, of the provisions of sections 2 to 10.

Alberta Human Rights Commission

12. (1) There shall be a commission to be known as the "Alberta Human Rights Commission" which shall consist of such number of members as may be appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may designate one of the members as a chairman of the Commission.

(3) The chairman and other members of the Commission shall receive such remuneration for their services as may be prescribed by the Lieutenant Governor in Council.

13. The Commission is responsible to the Minister for the administration of this Act.

14. (1) It is the function of the Commission

(a) To forward the principle that every person is equal in dignity and rights without regard to race, religious beliefs, colour, sex, age, ancestry or place of origin,

(b) To promote an understanding of, acceptance of and compliance with this Act.

(c) To research, develop and conduct educational programmes designed to eliminate discriminatory practices related to race, religious beliefs, colour, sex, age, ancestry or place of origin, and

(d) To encourage and co-ordinate both public and private human rights programmes and activities.

(2) The Commission may delegate to one or more of its members any of the functions or duties of the Commission.

(3) The Lieutenant Governor in Council may make regulations adding to or extending the functions of the Commission and respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

15. In accordance with the Public Service Act, there may be appointed a Director of the Commission and such other employees as may be required for the purpose of enabling the Commission to carry on the administration of this Act.

16. (1) The Commission shall after the end of each year prepare and submit to the Minister a report of its activities during that year, including a survey of all complaints and prosecutions under this Act and such other information as the Minister may require.

(2) When the report is received by him, the Minister shall lay a copy of it before the Legislative Assembly if it is in session and if not, within 15 days after the commencement of the next ensuing session.

Enforcement

17. (1) The Commission shall as soon as is reasonably possible cause an investigation to be made into and shall endeavour to effect a settlement of any complaint of an alleged contravention of this Act where

(a) A person who believes he has been discriminated against contrary to this Act makes a complaint in writing to the Commission, or

(b) The Commission has reasonable grounds for believing that a complaint exists.

(2) The Commission shall, before commencing an investigation under subsection (1), give notice of the complaint and of the Commission's intention to investigate it, to the person against whom the complaint was made.

(3) Any complaint filed pursuant to this section by an aggrieved person must be filed within six months after the alleged contravention of this Act.

(4) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of proceeding.

18. (1) If the Commission is unable to effect a settlement of the matter complained of, the Minister shall, on the request of the Commission, appoint a board of inquiry composed of one or more persons to investigate the matter.

(2) The Minister shall forthwith communicate the names of the members of the board of inquiry to the parties to the complaint.

(3) The Lieutenant Governor in Council may determine the rate of remuneration of the chairman and members of boards of inquiry.

19. (1) A board of inquiry and each member thereof has all the powers of a commissioner appointed under the Public Inquiries Act.

(2) If a board of inquiry is composed of more than one person, the recommendations of the majority are the recommendations of the board.

20. (1) A board of inquiry shall give the parties to the complaint full opportunity to be represented by counsel, to present evidence and to make submissions.

(2) The board of inquiry may receive and accept whatever evidence and information on

oath, affidavit, or otherwise it, in its discretion, deems fit and proper, whether admissible as evidence in a court of law or not.

(3) The Administrative Procedures Act applies to the proceedings of a board of inquiry.

21. (1) A board of inquiry shall submit a report of its inquiry to the Commission within 14 days, exclusive of Saturdays and holidays, after its appointment or within such longer period as the Minister may approve.

(2) In its report a board of inquiry shall state whether it found the complaint to be justified or not.

(3) After a board of inquiry has made its report, the Commission may direct it to clarify or amplify any of its findings or recommendations and the report shall be deemed not to have been received by the Commission until they have been so clarified or amplified.

(4) Upon receipt of the report of a board of inquiry, the Commission shall furnish a copy thereof to each of the persons affected and, if it considers it advisable, shall publish the report in such manner as it considers fit.

22. (1) Where a board of inquiry finds a complaint to be justified, in whole or in part, it shall in the report recommend the course of action it thinks ought to be taken with respect to the complaint.

(2) If the Commission cannot effect a settlement on the course of action to be taken with the person against whom the finding was made within 30 days of the date he was furnished with a copy of the report of the board of inquiry, the Commission shall forthwith deliver all of its files and other records pertaining to the complaint to the Attorney General.

(3) The Attorney General may, within 30 days after receiving the Commission's files and other records pursuant to subsection (2), apply to the Supreme Court of Alberta for an order under subsection (5) by way of originating notice of motion filed in the office of the clerk of the court of the judicial district in which the inquiry of the board of inquiry was held.

(4) The judge hearing the motion shall hold an inquiry *de novo* and may confirm, reverse or vary the findings and recommendations of the board of inquiry and may make an order under subsection (5).

(5) The judge in his discretion may make an order directing the person against whom the finding was made to do any or all of the following:

(a) To cease the contravention complained of;

(b) To refrain in future from committing the same or any similar contravention;

(c) To make available to the person discriminated against the rights, opportunities or privileges he was denied contrary to this Act;

(d) To compensate the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action;

(e) To take such other action as the judge considers proper to place the person discriminated against in the position he would have been but for the contravention of this Act;

(f) To pay to the Crown a penalty of

(i) Not more than \$200, in the case of an individual, or

(ii) Not more than \$1,000, in the case of a corporation, trade union, employers' organization, employment agency or occupational association;

and the order may be enforced in the same manner as any other order of the Supreme Court.

23. (1) Where a board of inquiry finds a complaint to be justified, the person who submitted the complaint may appeal therefrom to the Supreme Court in accordance with this section.

(2) Where a board of inquiry finds a complaint to be justified, in whole or in part, the person against whom the finding was made may appeal therefrom to the Supreme Court in accordance with this section.

(3) An appeal under this section shall be made by way of an originating notice of motion filed with the clerk of the court of the judicial district in which the inquiry was held.

(4) The originating notice of motion

(a) Shall be filed with the clerk of the court within 30 days of the date the appellant was furnished with a copy of the report of the board of inquiry;

(b) Shall be returnable on a date not later than 15 days after the date it is filed with the clerk;

(c) Shall show as a respondent the complainant or the person against whom the finding of the board of inquiry was made, as the case may be;

(d) Shall show the Commission as a nominal respondent for the purpose only of allowing the Commission to be notified of the motion and subsequent proceedings.

(5) The Supreme Court shall hear and determine the appeal by holding an inquiry *de novo* and may confirm, reverse or vary the findings and recommendations of the board of inquiry and make any order that may be made under section 22, subsection (5).

24. (1) Where an order of the Supreme Court under section 22 or 23 did not direct a person to cease the contravention complained of, the Attorney General may subsequently apply by way of originating notice of motion to the Supreme Court for an order enjoining the person from continuing the contravention.

(2) The judge, in his discretion, may make the order and the order may be enforced in the same manner as any other order of the Supreme Court.

25. (1) Any proceedings under this Act may be instituted against a trade union or employers' organization or occupational association in its name.

(2) Any act or thing done or omitted by an officer, official, or agent of a trade union or

employers' organization or occupational association within the scope of his authority to act on its behalf shall be deemed to be an act or thing done or omitted by the trade union or employers' organization or occupational association, as the case may be.

26. (1) No member of the Commission, nor the Director or any employee mentioned in section 15, shall be required by any court to give evidence relative to information obtained for the purpose of this Act.

(2) No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

27. The Ombudsman Act applies to the activities of the Commission and every board of inquiry appointed under this Act.

28. In this Act

(a) "Age" means any age of 45 years or more and less than 65 years;

(b) "Commercial unit" means any building or other structure or part thereof that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or any space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building or other structure or in a part thereof;

(c) "Commission" means the Alberta Human Rights Commission;

(d) "Director" means the Director of the Commission;

(e) "Employers organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

(f) "Employment agency" includes a person who undertakes with or without compensation to procure employees for employers and a person who undertakes with or without compensation to procure employment for persons;

(g) "Minister" means the member of the Executive Council charged with the administration of this Act;

(h) "Occupational association" means any organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession;

(i) "Person", in addition to the extended meaning given it by the Interpretation Act, includes an employment agency, an employers' organization, an occupational association and a trade union;

(j) "Trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

29. The Human Rights Act is repealed.

30. The Alberta Labour Act is amended by striking out part 6.

31. This Act comes into force on a date to be fixed by Proclamation.

4. The Alberta Bill of Rights, Statutes of Alberta, 1972, Chapter I

(assented to on 15 November 1972)

...

1. It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:

(a) The right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) The right of the individual to equality before the law and the protection of the law;

(c) Freedom of religion;

(d) Freedom of speech;

(e) Freedom of assembly and association; and

(f) Freedom of the press.

2. Every law of Alberta shall, unless it is expressly declared by an Act of the Legislature that it operates notwithstanding the Alberta Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared.

3. (1) Nothing in this Act shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated herein that may have existed in Alberta at the commencement of this Act.

(2) In this Act, "law of Alberta" means an Act of the Legislature of Alberta enacted before or after the commencement of this Act, any order, rule or regulation made thereunder, and any law in force in Alberta at the commencement of this Act that is subject to be repealed, abolished or altered by the Legislature of Alberta.

(3) The provisions of this Act shall be construed as extending only to matters coming within the legislative authority of the Legislature of Alberta.

4. (1) Where in any action or other proceeding a question arises as to whether any law of Alberta abrogates, abridges or infringes, or authorizes the abrogation, abridgment or infringement of any of the rights and freedoms herein recognized and declared, no adjudication on that question is valid unless notice has been given to the Attorney General.

(2) Where the Attorney General has notice under subsection (1), he may, in person or by counsel, appear and participate in that action or proceeding on such terms and conditions as the court, person or body conducting the proceeding may consider just.

5. This Act comes into force on a date to be fixed by Proclamation.

5. An Act to establish the Saskatchewan Human Rights Commission, Statutes of Saskatchewan, 1972, Chapter 108

(assented to in April 1972)

...

1. This Act may be cited as the Saskatchewan Human Rights Commission Act, 1972.

2. In this Act:

(a) "Commission" means the Saskatchewan Human Rights Commission established by section 3;

(b) "Creed" means religious creed;

(c) "Minister" means the member of the Executive Council to whom for the time being is assigned the administration of this Act.

3. (1) There is hereby established a commission to be called the Saskatchewan Human Rights Commission which shall consist of not less than three nor more than five members appointed by the Lieutenant Governor in Council.

(2) Each member of the commission shall be appointed for a term of five years and shall hold office until his successor is appointed and may be reappointed from time to time for further terms of five years each.

(3) The Lieutenant Governor in Council may designate one of the members of the commission as chairman and one other member as vice-chairman.

(4) The Lieutenant Governor in Council may fill any vacancy in the membership of the commission.

(5) The members of the commission shall receive such remuneration for their services and allowances for travelling and other expenses as the Lieutenant Governor in Council may determine.

4. (1) The Lieutenant Governor in Council may appoint a person as the Director of Human Rights who shall be the chief executive officer of and secretary to the commission.

(2) The Director of Human Rights shall receive such remuneration for his services and allowances for travelling and other expenses as may be determined by the Lieutenant Governor in Council.

5. The commission may appoint or employ such officers, clerks and other employees as are required for the proper conduct of the business of the commission and may determine their duties, powers, conditions of employment and remuneration.

...

7. The commission shall:

(a) Forward the principle that every person is free and equal in dignity and rights without regard to race, creed, religion, colour, sex, nationality, ancestry or place of origin;

(b) Promote an understanding of, acceptance of and compliance with this Act and the Acts administered by it;

(c) Develop and conduct educational programmes designed to eliminate discriminatory practices

related to race, creed, religion, colour, sex, nationality, ancestry or place of origin;

(d) Disseminate information and promote understanding of the legal rights of residents of the province and conduct educational programmes in that respect;

(e) Further the principle of the equality of opportunities for persons, and equality in the exercise of the legal rights of persons, regardless of their status;

(f) Conduct and encourage research by persons and associations actively engaged in the field of promoting human rights;

(g) Forward the principle that cultural diversity is a basic human right and a fundamental human value.

8. Subject to the direction of the minister the commission shall administer the following Acts:

(a) The Saskatchewan Bill of Rights Act;

(b) The Fair Accommodation Practices Act;

(c) The Fair Employment Practices Act; and

(d) Such other Acts as are assigned by the Lieutenant Governor in Council to be administered by it under the direction of the minister.

9. (1) The commission itself or through any person designated by the commission to do so shall inquire into the complaint of any person that an infringement of or an attempt to infringe a right under an Act administered by the commission, or a contravention or alleged contravention of some provision of one of those Acts, has taken place and it shall endeavour to effect a settlement of the matter complained of.

(2) A complaint under subsection (1) may be made to the commission orally or by writing.

(3) The commission or the person designated by the commission to inquire into a complaint may, at all reasonable times, for the purpose of the inquiry, demand the production of and inspect all or any of the books, documents, correspondence or records of the person whose conduct is the subject of the complaint.

10. (1) If the commission or the person conducting the inquiry on behalf of the commission is unable to effect a settlement of the matter complained of, the commission shall report thereon to the minister and in its discretion may direct a formal inquiry into the complaint to hear and decide the matter or, in the absence of such a direction, the minister may direct such a formal inquiry.

(2) Where a formal inquiry is directed into a complaint the commission shall notify the parties of the time and place of the hearing and where the inquiry has been directed by the minister the commission shall also notify the parties of the minister's direction and thereupon it shall be presumed conclusively that the commission was so directed to inquire into the complaint and no order shall be made or process entered or proceeding taken in any court, whether by way of *certiorari*, *mandamus*, *prohibition*, *injunction* or other proceeding whatever, to question the direction to the commission or to review, prohibit or restrain any of its proceedings.

(3) Subject to subsection (4), the commission may determine its own procedure and may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it deems fit and proper, whether admissible as evidence in a court of law or not, and the commission and each member thereof have all the powers conferred upon commissioners by sections 3 and 4 of The Public Inquiries Act.

(4) The oral evidence taken before the commission on a formal inquiry shall be recorded.

(5) Immediately after a direction under subsection (1) to conduct an inquiry, the commission shall inquire into the matters complained of and shall give full opportunity to all parties to present evidence and make representations and, in the case of a matter involved in the complaint in which settlement is not effected in the meantime, if it finds that the complaint is supported by the evidence may order any party who has contravened any Act administered by the commission to do any act or thing that in the opinion of the commission constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefor.

(6) The decision of the majority of the commission shall be the decision of the commission.

11. (1) Any party to a formal inquiry before the commission may appeal from the decision or order of the commission to a judge of the Court of Queen's Bench.

(2) If a person proposes to appeal under subsection (1) he shall, within 30 days after the decision or order of the commission from which he proposes to appeal, serve on the commission a notice of motion in accordance with the rules of the Court of Queen's Bench to vary or set aside the decision or order.

(3) Where notice of an appeal is served under this section, the commission shall forthwith file in the office of the local registrar of the Court of Queen's Bench the record of the proceedings before it in which the decision or order appealed from was made which, together with a transcript of the oral evidence taken before the commission if it is not part of the record of the commission, shall constitute the record in the appeal.

(4) A judge may direct that notice of the appeal be served on such persons other than the commission as he deems advisable.

(5) The minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

(6) An appeal under this section may be made on a question of law or fact or both and the judge may affirm or reverse the decision or order of the commission or direct the commission to make any decision or order that the commission is authorized to make under this Act and the judge may substitute his opinion for that of the commission.

(7) There shall be no appeal from an order or decision of the judge of the Court of Queen's Bench under this section.

12. Every person in respect of whom an order is made under section 10 or 11 shall comply with the order.

13. (1) Every person who contravenes or fails to comply with a final order under section 10 or 11 is guilty of an offence and liable on summary conviction:

(a) If an individual, to a fine of not less than \$100 or more than \$500 and in default of payment to imprisonment for not less than 10 days or more than 30 days;

(b) If a corporation or other legal entity, to a fine of not less than \$400 or more than \$2,000.

(2) For the purpose of this section a trade union or an employers' organization as defined in the Fair Employment Practices Act shall be deemed to be a legal entity and any act or thing done or omitted to be done by an officer or agent of a trade union or an employers' organization who is acting within the scope of his authority on behalf of the trade union or organization shall be deemed to be an act or thing done or omitted to be done by the trade union or employers' organization, as the case may be.

14. Neither the minister, nor the commission nor a member of the commission nor the Director of Human Rights nor a person designated by the commission to inquire into a complaint under this Act shall be liable for any loss or damage suffered by any person by reason of anything in good faith done, or omitted to be done, pursuant to or in the exercise or supposed exercise of the powers conferred by this Act.

15. Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose.

16. This Act comes into force on a day to be fixed by proclamation of the Lieutenant Governor.

6. An Act to amend Chapter 11 of the Acts of 1969, the Human Rights Act, Statutes of Nova Scotia, 1972, Chapter 65

(assented to on 15 May 1972)

...

1. The preamble of chapter 11 of the Acts of 1969, the Human Rights Act, is amended:

(a) By striking out the words "has already affirmed" in the second and third lines of the third paragraph thereof and substituting therefor the word "affirms"; and

(b) By adding immediately after the word "colour" in in the fifth line of said paragraph a comma and the word "sex".

2. Said chapter 11 is further amended by adding immediately after section 11 thereof the following section:

11A. (1) No person shall deny to, or discriminate against, an individual or class of individuals, because of the sex of the individual or class of individuals, in providing or refusing to provide any of the following:

(a) Accommodation, services and facilities customarily provided to members of the public;

(b) Occupancy, or any term or condition of occupancy, of any commercial unit or self-contained dwelling unit;

(c) Transfer of any property or interest in property;

(d) Employment, conditions of employment or continuing employment, or the use of application forms or advertising for employment, unless there is a *bona fide* occupational qualification based on sex.

(2) No person or agency included in subsection (2) of section 8, or sections 9, 10 or 11 shall discriminate against an individual or class of individuals because of the sex of the individual or class of individuals.

3. This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation.

7. The Ombudsman Act, 1972; Statutes of Saskatchewan, 1972, Chapter 87

(Extracts)

3. (1) There shall be appointed, as an officer of the Legislature, a commissioner for investigation to be called an Ombudsman.

(2) The person appointed as Ombudsman shall be a Canadian citizen and, subject to section 5, he shall be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

(3) Unless he sooner resigns, dies or is removed from office, the Ombudsman shall hold office for a term of five years from the date of his appointment and may be reappointed for one additional term of five years.

12. (1) It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved.

(2) The Ombudsman may make an investigation of a matter either on a written complaint made to him by any person or of his own motion and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (1).

(3) A committee of the Assembly may at any time refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration and the Ombudsman shall:

(a) Subject to any special directions of the committee, investigate the petition or matter referred to him so far as it is within his jurisdiction; and

(b) Make such report to the committee as he thinks fit.

(4) The Lieutenant Governor in Council may at any time refer to the Ombudsman for invest-

igation and report any matter relating to the administration in or by any department or agency of the government or by any officer, employee or member thereof and the Ombudsman shall:

(a) Subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him so far as it is within his jurisdiction; and

(b) Make such report to the Lieutenant Governor in Council as he thinks fit.

13. (1) Every complaint to the Ombudsman shall be made by a person who is, or who before the date of the event that gave rise to the complaint was, a resident of Saskatchewan.

(2) A complaint under this Act may be made in respect of any matter that arises after this Act comes into force or that arose within the 12 months immediately preceding the coming into force of this Act.

(3) No complaint shall be investigated by the Ombudsman unless the complaint was made within 12 months after the event that gave rise to the complaint occurred.

(4) Notwithstanding subsection (3), if the Ombudsman for special reasons to be certified by him concludes that a complaint should be investigated, he may investigate the complaint regardless of when the event that gave rise to the complaint occurred.

14. The Ombudsman may exercise his powers and shall carry out his duties and functions under this Act notwithstanding anything in any other Act which provides:

(a) That any decision, recommendation, act or omission that he is investigating is final or that no appeal lies in respect thereof; or

(b) That no proceeding or decision of the department, agency of the government, officer, employee or person whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question.

15. (1) Nothing in this Act authorizes the Ombudsman to investigate:

(a) Any decision, recommendation, act, order or omission of the Assembly, a committee of the Assembly, the Lieutenant Governor in Council, the Executive Council or a member or committee of the Executive Council;

(b) Any decision, order or omission of a court, a judge of a court, a referee or local master of a court, a magistrate or a justice of the peace made or given in any action or proceeding in the court or before the Judge, referee, local master, magistrate or justice of the peace;

(c) Any award, decision, recommendation or omission of an arbitrator, or board of arbitrators, established by or under any Act;

(d) Any decision, recommendation, act or omission in respect of which there is under an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or under an Act, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the

Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal, but in that case the investigation shall not commence until after the time for the exercise of that right to appeal, object or apply has expired;

(e) Any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Crown in relation to any proceedings;

(f) Any decision, recommendation, act or omission of a deputy minister, an acting deputy minister, associate deputy minister or assistant deputy minister when acting as such or of any person who by virtue of his appointment or actual employment is expressly or by necessary implication directly responsible to a minister;

(g) Any decision, recommendation, act, order or omission of any department or agency of the government, or an officer, employee or person, in relation to any matter arising between the department, agency, officer, employee or person, and the government of another province or the Government of Canada or a municipality or school board.

(2) Where a dispute arises as to whether a person mentioned in clause (f) of subsection (1) is a person who by virtue of his appointment or actual employment is expressly or by necessary implication responsible to a minister, the dispute shall be referred to and be determined by the Attorney General and the decision of the Attorney General is final.

17. Notwithstanding any Act, where a letter written by a person in custody on a charge for an offence or after conviction for an offence, or by an inmate of a hospital, mental hospital, facility or institution operated by or under the direction of the government, or by any person in custody of another person for any reason, is addressed to the Ombudsman, it shall be forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer of the letter is detained or in which he is an inmate or by the person having custody of the writer

18. (1) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate a complaint if:

(a) It relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint is received by the Ombudsman;

(b) In his opinion it is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(c) In his opinion upon a balance between the public interest and the person aggrieved, it should not be investigated or the investigation should not be continued;

(d) In his opinion the circumstances of the case do not warrant investigation;

(e) The complainant does not have a sufficient personal interest in the subject matter of the complaint; or

(f) During the course of an investigation it appears to him:

(i) That under the law or existing administrative practices the complainant has adequate remedy or right of appeal, other than a petition to the Legislature, whether or not the complainant has availed himself of it; or

(ii) That, having regard to all the circumstances of the case, further investigation is unnecessary.

(2) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12.

20. (1) Before investigating any matter under this Act the Ombudsman shall notify the deputy minister of the department or the administrative or executive head of the agency of the government affected, as the case may be, of his intention to make the investigation.

21. (1) Every investigation by the Ombudsman under this Act shall be conducted in private.

24. (1) Where, after making an investigation under this Act, the Ombudsman is of the opinion:

(a) That a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been:

(i) Contrary to law;

(ii) Unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;

(iii) Based in whole or in part on a mistake of law or fact; or

(iv) Wrong;

(b) That in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised:

(i) For an improper purpose;

(ii) On irrelevant grounds; or

(iii) On the taking into account of irrelevant considerations; or

(c) That reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

(2) Without limiting the generality of subsection (1), in making a report under that subsection the Ombudsman may recommend:

(a) That a matter should be referred to the appropriate authority for further consideration;

(b) That an omission should be rectified;

(c) That a decision should be cancelled or varied;

(d) That any practice on which a decision, recommendation, act or omission was based should be altered or reviewed;

(e) That any law on which a decision, recommendation, act or omission was based should be reconsidered;

(f) That reasons should be given for any decision, recommendation, act or omission; or

(g) That any other steps should be taken.

(3) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12.

34. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure.

8. Mental Health Act, part 3, Rights of Patients, Statutes of Alberta 1972, Chapter 118

36. (1) Upon a person becoming

(a) A formal patient, or

(b) The subject of renewal certificates, the formal patient and his nearest relative shall

(c) Be informed of the reason for his admission or the issuance of renewal certificates in simple language, and

(d) Be given a written statement of

(i) The authority for his detention and the period thereof,

(ii) The function of the review panels,

(iii) The name and address of the chairman of the appropriate review panel, and

(iv) His right to apply to the review panel for cancellation of the admission certificates or renewal certificates.

(2) Upon the issue of a certificate of incapacity, the formal patient and his nearest relative shall be given a written statement of

(a) That fact,

(b) The effect of the certificate of incapacity, and

(c) His right to apply to the review panel for cancellation of the certificate of incapacity.

(3) In the event of language difficulty, the board shall obtain a suitable interpreter and provide the explanation and written statement referred to in subsection (1) and where appropriate, in subsection (2), in the language spoken by the formal patient or his nearest relative.

(4) In addition to giving an explanation and written statement pursuant to this section, the board shall, having regard to the circumstances in each case in which the formal patient desires to exercise his right to apply for cancellation of admission certificates, renewal certificates or certificate of incapacity, do such other things as the board considers expedient to facilitate the submission of one or more applications.

37. (1) A certificate of incapacity lasts until it is cancelled by a review panel or on appeal, by a judge of the Supreme Court.

(2) A certificate of incapacity is deemed to be cancelled where a committee is appointed by the court under the Mentally Incapacitated Persons Act, to replace the Public Trustee.

(3) Where a formal patient is discharged from a facility, the discharge does not cancel, nor in any manner affect, a certificate of incapacity.

Proceedings of review panels

38. (1) A formal patient or a person on his behalf, may apply to a review panel for cancellation of

(a) Admission certificates, or

(b) Renewal certificates, or

(c) A certificate of incapacity,

by sending notice of application to the chairman of the appropriate review panel in the prescribed form.

(2) Notwithstanding subsection (1), where a person in respect of whom a certificate of incapacity exists is not a formal patient, he may apply to a review panel or on appeal, to a judge of the Supreme Court, in the same way a formal patient may apply and appeal under this Act and the words "formal patient" and "applicant" when used in this Act or the regulations with respect to an application or an appeal include (where appropriate) a person in respect of whom a certificate of incapacity exists or is deemed to exist but who is not a formal patient.

(3) The Minister, the Director or a board may submit an application under subsection (1) on behalf of a formal patient, but where an application is so made, the word "applicant" wherever it occurs in this part and section 60, subsection (1), includes the formal patient but not the Minister, the Director or the board.

(4) Only one application may be made to a review panel by a formal patient or a person on his behalf with respect to each two admission certificates or renewal certificates issued, but the Minister, the Director or a board may apply at any time.

(5) An application for cancellation of a certificate of incapacity may be made to a review panel by a formal patient or a person on his behalf twice each year, but the Minister, the Public Trustee, the Director or a board may apply at any time.

39. (1) Upon receipt of an application under section 38, the chairman of a review shall give notice

(a) To the applicant and any person acting on his behalf,

(b) To the nearest relative and any other person that the chairman considers may be affected by the application and should be notified, and

(c) Where the application is for cancellation of a certificate of incapacity, to the Public Trustee,

of the date, time, place and purpose of the hearing.

(2) As soon as it is able to do so, the review panel shall carry out whatever investigation and hearing it considers necessary and may invite the applicant and any other person to testify or produce evidence at the hearing.

40. (1) All proceedings of a review panel shall be conducted in private and, subject to subsection

(2), no person has a right to be present without the prior consent of the chairman.

(2) The applicant and his representative have the right to be personally present during the presentation of any evidence to the review panel, but if in the opinion of the review panel there may be an adverse effect on the applicant's health by his presence, the applicant may be excluded, but in that event the review panel shall appoint a person to act on his behalf if he does not already have a representative.

(3) The applicant or person acting on his behalf has the right of cross-examination.

(4) Except as permitted by the chairman, no person shall publish any report of a hearing, investigation or deliberation by a review panel or the names of any persons concerned therewith.

(5) The chairman may adjourn a hearing for any period up to 21 days (and with consent of the Minister for a longer period) for any purpose he considers necessary.

41. (1) Within 28 days of the receipt of an application by the chairman or such longer period as the Minister allows, the review panel shall hear and consider an application.

(2) Where the application is for the cancellation of admission certificates or renewal certificates, the review panel may

(a) Cancel the admission certificates or renewal certificates, as the case may be, with or without conditions, where it considers that the applicant is not in a condition presenting a danger to himself or others, or

(b) Refuse to cancel the admission certificates or renewal certificates.

(3) The chairman of the review panel shall send a copy of the decision of the review panel in writing to the applicant, his nearest relative and to any person interested in the application, within seven days of the date of its decision.

(4) Where the review panel refuses to cancel admission certificates or renewal certificates, the written report of the decision of the review panel shall include a statement of the right of the applicant to appeal the decision of the review panel to the Supreme Court under section 46.

(5) Where the application to the review panel was made by the Minister, the Director or a board, the chairman of the review panel shall send a copy of the report to the applicant and to the Minister, the Director or the board, as the case may be.

(6) The board of the facility in which the formal patient is detained shall take or cause to be taken whatever action may be required to give effect to the decision of the review panel.

42. (1) Where a person is convicted of a criminal offence and is sent to a facility for treatment, that person, whether or not admission certificates or renewal certificates have been issued with respect to him, may apply to the review panel in accordance with section 38 for an order transferring him back to a correctional institution.

(2) A review panel hearing an application under subsection (1) may

(a) Make the order applied for, or

(b) Cancel the admission certificates or renewal certificates.

(3) Where a review panel makes an order transferring a person from a facility to a correctional institution or cancels admission certificates or renewal certificates, the board of the facility in which the person is detained shall

(a) Comply with the order, or

(b) Where admission certificates or renewal certificates are cancelled, arrange to have the person returned to a correctional institution.

43. (1) Where an application is made to a review panel for the cancellation of a certificate of incapacity, the review panel may

(a) Cancel the certificate of incapacity where it considers that the applicant is capable of managing his affairs or

(b) Refuse to cancel the certificate of incapacity.

(2) Where a review panel cancels a certificate of incapacity the chairman thereof shall immediately notify the Public Trustee.

(3) Within seven days of the date of its decision, the chairman of the review panel shall send a written report of the decision of the review panel to

(a) The applicant,

(b) The Public Trustee, and

(c) The nearest relative and any other person that the chairman considers may be affected by the application and should be notified.

(4) Where the review panel refuses to cancel a certificate of incapacity, the written report shall contain a statement of the right of the applicant to appeal the decision of the review panel to the Supreme Court under section 46.

Communications and visitors

44. No communication written by a patient in a facility or to a patient in a facility shall be opened, examined or withheld and its delivery shall not in any way be obstructed or delayed by the board or a member of the staff at a facility.

45. (1) A patient shall not be prevented from receiving visitors at hours fixed by the facility director unless a therapist or a physician considers that a visitor would be detrimental to the patient's health.

(2) Notwithstanding subsection (1), a solicitor acting for a patient may visit the patient at any time.

Appeal to Supreme Court

46. (1) Within 14 days of a decision of a review panel, the applicant may appeal to the Supreme Court.

(2) The application shall be made by originating notice of motion.

(3) The notice of motion shall be served upon

(a) The Minister,

(b) The chairman of the board of the facility in which the applicant is a formal patient (if the applicant is a formal patient), and

(c) Such other persons as the Court may direct, not less than 15 days before the motion is returnable and the practice and procedure of the Court pertaining to applications by originating notice of motion applies, so far as it is applicable, to an application under this section, except as otherwise provided by this section.

(4) The application shall be supported by an affidavit of the applicant setting forth fully all the facts in support of the application.

(5) In addition to the evidence adduced by the applicant, the Court may direct such further evidence to be given as it considers necessary.

(6) An order of the Court under this section is not subject to appeal.

(7) The Court may make whatever order as to the costs of the application as it considers fit.

(8) The Court may

(a) With respect to an appeal from a decision of a review panel to refuse to cancel admission certificates or renewal certificates,

(i) Quash the decision and order the cancellation of the admission certificates or renewal certificates, as the case may be, or

(ii) Order that the review panel reconsider the applicant's application for cancellation, or

(iii) Make such other order it considers just, or

(b) With respect to an appeal from a decision of a review panel to refuse to cancel a certificate of incapacity,

(i) Quash the decision and order the cancellation of the certificate of incapacity, or

(ii) Order that the review panel reconsider the applicant's application for cancellation, or

(iii) Make such other order it considers just.

Discharge

47. (1) Where a formal patient is discharged from a facility, a therapist or a physician shall, where possible, give notice of the discharge

(a) To the nearest relative, if the person discharged agrees, and

(b) To the referring source, and where applicable shall state in the notice whether a certificate of incapacity continues to exist with respect to the person.

(2) Where a formal patient has been discharged and refuses or is unwilling to leave the facility the board may, with the consent of the Minister, cause the person to be removed from the facility.

48. (1) A board shall comply with and take any necessary action to comply with a decision of a review panel concerning admission certificates or renewal certificates.

(2) An order of cancellation of admission certificates or renewal certificates does not require a board to cease treatment of a person where the person wishes to receive treatment on a voluntary basis and the board is willing and able to provide the treatment.

(3) Where a formal patient is no longer a danger to himself or others, he may be discharged in accordance with the by-laws of the board and thereupon the admission certificates or renewal certificates, as the case may be, shall be deemed to be cancelled.

Examination and detention at a facility pursuant to an Order of Court

49. (1) Where a judge has reason to believe that a person who appears before him charged with or convicted of an offence, suffers from mental disorder, the judge may order the person to attend a facility or service as an out-patient for examination.

(2) Where an examination is made under this section, a report in writing shall be made to the judge as to the mental condition of the person.

(3) If the report indicates that the person examined needs treatment, the judge may order the person to attend a facility or service for treatment as an out-patient.

50. (1) Any person who, pursuant to the Criminal Code, is remanded to custody for observation may be admitted to, examined and detained in, and discharged from a facility in accordance with the law.

(2) Any person who, pursuant to the Criminal Code is detained under the authority of a warrant of the Lieutenant Governor may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

9. The Social Development Amendment Act, 1972, Statutes of Alberta, 1972, Chapter 88

(assented to on 2 June 1972)

...

1. The Social Development Act is hereby amended.

2. Section 2 is amended by adding the following new clause after clause (b):

(b1) "Dependant" means

(i) A spouse who is dependent for support upon a person in need of assistance, or

(ii) A child who is dependent for support upon a person in need of assistance and who

(A) Is not over the age of 16 years, or

(B) Is over 16 years of age and who is attending an educational institution, when authorized by the Director, or

(C) Is over 16 years of age and who is incapable of attending an educational institution by reason of mental or physical incapacity, or

(D) Is over 16 years of age, is not attending school and is, in the opinion of the Director, unemployed;

3. The following new sections are added after section 5:

5.1. (1) No person shall disclose to any other person

(a) Any file, document or paper kept by any person in any place, that has come into existence through anything done under or pursuant to part 2, or

(b) Any information obtained by him in the performance of any duties under part 2, that deals with the personal history or record of a person who has applied for or has received a social allowance under part 2, or any dependants of such a person, except by, or upon the written consent of, the Minister or a duly authorized official responsible for the administration of this Act.

(2) Subsection (1) shall not apply to a disclosure considered necessary in the administration of this Act or in the best interests of a person who has applied for or has received a social allowance, or his dependants,

(a) To an employee of the Department or of any other department or agency of the Government,

(b) To any official of the Government of Canada, or an agent thereof, or

(c) To any agency or authority charged with the responsibility of providing a social allowance to any person under this Act, or

(d) To any person assisting the Department or acting as an agent of the Department, or

(e) Any government department, municipality or agency of another province or territory of Canada having a responsibility to provide financial assistance to persons in need, or

(f) At a trial, hearing or proceedings under the Criminal Code or the Maintenance and Recovery Act related to any matter under this Act, or to a solicitor acting on behalf of any government, authority or agency and responsible for the institution of such a trial, hearing or proceedings, or

(g) During the hearing of an appeal before such appeal authority as is established and acting pursuant to section 24, or

(h) To a member of the Legislative Assembly of Alberta if he has the consent of the person who has applied for or has received a social allowance.

(3) Any person who contravenes this section is guilty of an offence and liable upon summary conviction to a fine of not more than \$500 and in default of payment to a term of imprisonment of not more than 90 days.

10. Constitution (Guiding Principles) of the Canadian Association of Statutory Human Rights Agencies, July 1972

1. Purposes

(a) To provide opportunity for an annual meeting of policy-making and administrative officials of statutory human rights agencies.

(b) To act as a vehicle through which the exchange of information of value to member

agencies can take place and to assist in planning and fostering co-operative services.

2. Membership

Any statutory Canadian agency, federal, provincial or territorial, which has as one of its functions the administration of enforceable laws prohibiting discrimination because of one or more of the following factors: race, creed, age, colour, religion, nationality, ancestry, sex, or place of origin, shall be eligible for membership upon meeting the requirements and paying the fee. The Executive is responsible for processing applications and recommending membership. Agencies applying for membership may be announced at each annual meeting or may become members at any time after ratification by member agencies.

3. Government of CASHRA

At each annual meeting an Executive shall be elected to carry out the purposes of the organization for the ensuing year. No more than one Executive member, with the exception of the Secretary, shall be drawn from the same provincial, territorial or federal government.

4. Voting representative

Each provincial, federal or territorial government may appoint one voting representative to the Association. An alternate may be appointed to vote in his absence. The voting representative and the alternate shall be an officer or commissioner from a statutory agency as defined in section 2.

5. Annual conference

The Association shall convene annually at a time and place to be approved by the Executive. Meetings are open to member agencies. The host member agency shall be chairman of the annual meeting and shall be assisted in planning that event by a conference planning committee appointed at the annual meeting or by the Executive.

6. Secretary

The annual meeting may approve the person who shall be designated to act as Secretary.

7. Membership subscription

To defray costs of the Association, each government will contribute a sum annually, the amount of which shall be determined at each annual meeting but which shall not exceed \$25.

8. Committees

Committees may be appointed at the annual meeting or by the Executive.

9. Changing guiding principles and rules

The guiding principles and rules may be amended or changed at any annual meeting.

CENTRAL AFRICAN REPUBLIC

1. Ordinance No. 72/083 of 18 October 1972 amending certain provisions of the Penal Code of the Central African Republic and Ordinance No. 66/004 of 8 January 1966¹

Article 1. Article 76 of Act No. 61/239 of 13 May 1961 establishing the Penal Code of the Central African Republic is hereby rescinded and replaced by the following new article 76:

Any person refusing to pay the tax or its attendant charges or deferring payment thereof for the purpose of obstructing the exercise of the authority of the State shall be punished by imprisonment for a term of three to 10 years.

Article 2. Article 166 of Act No. 61/239 of 13 May 1961 establishing the Penal Code of the Central African Republic is hereby rescinded and replaced by the following new article 166:

The term "vagrants" shall mean able-bodied persons who have neither means of subsistence nor fixed abode and who are not regularly employed in a trade or profession.

Vagrants shall be liable to imprisonment for a term of one to three years.

Article 3. An article 166. *bis* is hereby added to Act No. 61/239 of 13 May 1961, with the heading "Failure to furnish proof of payment of tax" and worded as follows:

¹ *Journal officiel de la République centrafricaine*, No. 22, 15 November 1972.

All citizens must be able to furnish proof of payment of the tax after the expiry of a period of two months following notification of assessment.

Any person who, upon the expiry of such period, is unable to produce his tax certificate or receipt shall be liable to imprisonment for a term of one to three years and to a fine of 50,000 to 200,000 francs.

The present provisions rescind article 296, paragraph 2, of Act No. 61/239 of 13 May 1961, under which failure to produce the tax certificate was classified as a fifth-category offence.

Article 4. Articles 2 and 3 of Ordinance No. 66/004 of 8 January 1966 concerning the suppression of idleness are hereby rescinded and replaced by the following provisions:

Any person who is unable to furnish evidence of employment as specified in article 1 of Ordinance No. 66/004 of 8 January 1966, shall be deemed to be idle.

Any person deemed to be idle in the sense defined above shall be liable to a penalty of imprisonment for one to three years.

Article 5. This ordinance, which shall be promulgated under the emergency procedure, shall be published in the *Journal officiel*. It shall have the force of law.

2. Ordinance No. 72/085 of 28 October 1972 instituting a new system of compulsory military service²

(Extracts)

Article 1. Active military service shall be compulsory for all citizens of the Central African Republic of both sexes who have been certified as medically fit. This provision shall apply to:

(a) Men from 18 to 40 years of age;

(b) Women from 18 to 30 years of age.

The registration of citizens to be conscripted shall begin with officials remunerated out of the budget of the State or of any other para-governmental authority.

Article 2. The compulsory active military service referred to in article 1 above shall be undertaken for a continuous period of six months.

Article 3. Dispensations from the obligations of compulsory military service or reductions in the length of such service may be granted in the cases and under the conditions determined by a decree of the President of the Republic.

Article 4. No person may be called upon to perform active military service if such person has passed the age of 40 in the case of men, and 30 in the case of women. However, persons who fail to serve or whose names have been omitted from the registration lists shall be eligible for conscription until the age of 45 in the case of men and 35 in the case of women.

Article 5. No man who has completed his fortieth year or woman who has completed her thirtieth year may perform public or para-govern-

² *Ibid.*

mental functions or be employed in the civil service or on the staff of a para-governmental body unless he or she has fulfilled his or her legal obligations with respect to military service, or has been exempted therefrom.

Article 6. When circumstances so require, the Government may temporarily retain in the armed forces citizens who have completed the period of active service. The period during which they are kept in the armed forces shall be considered as an extension of active service.

Article 11. Citizens called on for military service pursuant to this Ordinance shall continue to receive the pay they earn at the time of their conscription. They shall continue to be paid by their original employers.

Article 12. Citizens called on for military service shall be subject to the supervision and administration of the Ministry of National Defence. Expenditures in respect of them shall be borne by the State, with the exception of the costs referred to in article 13.

Article 13. Citizens called on for military service shall bear the cost of their food, clothing

and packs and the cost of maintaining such clothing.

Article 14. The provisions of this Ordinance shall not apply to students of the National School of Administration who perform their military service in accordance with the conditions laid down in the special statutes of their school.

Article 15. Citizens called on for military service shall be expressly prohibited from engaging other persons to serve in their stead.

Article 16. Failure to comply with the provisions of article 15 above shall be severely punished.

Article 17. The procedures for the implementation of this Ordinance shall be established by decrees, on the proposal of the Minister of National Defence.

Article 18. This Ordinance, which shall take effect from the date of its promulgation, shall annul all previous provisions to the contrary. It shall be published in the *Journal officiel* under the emergency procedure and shall have the force of law.

CONGO

NOTE¹

Following the revolution of 13, 14 and 15 August 1963, the People's Republic of the Congo has sought to apply Marxist-Leninist theory. It believes that there can be no true democracy while power is in fact held by a minority which exploits the workers. It therefore intends to achieve Government of the people for the people in practice as well as in theory.

It has accordingly endeavoured, both in its Constitution and in the legislation in force, to develop social rights to the greatest possible extent and eliminate the individual exploitation which results from private appropriation of capital goods.

However, it has not lost sight of the fact that while, during a transitional phase, it was necessary to apply a policy of giving the proletariat control over affairs of State in order to break the resistance of the bourgeois class, all political rights could be restored once the homogeneity of the society born of revolution was achieved. To the greatest possible extent consistent with its ideology, it has, moreover, regarded it as an obligation to refrain from any infringement of public freedoms during this initial period.

It should be noted that the extraordinary congress of the Congolese Labour Party, held in December 1972, adopted a draft constitution which will be submitted to the people for approval by referendum in the near future.

The draft constitution, in contrast to the Constitution of 31 December 1969 (see extracts below), provides for the establishment of a people's national assembly; that is to say, it marks an advance towards even greater democratization of institutions and a broadening of political rights. The assembly is to be elected by direct, equal universal suffrage and secret ballot.

Other political rights, such as freedom of expression, association and assembly, are upheld by existing legislation. At the present time and

for a transitional period, advance notice of meetings and of the formation of associations must be given (Acts Nos. 19/60 and 26/60 of 11 May 1960). Similarly, it seemed necessary to impose certain temporary restrictions on freedom of the press on the eve of independence (Act No. 20/60 of 11 May 1960).

Social and cultural rights, which, as stated above, were regarded by the Government that resulted from the revolution of August 1963 as being essential if the workers were to free themselves from the yoke of an exploiting minority, have been guaranteed by various texts to which only brief reference is possible here. Act No. 10-64 of 25 June 1964 established the Labour Code of the Republic of the Congo, which limits the working hours of all workers, requires employers to grant their employees a weekly rest period and paid annual leave, provides for a minimum wage, etc. Act. No. 22-59 of 20 February 1959 established regulations concerning compensation for and prevention of employment accidents and occupational diseases. All employed persons covered by the Labour Code (i.e. all those who do not have civil servant status) benefit from a retirement scheme (Ordinance No. 62-25 of 16 October 1962).

Education is available to all free of charge and is compulsory for all children and adolescents from 6 to 16 years of age. It is provided, in principle, in public establishments where neutrality is the rule (Act No. 32-65 of 12 August 1965). It should also be noted that the People's Republic of the Congo has ratified Recommendation No. 58 of UNESCO of 16 September 1965 on Adult Education.

Thus, the People's Republic of the Congo, a country which only recently won its independence, and must contend with problems arising from an economy which before that was completely controlled by imperialist nations, intends to advance resolutely towards true democratization and implement all the great principles embodied in the Universal Declaration of Human Rights.

¹ Note furnished by the Government of the People's Republic of the Congo.

The Constitution of 31 December 1969 of the People's Republic of the Congo

(Extracts)

Title I. The People's Republic of the Congo

Article 1. The Congo, a sovereign and independent State, is a people's republic, one, indivisible and secular, in which all power emanates from the people and belongs to the people.

Article 2 Sovereignty shall reside in the people, and all the governmental authority shall emanate from the people through a single political party, the Congolese Labour Party, the organization of which shall be defined in its statute.

Article 3. In addition to exercising power

through the Party, the masses shall do so through representative organs of State power constituted by People's Councils. These organs—from the communal and district People's Councils up to the regional People's Councils—shall be freely elected by the people.

Article 4. All representative organs of State power shall be elected by the citizens by direct universal suffrage and secret ballot.

In all organs of State power, the representatives of the people shall be responsible to the organs of the Party.

All acts of the organs of the State, the administration and the courts must be founded upon law.

...

Title II. Public freedoms and the human person

Article 6. The human person is sacred. The State has an obligation to respect and protect it.

Everyone shall have the right to develop his personality freely provided that he respects the rights of others and public order.

The freedom of the human person is inviolable.

No one may be accused, arrested or detained except in cases determined by a law promulgated here prior to the commission of the offence for which it prescribes penalties.

Article 7. The home shall be inviolable. House searches may be ordered only in the manner and under the conditions prescribed by law.

Article 8. The secrecy of letters and all other forms of correspondence may not be violated except in the case of a criminal investigation, mobilization or a state of war.

Article 9. No citizen may be interned in the national territory except in the cases specified by law.

Article 10. Social origin and status, wealth and level of education shall not confer privileges of any kind.

Article 11. All Congolese citizens shall be equal before the law. Any act which grants privileges to citizens or limits their rights by reason of ethnic, regional or religious differences is contrary to the Constitution and shall be punishable under the law.

Any act of provocation and all attitudes designed to sow hatred and discord among citizens are contrary to the Constitution and shall be punishable under the law.

Article 12. Any act of racial discrimination and any propaganda of a racist or regionalist nature are punishable under the law.

Article 13. All Congolese citizens who have reached the age of 18 years shall have the right to participate in elections and to be elected to all organs of State power. Those who are deprived by law of the right to vote shall not be entitled to vote.

Article 14. All citizens of the People's Republic of the Congo shall be under a duty to comply with the Constitution and other laws of the Republic, to pay their taxes and to fulfil their social obligations.

Article 15. The People's Republic of the Congo shall grant the right of asylum in its territory to foreign nationals persecuted for their activities in the interests of democracy, the struggle for national liberation, freedom of scientific and cultural endeavour and defence of the rights of the working people.

Article 16. It is the sacred duty of all citizens of the People's Republic of the Congo to defend their country.

Treason against the people is the gravest of all crimes.

Article 17. The citizens of the People's Republic of the Congo shall enjoy freedom of speech, the press, association, procession and demonstration under the conditions determined by law.

Article 18. Women shall have the same rights as men in all spheres of private, political and social life.

Women shall be entitled to equal pay with men for equal work. They shall enjoy the same rights in the matter of social insurance.

Article 19. All citizens shall be guaranteed freedom of conscience and religion. Religious communities shall be free in matters relating to their beliefs and their forms of worship.

It shall be forbidden to make improper use of religion and the Church for political purposes. Political organizations based on religion shall be prohibited.

Article 20. Marriage and the family shall be protected by the State. The State shall determine the legal conditions relating to marriage and the family.

Legal marriage may be contracted only before the competent organs of the State.

Parents shall have the same obligations and duties towards children born out of wedlock as towards legitimate children.

Article 21. In the People's Republic of the Congo, work shall be a source of happiness, a right and a sacred duty. Every citizen shall have the right to be paid according to his work and his ability.

Article 22. The requirements for access to a public post shall be defined by law and shall be the same for all Congolese citizens. Citizens entrusted with or elected to public office must fulfil their task conscientiously.

Article 23. The State shall concern itself with public health by organizing and supervising all health services.

Article 24. The State shall concern itself with the physical education of the people, particularly that of young people, with a view to improving

their health and thus increasing their capacity for work and defence of their country.

Article 25. Freedom of scientific endeavour shall be guaranteed. The State shall promote the sciences and the arts with a view to developing the culture and well-being of the people.

Article 26. With a view to raising the general standard of culture of the people, the State shall guarantee to all sectors of the population the opportunity of attending schools and other cultural institutions.

Article 27. Congolese citizens shall have the right to petition the appropriate organs of the State.

Article 28. Every Congolese citizen shall have the right to lodge a complaint in court against organs of State power or public officials that have caused him injury.

Article 29. Congolese citizens may not use the rights conferred upon them by this Constitution to change the constitutional order of the People's Republic of the Congo for anti-democratic purposes.

Any such act shall be considered a crime and shall result in application of the penalties prescribed by law.

Title III. The social and economic order

Article 30. In the People's Republic of the Congo, the means of production shall consist of the common property of the people held by the State, the property of people's co-operative organizations and the property of private persons, whether individuals or bodies corporate.

Article 31. The land shall belong to the people. No rights of land ownership or customary rights

may be legitimately invoked against any land development initiative by the State or local communities. Everyone shall be free to dispose of the products of the land which are the fruit of his own labour. The State, acting on behalf of the people, shall regulate, as necessary, the individual or collective use of the land.

Article 32. In order to protect the vital interests of the people, to enhance their well-being and to utilize all economic opportunities and resources, the State shall direct economic life and development in accordance with an over-all plan. Relying on the State and co-operative sectors of the economy, it shall exercise general control over the private sector of the economy.

In fulfilling its over-all plan, the State shall rely on the trade unions of manual and non-manual workers, on peasant co-operatives and, where appropriate, on other organizations of the working masses.

Article 33. Private ownership and the right to inherit private property shall be guaranteed. No one may use his right of private ownership to the detriment of the community.

When the general interest so requires, the Government may adopt measures restricting the right of private ownership.

Expropriation may be carried out only pursuant to a law.

Article 34. The State shall take economic measures to encourage the working masses to unite and organize against the exploitation of man by man.

Article 35. The working masses, led by their vanguard, the Congolese Labour Party, shall constitute together with it the dominant force in the activities of the State and society.

...

CYPRUS

NOTE ¹

I. Social insurance law

Under the new Social Insurance Law 1972, which came into force on 1 January 1973, a number of important changes were effected in the field of social insurance. Principal among these changes are the following:

(i) Benefit rates have been increased by an average of 44.5 per cent. Thus an old-age pensioner who received £12.565 mils per month now receives £18.200 mils.

(ii) A new benefit—invalidity benefit—was introduced. This benefit is available to both employed and self-employed persons who are permanently incapable of work. It replaces sickness benefit after this has been paid for 156 days if incapacity continues.

(iii) Maternity grants and sickness benefit have been extended to the self-employed. The payment of sickness benefit starts with the seventy-ninth day of incapacity and will be paid up to a maximum of 156 days.

(iv) The provisions of unemployment and sickness benefits have been improved so that employed persons are now entitled to each of these benefits for at least 78 days per annum. The payment of one benefit does not affect the right to the other.

(v) Upon reaching the age of 15 or 18 (depending whether they are attending full-time education or not), orphans now receive a lump sum payment equivalent to the yearly value of the orphan's benefit.

(vi) The dependants' increases paid to beneficiaries of old-age, widows' and invalidity pensions are now higher, starting with the second dependant, than those paid to beneficiaries of short-term benefits.

(vii) Old-age pensioners who continue to work after the pensionable age of 65 are exempted from the liability of contributing to the Social Insurance Scheme when reaching age 70, and for the contributions paid between the ages of 65 and 70, they receive an increment to their pension.

(viii) Sickness and unemployment benefits have been extended to married women.

(ix) Disablement pension is now paid, at the basic rate only, concurrently with any other benefit which a beneficiary might be receiving.

(x) The Pneumoconiosis Compensation Scheme, which was introduced in 1960 to provide benefits in cases of disablement or death caused or accelerated by pneumoconiosis, was integrated

into the Social Insurance Scheme as from 1 January 1973.

Persons suffering from pneumoconiosis now receive the same rate of benefit as those applicable for disablement pension and death benefit under the Social Insurance Scheme. In addition, the families of pneumoconiosis will receive supplementary benefits to be paid out of the Reserve of the Fund which stands at about £200,000.

The increase in benefit rates plus all the other improvements which were introduced will be financed by increases in contribution rates. As from 1 January 1973, contributions have been increased by an average of 30 per cent, and will be increased by a further 20 per cent in January 1974. Women now contribute at the same rate as men since they are now entitled to the same benefits.

II. Annual holidays with pay law

In 1972, a number of amendments were effected to the Annual Holidays with Pay Laws and Regulations, the most important of which are the following:

(i) The leave year for employees for whom contributions are paid to the Annual Holidays with Pay Fund has become identical with the Social Insurance Contribution Year, i.e. it begins on the first Monday of October in the next year;

(ii) An upper limit or "ceiling" up to which contributions are paid to the Annual Holidays with Pay Fund was introduced. Contributions in respect of employees are paid on wages of up to £30 weekly or £130 monthly. This ceiling corresponds to the ceiling up to which contributions to the Redundancy Fund are paid; and

(iii) The Annual Holidays with Pay Law was amended so that part of the surpluses of the Annual Holidays with Pay Fund could be used to subsidize employees holidays at mountain resorts. To this effect a sum of £20,000 was used and more than 700 families with their dependants (2,804) vacationed in the mountains, in summer and at Christmas time.

III. Termination of employment law

In 1972 a number of changes to the Termination of Employment Laws and Regulations were effected, the most important of which are the following:

(i) The ceiling on wages/salaries up to which employers contribute to the Redundancy Fund in respect of their employees was raised from £20 to £30 per month; and

¹ Note furnished by the Government of Cyprus.

(ii) The ceiling on wages/salaries for the purposes of calculating redundancy payments was increased from £20 per week to £30 per week.

* *

Another major change which affected all the above three laws was the introduction of the unified system for the collection of contributions to the Social Insurance, Annual Holidays with Pay and Termination of Employment Schemes as from 2 October 1972. The Social Insurance and Holidays-with-Pay stamps have been abolished, together with the social insurance cards and holiday booklets. Under the new unified system, employers pay the contributions in respect of their

employees in cash, at the end of each month, at the District Labour and Social Insurance Office. Self-employed persons pay their contributions on a quarterly basis and voluntary persons pay theirs at the end of each contribution year.

IV. Hotels (conditions of service) regulations

In 1972 several amendments were effected to the Hotels (Conditions of Service) Regulations. The major amendments relate to a reduction in the hours of work and an increase in the annual and sick leaves. The new Regulations were based on a collective agreement negotiated between the trade unions and the Hotel Keepers' Association.

CZECHOSLOVAKIA

NOTE ¹

1. Act No. 5/1972, Collection of Laws, on social security

This Act realizes the right of material security in old age and in case of disability to work, as guaranteed to all working people by the Constitution and carried out by the system of social security.

The system of social security must ensure that the material and financial means given by the society for social needs are used in a most effective manner in conformity with the interests and needs of the further development of the national economy and that their allocation secures primarily the needs of those working people who, due to old age, invalidity or disease, cannot satisfy their needs by their own work.

The benefits and services of social security are provided by the State. The working people participate in the implementation of the social security scheme to the maximum extent, through national committees and public organizations.

Under the Act, the social security scheme includes pensions security, security of family members of citizens who serve in the armed forces, security of pensioners in case of illness, and social security services. These components of the social security scheme are elaborated in detail in individual provisions of the Act.

2. Act No. 8/1972, Collection of Laws, on social security of co-operative farmers

This Act, which gives the full text of Act No. 103/1964, Collection of Laws, on social security of co-operative farmers, as amended during the years 1965-1970, provides for social security of co-operative farmers along the same lines as social security of workers in labour relations.

As the level of agriculture reaches that of industry, it will be possible to bring the labour and living conditions of co-operative farmers nearer to those of persons working in industry and it will also be possible to bring about a unified social security arrangement for all working people.

The Act provides a basis on which, under the conditions of transition to a higher level of management, the co-operative farmers will enjoy,

in the field of social security, the same rights as other working people and that the differences in the social sphere between agriculture and industry will also gradually disappear.

Under the Act, the allowances and services of the social security scheme are provided by the State, whereas the co-operatives contribute for the partial coverage of the costs of social security. The unified agricultural co-operatives also take part in the implementation of the social security scheme.

Under this Act, the social security scheme for co-operative farmers includes security in case of illness, security of mother and child, pensions security, security of family members of co-operative farmers serving in the armed forces, social security of apprentices who are trained in the co-operative, security of pensioners in case of illness, social security services.

The scope of rights under social security depends on whether the co-operative is one with a higher level of management or not. The regional national committee decides, on the basis of principles laid down by the Government, that a certain co-operative has achieved the higher level of management. This competence can also be delegated to a district national committee.

The right of co-operative farmers to social security starts on the day they become members of the co-operative and ends on the day their membership in the co-operative is terminated. Preventive medical care is provided to co-operative farmers and members of their families under the same conditions and to the same extent as to other working people

3. Act No. 99/1972, Collection of Laws, on the increase of allowances for children and their upbringing

This Act provides for an increase in the allowances for children and their upbringing. The monthly allowance is Kčs 90 for one child, Kčs 400 for two children, Kčs 880 for three children, Kčs 1280 for four children and Kčs 240 for each further child.

The same increase of allowances for children and their upbringing is laid down by Notice No. 100/1972, Collection of Laws, of the Federal Ministry of Labour and Social Affairs, concerning the increase of allowances for children and their upbringing provided to private farmers and other self-employed persons.

¹ Note furnished by the Government of the Czechoslovak Socialist Republic.

DENMARK

NOTE ¹

1. By Act No. 89 of 29 March 1972 amending the Penal Code the provisions relating to the protection of privacy were extended in the following fields:

Article 152: new paragraphs 4 and 5 impose professional secrecy on persons employed in public or private EDP (Electronic Data Processing) centres processing the material of public authorities and for other persons who have lawful access to such centres, e.g. persons carrying out service inspection of the equipment.

In article 263, a new penal provision was introduced relating to the improper tapping or recording of statements made in private and of conversations between others by means of a hidden device.

Article 264 *a* penalizes photographing, without permission, of persons staying within an enclosed area, as well as of spying on such persons by means of field-glasses or the like.

Further, a penal provision was introduced, relating to the communication of information about the private affairs of others, with a wider scope than the one previously in force, extending it in particular to cover pictures of another person in circumstances which the latter can obviously expect not to be disclosed publicly (article 264 *d*).

Finally, the penal provisions relating to violation of the peace or privacy of others were extended so as to apply to any person who, without being a party to the original violation, subsequently procures for himself or utilizes the

information, etc., obtained by means of the violation.

2. By Act No. 121 of 17 April 1972, amending the Act on Elementary Public Education, the period of compulsory education was extended from 7 to 9 years.

3. The Daily Cash Benefit (Sickness or Maternity) Act No. 262 of 7 June 1972, which came into operation on 1 April 1973, provides for the entire economically active population to be ensured daily cash benefit in the event of illness, injury or childbirth. The benefit is calculated on the basis of the average weekly earnings of the employee during the last four weeks before the date of onset of the illness and is payable at the rate of 90 per cent of those earnings; the rate of the benefit, however, cannot exceed 90 per cent of the weekly wage of skilled workers.

The new Daily Cash Benefit Scheme is financed by the employers during the first five weeks and, after the expiration of that period, by the local authority serving the area in which the protected person is resident. The local authority is reimbursed from the Daily Cash Benefit Fund of 75 per cent of its expenses on payment of daily cash benefit. The resources of that Fund are provided through employer contributions, Exchequer grants and personal contributions. The personal contribution constitutes 1 per cent of the amount forming the basis for assessment of income tax. An extract from the Act appears below

4. By Royal Orders Nos. 381 and 382, the acts of 1971 concerning discrimination on grounds of race, etc. ² were brought into operation in the Faroe Islands.

¹ Note prepared by Mr. Niels Madsen, government-appointed correspondent of the *Yearbook on Human Rights*.

² See *Yearbook on Human Rights for 1971*, pp. 79-80.

The Daily Cash Benefit (Sickness or Maternity) Act No. 262 of 7 June 1972

(Extract)

Chapter 1. Introduction

1. (1) Daily cash benefit under this Act shall be paid to compensate for loss of earnings in the event of incapacity for work by reason of illness (including injury) or childbirth.

(2) Persons who carry out domestic work in their own homes may be ensured such benefit under chapter 11 of this Act.

2. (1) Daily cash benefit shall be paid on the basis of income from employment or such other

earnings as are largely derived from work performed by the protected person. Regulations shall be made by the Minister of Social Affairs as to what income shall be reckoned as derived from employment and what income shall be reckoned as other earnings.

(2) Entitlement to the benefit shall be conditional upon the income being subject to taxation in this country.

(3) Regulations may be made by the head of the National Board of Social Security to the

effect that persons who are not liable to pay tax in this country shall be entitled to the benefit and, also, that persons who are entitled to such benefit in another country shall not be entitled to the benefit in this country.

**PART I. DAILY CASH BENEFIT IN THE EVENT OF ILLNESS
IN THE EMPLOYER PERIOD**

Chapter 2. Conditions of payment

3. (1) Any employee who at the time of the onset of the illness has been employed with his employer for at least 40 hours within the past four weeks and who is not entitled to full pay during illness shall be entitled to receive from his employer daily cash benefit for five weeks as from the first day of absence (the employer period).

(2) The right to such benefit from the employer shall be maintained even if the employment is terminated before the expiration of the employer period.

4. (1) Daily cash benefit shall be paid in the event of total incapacity for work by reason of illness.

(2) In the event of partial incapacity for work, benefit at a reduced rate may be paid under regulations to be made by the head of the National Board of Social Security.

5. (1) The right to daily cash benefit from the employer shall be extinguished if the employee has

contracted the illness intentionally or through gross negligence or if he has failed to disclose health data relevant to the employment relationship.

(2) The right to daily cash benefit from the employer shall be suspended during a strike or lockout.

6. Any case of illness shall be notified to the employer without unjustified delay. Unless warranted by special circumstances, the failure to do so shall entail the extinction of any claim for daily cash benefit from the employer.

7. (1) The employer may require the employee to show that his absence from work is due to illness.

(2) In the event of illness of over two weeks' duration, the employer may require the employee to provide further particulars on the duration of the illness from his own doctor or from a medical specialist chosen by the employee. The expenses shall be paid by the employer. The employee failing to fulfil that obligation without a good cause, his right to daily cash benefit from the employer shall be extinguished.

(3) The obligation to pay daily cash benefit shall cease if, contrary to the doctor's request, the protected person refuses to go into hospital or to submit to the necessary medical treatment or to undergo any appropriate rehabilitation with a view to restoring his earning capacity.

8. The payment of daily cash benefit shall cease on the day when the employee is capable of work, even if he fails to resume his work or report fit for duty.

...

ECUADOR

1. Social Security Code promulgated by Supreme Decree No. 51 of 14 January 1972¹

(Extract)

TITLE I

Social security

Article 1. Social security is a public social service of a compulsory nature, the organization and administration of which shall be the responsibility of the Ecuadorian Institute of Social Security (IESS), in accordance with this Code, its Statutes and Regulations.

TITLE II

Scope

Chapter I. The general scheme

Article 2. Social security shall protect, without distinction as to sex, nationality, occupation or activity:

(a) Under the scheme for salaried workers:

Workers employed by others, whatever work they may perform, whether manual or intellectual, and whatever the amount or form of remuneration, without distinction as to the legal nature of the type of activity of the enterprise, institution, service or person that employs them, including home workers, temporary or occasional workers, workers in domestic service, workers serving a probationary period, and apprentices.

Persons who, by virtue of their work status or source of income, may be considered comparable to salaried workers, shall also receive social security protection afforded under the above scheme.

(b) Under the scheme for non-salaried workers:

1. Persons who live on the product of their work without having an employer as defined in labour legislation, such as independent workers, craftsmen, self-employed persons or small entrepreneurs, and members of the secular clergy. These groups shall be afforded social security protection on the basis of their income, in accordance with the rules laid down in this Code, its Statutes and Regulations.

2. Persons belonging to the remaining groups of the economically active population, whether rural or urban, not covered by the foregoing provisions, and who by law are not members of the Military Fund of the Armed Forces or the National Civil Police Fund.

Article 3. Social security in the case of all workers, whether in the public or private sector,

covered by the scheme for salaried workers provided for in article 2 (a), shall be governed by the regulations, systems of contributions, financing and conditions set forth in this Code, its Statutes and Regulations.

Article 4. In the case of the groups of workers or persons referred to in article 2 (b), the IESS shall prescribe on the basis of the necessary socio-economic, financial and administrative studies, the rules and regulations concerning the conditions for insurance, as well as the procedures for organizing, financing and administering the social security protection appropriate to the conditions of work and the economic and social circumstances of the above-mentioned groups.

Article 5. The wife of an insured man and his children under the age of 14—or up to the age of 18 if they are students in official or state-authorized educational institutions—shall be entitled to health care and protection under the medical services of the IESS to the extent and under the conditions provided in the rules and regulations prescribed by the IESS in that connexion.

If such insured person has no wife or children, the entitlement to the health services referred to in this article shall be vested in his mother, and in his father if the latter is disabled or aged 65 or over.

For the purposes of this article the wife of the insured man shall mean the spouse or, if he has no spouse, the woman with whom he is living in common-law union under the same roof, provided that cohabitation began at least one year before the medical attention is applied for.

The husband of an insured woman shall have the same rights as are accorded under this article to an insured man's wife, provided that such husband is disabled and dependent on her.

Article 6. Exemption from the obligation to join the social security scheme shall be granted to aliens working in the country under fixed-term contracts for a maximum of one year and to those who, being employed by enterprises that are subsidiaries of, or are affiliated to, foreign organizations covering a number of countries, are liable to be transferred abroad at any time provided that, in addition, the foreign organization in question has arranged for them some system of insurance against the risks covered by this Code.

Article 7. Employers shall be required to enrol themselves and their workers in the IESS within the time-limits and in accordance with the requirements laid down in the Statutes and Regulations. They shall also be required to report

¹ *Registro Oficial*, No. 400, 24 January 1972.

appointments and separations of staff in their service as well as changes in salaries or wages and any other circumstances that the IESS considers necessary. The workers, in turn, shall be required to provide employers with the necessary particulars to enable them to fulfil those obligations.

If the employer does not fulfil his obligation to enrol the worker or gives false particulars in so doing, the worker shall have the right to enrol himself, supplying the relevant particulars; such action shall not, however, exonerate the employer from fulfilling his obligation or exempt him from the penalties which he may incur, without prejudice to his right, where necessary, to dispute the existence of a worker-employer relationship or the particulars given in support thereof. Non-salaried workers shall enrol and supply particulars in the manner prescribed in the Statutes and Regulations.

Article 8. For the purposes of this Code, the Treasury, the municipal authorities and other institutions established under public or private law for social or public purposes, are employers of their respective workers.

Article 9. Co-operatives or other kinds of legally constituted independent workers' associa-

tions may assume the obligations for payment of the employers' contributions in respect of their associates or members, in which case the associates or members shall be considered for all social security purposes to be subject to the scheme for salaried workers.

Article 10. The Commissions for the Recognition of Rights shall determine, in case of doubt, the existence of any obligation to insure a person.

Chapter II. Supplementary scheme

Article 11. No person, group or category may on any account be allowed or granted benefits that are higher or provided on more favourable terms than those established under the general scheme for the classification in which such person, group or category belongs under article 2.

Benefits that are higher or provided on more favourable terms than those under the general scheme in question, may be allowed, for a particular group or category, only under the supplementary scheme and in accordance with the procedures and conditions prescribed in this Code, Statutes and Regulations.

...

2. Law on the Status of Aliens²

(Extract)

Chapter I. Fundamental principles

Article 1. The provisions of this Law shall govern the status of aliens residing in Ecuador and shall lay down procedures and conditions relating to immigration status. The principles concerning the status of aliens set forth in special laws or international agreements in force for Ecuador shall be applied in the specific cases to which they refer.

Article 2. Aliens admitted to the national territory shall have the same rights and obligations as Ecuadorians, with the exceptions provided for in the domestic legislation of the State.

Within a 50 kilometre-wide strip of territory along the national frontiers of the Republic and the coast, aliens shall not be permitted, either directly or indirectly, singly or jointly, to acquire real estate, to exercise rights of ownership over immovable property or to let it, without first obtaining the approval of the Armed Forces Joint Command; the penalty for failure to comply with this requirement shall be annulment of the property title or lease at the request of the Procurator General of Ecuador.

Such annulment shall be declared in summary hearing by the judge who is competent by reason

of the value involved, after the person acquiring the real estate, the holder of the ownership rights, the lessor or the lessee has been summoned.

Article 3. The Government of Ecuador may agree to the extradition of aliens who are liable to prosecution or sentencing for offences under ordinary law committed in another State, upon a substantiated request from the Government concerned, invoking the relevant treaty in force for the two countries or the international reciprocal arrangements for the application of domestic laws.

Article 4. When, in the course of court proceedings, a citizen of Ecuadorian or other nationality, residing in another country, is found to be involved in an offence to which corporal punishment applies, the judge shall transmit the records to the President of the Supreme Court of Justice so that the latter may declare whether a requisition for extradition of the accused should be made to the Government of the country in which he happens to be at that time.

Article 5. In order that the Government of Ecuador may maintain strict neutrality in matters of domestic or foreign policy arising in another State, it shall adopt appropriate measures to prevent aliens residing in the country from participating in political or warlike activities that might lead to or foster civil wars or international conflicts.

Article 6. Aliens who have been displaced as a result of wars or political persecutions in their country of origin may, for the protection of their

² *Ibid.*, No. 382, 30 December 1971. For the text of the Law on the Status of Aliens, of 20 February 1947, see *Yearbook on Human Rights for 1947*, pp. 92-94.

lives or their liberty be granted asylum by the Government of Ecuador, in compliance with the provisions of the relevant international agreements; in the absence of such agreements, the provisions of domestic law shall apply.

Chapter II. Organization and competence

Article 7. The Executive Power, through the Ministry of Foreign Affairs, shall be responsible for the application and implementation of principles and procedures relating to the status of aliens.

Article 8. For the purpose of defining and pursuing migration policy and co-ordinating the information supplied and the action taken by the state agencies, an Advisory Council on Migration Policy shall be established under the Ministry of Foreign Affairs, with headquarters at Quito and consisting of:

A representative of the Ministry of the Interior and Police;

A representative of the Ministry of Foreign Affairs;

A representative of the Ministry of National Defence; and

A representative of the National Planning and Economic Co-ordination Board.

The President of the Council shall be the representative of the Ministry of Foreign Affairs.

The duties and powers of the Council are set forth in the Regulations for this Law, and its procedures shall be governed by its internal statute, which shall be drawn up by its members with the approval of the Minister for Foreign Affairs.

Chapter III

TITLE I. IMMIGRATION STATUS

Article 9. Any alien who applies for admission to Ecuador, whether in the capacity of an immigrant or a non-immigrant, with the exception of persons in transit, must hold a visa issued by an official of the Ecuadorian foreign service who is serving in the alien's place of domicile or, where there is none, from the one in the nearest place.

TITLE II. IMMIGRATION CATEGORIES

Article 10. An immigrant is any alien who enters the country legally and conditionally with the intention of settling and pursuing the authorized activities which for each category are set forth below:

I. Living on his deposits, on the income derived from them, or on any other permanent income transferred to the country.

II. Investing his capital in real estate or in certificates, securities or bonds issued by the State or by national credit institutions.

III. Investing his capital in some branch of industry, agriculture, animal husbandry or the export trade, in stable form, other than that of a joint-stock company.

IV. Assuming for an indeterminate period administrative, technical or specialized functions

in the service of enterprises, institutions or persons established within the country.

V. Practising a profession or engaging in a technical occupation under the provisions of the Law on Higher Education; and

VI. Living as the dependant of a spouse or relation up to the second degree of kindred.

Article 11. The Government of Ecuador may agree with the Governments of the States of emigration or with international organizations recognized by Ecuador concerning the performance of the tasks of physical and occupational selection, transfer and settling of high-level or medium-level specialists or technicians required for the economic, social and cultural development of the country, and their close family.

Article 12. A non-immigrant is any alien domiciled in another State who enters the country legally and conditionally, with no intention of settling, for the purposes which for each category are set forth below:

I. Diplomatic or consular officials, qualified international officials belonging to international organizations of which Ecuador is a member, and the representatives of special missions accredited to the Government of Ecuador, and their close family.

II. High-ranking officials of other States and persons travelling on diplomatic passports, and their close family.

III. The private and domestic employees of the persons enumerated in the foregoing paragraphs, accompanied by their close family.

IV. Persons displaced as a result of wars or political persecutions in their country of origin, for the purpose of protecting their lives or their liberty.

V. Students wishing to begin, complete or continue their studies in official or in private government-recognized establishments, and their close family.

VI. Highly-qualified professional staff or skilled workers requested by enterprises, institutions or persons established within the country to perform temporary work in their own particular field, or intending to undergo industrial training, and their close family.

VII. Missionaries, voluntary workers or members of the clergy belonging to organizations or orders recognized in their country of origin and in Ecuador, for the purpose of performing social or church work or teaching.

VIII. Persons assisted by legally constituted national organizations, for the purpose of carrying out cultural exchange programmes.

IX. Temporary visitors for legitimate purposes such as tourism, sport, health, study, scientific or artistic activities, or intending to undertake commercial activities that do not involve the simultaneous importation of goods, for a period exceeding three months within six consecutive months in any one year; and

X. Persons in transit, falling within the following subcategories:

1. Persons disembarking and proceeding to direct transit areas during technical stops by ships

or aircraft with a view to continuing their journey either on the same ship or aircraft or another provided by the same enterprise.

2. Persons entering the national territory in order to proceed to their country of destination or to board a ship that will transport them abroad, or in the performance of services connected with the driving of international land transport vehicles.

3. Temporary visitors for the purposes enumerated in paragraph IX of this article, for a period not exceeding three months in any one year; and

4. Persons domiciled in foreign towns adjoining Ecuadorian frontier towns and who need to travel daily to the national border town.

Chapter IV

TITLE I. REGISTER OF ALIENS

Article 13. All aliens over the age of 18 subject to territorial jurisdiction who have been admitted to the country, in the capacity of immigrants or non-immigrants, except for persons in transit, shall be entered in the Register of Aliens of the Consular Department of the Ministry of Foreign Affairs within 30 days after their arrival in the national territory.

Article 14. Minors who enter the country together with their legal representatives shall be covered by the status of the latter, or their entry in the Register, up to the age of 18, when they shall be entered separately in the Register within 30 days after attaining that age.

Article 15. Persons under the age of 18 who enter the country alone shall be entered in the Register within 30 days after their arrival, by their legal representative domiciled in the country.

Article 16. Aliens required to register must notify the Consular Department of the Ministry of Foreign Affairs, in person or by registered mail within 30 days after the date of any change affecting their entry in the Register, of all details relating to such change.

TITLE II. EFFECTS OF REGISTRATION

Article 17. Aliens admitted as immigrants shall, from the date of entry in the Register of Aliens

of the Consular Department of the Ministry of Foreign Affairs, acquire political domicile in Ecuador.

Article 18. Aliens admitted as immigrants who have been legally entered in the Register shall receive a certificate signed solely by the Director of the Consular Department, such certificate constituting authorization to obtain the Ecuadorian identity card, the only official document attesting to the legalization of their stay in the country.

Article 19. Aliens admitted as non-immigrants, with the exception of persons in transit, who have fulfilled their obligation to register, shall have a statement inserted in their migration document, signed by the Director of the Consular Department or his representative, which shall attest to the legalization of their stay, except that they shall not have the right to obtain the Ecuadorian identity card.

Article 20. The legal distinction between aliens who are admitted and registered as immigrants and those who are non-immigrants is basically designed to ensure that the enjoyment and exercise of immigrants' rights is governed by the legal system of domicile in all cases where it is recognized and applied under Ecuadorian law.

Chapter V. Changes in the status and category of immigrants

Article 21. No alien may be placed in two or more immigrant categories simultaneously. Changes in the immigrant status or category of an alien legally admitted and registered shall be subject to the approval of the Advisory Council on Migration Policy.

Article 22. When the above-mentioned approval has been obtained, and subject to the requirements of the laws and regulations for transfer to the new immigrant status or category, the Director of the Consular Department may grant the change in the immigrant status of aliens resident in the country, except in the case of non-immigrants in transit, whose status in Ecuador may not be changed.

...

3. Law on Migration ³

(Extract)

Chapter I. Fundamental principles

Article 1. The provisions of this Law shall regulate the organization and co-ordination of services dealing with the entry into the country, or departure from it, of nationals or aliens, through inspection and classification of their documents, and ensuring compliance with the legal provisions regarding the stay and activities of aliens residing in Ecuadorian territory.

The principles concerning migration control set forth in special laws or international agreements in force for Ecuador shall be applied in the specific cases to which they refer.

Chapter II. Organization and competence

Article 2. The Executive Power, through the Ministry of the Interior and Police, shall be responsible for the application and implementation of the principles and procedures relating to migration control.

³ *Ibid.*

Article 3. The Minister of the Interior, through the Office of Chief Commissioner of the National Civil Police, may order the closure of the international sea-ports, airports and frontier posts of the Republic and prohibit the entry and departure of nationals and aliens when the circumstances of public order and internal security so require.

Article 4. For the functioning of the Migration Service, the Office of Chief Police Commissioner shall have the following basic duties and powers:

I. Organization and co-ordination of the central and provincial Migration Services in the Republic.

II. Establishment and modification of migration procedures for the conduct of the activities of the Service.

III. Prevention and control of clandestine migration.

IV. Maintenance of the national register of migration, compilation of statistics of arrivals and departures, classifying nationals according to their domicile in the country or abroad, and classifying aliens, both immigrant and non-immigrant, according to their migration category, as well as providing certification of such data.

V. Arrangements for the maintenance on a national scale of the registers recording orders for the exclusion or deportation of aliens and of the judicial decisions rendered with a view to preventing the person concerned from leaving the country. The information relating to such measures must include the personal particulars of the person and the number of his identity document.

VI. Co-operation in the conduct of the national census of aliens at the time determined by the Advisory Council on Migration Policy.

VII. Supervision to ensure compliance with taxation requirements in respect of migration.

Article 5: The police officers of the Migration Service shall have the following discretionary powers in discharging the basic duties established by this law:

I. Inspection of ships or vehicles used in local or international transport presumed to be carrying persons subject to migration control.

II. Interrogation of any alien subject to territorial jurisdiction and examination of his personal effects where it is presumed that there are grounds for exclusion or deportation from the country.

III. Refusal to permit the entry or departure of persons who fail to comply with the laws and regulations.

IV. Prevention of the departure of ships or vehicles, whether or not engaged in international transport, until the migration inspection has been carried out.

V. Limitation and control of the stay of aliens subject to territorial jurisdiction.

VI. Arrest, and referral to the competent judge, of any persons subject to territorial jurisdiction who, in the presence or in view of members of the Migration Service, obstruct or seek

to obstruct the actions of the latter, or who violate or seek to violate the migration laws, regulations or orders and who could evade police action pending the issue of a court order for deprivation of liberty.

Chapter III. Rules for international transit in Ecuador

Article 6. International transit may be effected only through the international ports of the country, in accordance with the established regulation time-tables and with the supervision of the health, police and customs authorities and officers, in the order indicated.

Article 7. Subject to the exceptions permitted, every person applying for admission to, or authorization to leave, the country must fulfil the following requirements:

I. Identify himself by means of the proper documents and, where necessary, provide evidence of his migration status and category.

II. Pass an examination by the public health authorities and produce an international certificate of vaccination against smallpox.

III. Fill out the statistical form for migration control.

IV. Pass an examination by officers of the Migration Service of the National Civil Police.

Article 8. Police officers of the Migration Service shall carry out inspections for admission to, or departure from, the national territory in order to ensure and verify that the agents authorized by the operator of the transport enterprise and persons in international transit conform to the laws and regulations relating to the status of aliens and migration.

Chapter IV. Rules for the exclusion of aliens

Article 9. Except as provided in other legal provisions, aliens subject to territorial jurisdiction shall not be eligible for visas, and must be excluded when applying for admission to the country, in the case of:

I. Persons who have previously been excluded or deported from the country or who have been subjected to similar measures in another country for non-political reasons.

II. Persons not in possession of a passport valid for at least six months, issued by the competent authority of their place of origin or domicile, or of another special travel document recognized by the international agreements in force for Ecuador, and are not in possession of a valid visa issued by an official of the Ecuadorian foreign service.

III. Persons who are under 18 years of age, unless they are accompanied by their legal representative or are travelling with the latter's express permission certified by an official of the Ecuadorian foreign service.

IV. Persons who procure or have procured a visa or other document fraudulently or seek to enter the country fraudulently or with improper or irregular documents.

V. Persons holding a visa not issued in accordance with the legal requirements or persons who fail to fulfil the conditions with respect to migration status or category at the time of applying for admission.

VI. Persons who, at any time, have given advice, or extended assistance or co-operation to enable an alien to enter or seek to enter the country illegally.

VII. Persons suffering from any disease considered serious, chronic or contagious, such as tuberculosis, leprosy and trachoma, or from another similar disease not subject to quarantine.

In the case of persons afflicted with diseases such as bubonic plague, cholera and eruptive fevers, action shall be taken in accordance with the rules of the national and the Pan-American Health Codes.

VIII. Persons suffering from acute or chronic psychosis, a dangerous mania, a sexual deviation or general progressive paralysis, such category including habitual alcoholics, persons with atavistic traits, epileptics, idiots, cretins, blind persons and, in general, invalids whose disability prevents them from working.

IX. Stowaways, professional beggars, illiterates over 15 years of age, persons who follow a gypsy way of life and, in general, persons who could clearly become a burden on society.

X. Persons who have been convicted of offences under ordinary law, political offences being excluded even though they may have given rise to an offence under ordinary law.

XI. Drug addicts, especially persons convicted of violation or conspiracy to violate any law or rule relating to the possession of drugs or illicit traffic in narcotic drugs, or convicted of violation or conspiracy to violate any law or rule governing or controlling the production, manufacture, composition, transport, distribution, sale, exchange, delivery, import or export of opium, cocaine, heroin, marijuana or their derivatives or involved in the preparation of opium or cocaine or any additional form of opium or opium substance and, in general, any alien who is known to be or to have been, or can reasonably be suspected of being or having been, an illicit trafficker in drugs.

XII. Persons who offend against morals or decency, prostitutes or persons who seek to introduce the latter into the country, persons who live on the earnings of prostitutes, who accompany them, or who encourage or exploit prostitution.

XIII. Persons who advise, teach or practise disobedience of laws, the overthrow of the Government by violence or disregard of the right to property, who are opposed to all organized government or to the republican and democratic system, or who belong to or have belonged to nihilist organizations.

XIV. Persons whom the officer knows, or may reasonably suspect, to be attempting to enter the country, whether exclusively, primarily or incidentally in order to undertake activities prejudicial to the public interest or to jeopardize national prestige or security.

Article 10. Aliens applying for admission to the country shall be excluded especially if, having been admitted in the capacity of immigrants, they have:

I. Not had themselves entered in the Register of Aliens of the Consular Department of the Ministry of Foreign Affairs.

II. Not obtained an Ecuadorian identity card.

III. Left or entered the country in the capacity of non-immigrants.

IV. Have remained abroad for more than 90 days in any one year of the first two years of their admission and registration, or more than 18 consecutive months at any time or for intermittent periods totalling 18 months or more over a period of five years.

Article 11. Aliens applying for admission to the country shall be excluded especially if, having already been admitted as non-immigrants, they have:

I. Remained longer than the period authorized at the time of admission in accordance with their migration category, whether or not they have been penalized.

II. *De facto* changed their migration status or category.

III. Not had themselves entered in the Register of Aliens of the Consular Department of the Ministry of Foreign Affairs, unless they are in transit.

Article 12. The rules for exclusion set forth in paragraphs II, III, VII, and VIII of article 9 of this Law shall not apply to immigrant aliens having political domicile in Ecuador who return to the country before the expiry of the periods specified in paragraph IV of article 10 of this Law, without prejudice to the committal of the person concerned to an establishment designated by the public health authorities.

Article 13. A work disability shall not constitute grounds for exclusion in the case of an alien who is a member of the family of an Ecuadorian or of an immigrant having political domicile in the country who undertakes to provide for his care and subsistence.

Article 14. The grounds for exclusion specified in paragraph II of article 9 of this Law shall not apply to non-immigrant aliens who are in transit.

Article 15. The police officers of the Migration Service may provisionally admit, without applying the rules for exclusion, aliens who request territorial political asylum, but shall keep them under surveillance in the port of entry until each case has been decided by the Director of the Consular Department of the Ministry of Foreign Affairs.

Article 16. Aliens to whom the grounds for exclusion specified in paragraph I of article 9 of this Law apply may be admitted to the country only after an express decision has been taken by the Advisory Council on Migration Policy and communicated by the Consular Department to the officials of the Ecuadorian foreign service and to the Migration Service of the National Civil Police.

Article 17. When a police officer of the Migration Service finds, during the inspection for admission, that there are grounds for the exclusion of an alien subject to territorial jurisdiction, he shall deny him entry and compel him to leave the national territory for his country of origin or last country of departure, delivering him into the custody and supervision of the competent authorities of the neighbouring country or of the agents authorized by the operator of the enterprise which brought him to the country. The decision taken by the police officer of the Migration Service regarding the exclusion of an alien shall not be subject to administrative revision, nor shall it prejudice the alien's option to be admitted provisionally and to submit to penal action for deportation in the manner prescribed in this Law.

Article 18. The police officers of the Migration Service may permit voluntary departure from the country where requested by aliens enumerated in paragraphs II, III and V of article 9 of this Law, as provided in the foregoing article, in which case their exclusion shall not be registered for the purposes of paragraph I of article 9 of this Law.

Chapter V. Rules for the deportation of aliens

Article 19. The Minister of the Interior, through the Migration Service of the National Civil Police, shall proceed to deport any alien subject to territorial jurisdiction who remains in the country where such alien:

I. Has entered the country without submitting to migration inspection by the police officers of the Migration Service, or has entered at an unauthorized place or time.

II. Save as provided in other legal provisions, was admitted either provisionally or permanently and, at the time of entry or during his stay, qualified for exclusion on the grounds specified in this Law.

III. Has been sentenced in Ecuador for an offence under the criminal laws of the Republic, after the sentence has been confirmed and after the penalty has been served or a pardon obtained.

IV. Is an offender under ordinary law who, because of the non-applicability of territorial jurisdiction, cannot be tried in Ecuador.

Article 20. Police officers of the Migration Service who become aware of any facts constituting grounds for deportation may provisionally arrest the alien concerned, so that the Chief of Police of the province in which the arrest was made may initiate the necessary action; in such cases, bail shall not be granted.

Article 21. All courts and tribunals exercising criminal jurisdiction in the Republic, acting through the clerk of the court, shall notify the Chief of Police of the province concerned of all sentences pronounced against aliens, once the sentences have been confirmed.

Article 22. The directors of the correctional institutions of the Republic shall be required to bring convicted aliens before the Chief of Police of the province concerned, once the sentence has

been served or a pardon obtained, before proceeding to release them.

Article 23. The Chief of Police responsible for the penal action for the deportation of aliens shall institute the proceedings *ex officio*; on the basis of a specific report by the police officer of the Migration Service, or on the advice of a judge or tribunal, of the director of the correctional institution or the Director of the Consular Department of the Ministry of Foreign Affairs.

Article 24. If the alien subject to penal action for deportation is held in custody, the Chief of Police, in instituting the proceedings, shall act in accordance with articles 73 and 74 of the Code of Criminal Procedure, in conformity with this Law.

Article 25. The Chief of Police taking action in the case shall, within 24 hours after instituting the penal proceedings for deportation, summon to his presence the designated representative of the *ministerio publico*, the alien and, his court-appointed defence counsel, if necessary, on the date and at the time stipulated in the summons which shall not exceed an additional period of 24 hours, to hold the hearing at which the penal action for deportation is to be decided.

Article 26. At the hearing, the documents, evidence and other points of fact and law on which the action is based shall be examined, as well as the alien's statement and arguments in his defence. The Chief of Police shall give his verdict within 48 hours after the aforesaid hearing.

Article 27. The Secretary of the Office of the Chief of Police shall have a complete account of the hearing recorded in a report which, when signed by the Chief of Police and the representative of the *ministerio publico* concerned in the case, shall be annexed to the proceedings.

Article 28. A decision by the Chief of Police calling for a provisional stay of proceedings in the case of an alien subject to penal action for deportation must be referred to the Minister of the Interior within three days after the date on which it was rendered, together with the written proceedings of the case.

Article 29. The Minister of the Interior may confirm or revoke, in determining the merits of the case, the provisional stay of proceedings within five days after receipt of the written proceedings.

In the event that the provisional stay of proceedings is confirmed, it shall become definitive, and accordingly the alien's release shall be ordered immediately, and he may fully exercise his rights and sue for damages.

In the event that the provisional stay of proceedings is revoked, the order for deportation of the alien shall be issued in the manner prescribed by this Law. In both cases the written proceedings shall be transmitted with the Minister's decision to the Chief of Police concerned in the case for the necessary action on the Minister's decision.

Article 30. The verdict of the Chief of Police who issues the order for deportation of an alien shall not be subject to administrative or judicial appeal and shall be enforced by police officers

in the manner, under the conditions and within the period prescribed.

Article 31. When the deportation order cannot be executed, because it relates to a stateless person, or for want of identity documents or any other valid reason, the Chief of Police concerned shall order the committal of the alien to a correctional institution pending enforcement of the deportation order over a maximum period of three years, after which time-limit the alien's stay in the country shall be regularized.

Article 32. The granting of bail by the courts or tribunals of the Republic shall not preclude the execution of deportation orders upon the decision of the Advisory Council on Migration Policy.

Article 33. Any alien subject to territorial jurisdiction, under whose protection or in whose company the person to be excluded or deported happens to be, may be compelled to leave the national territory in the same manner and under the same conditions as his protégé or companion.

Article 34. Orders for exclusion or deportation and the security measures taken to enforce them fall, for all legal purposes, within the purview of public order.

Article 35. Any alien under an order for exclusion or deportation shall be transferred to the country from which he came prior to his entry; to the country in which he began his journey to Ecuador; to his country of origin; to the country in which he was domiciled prior to his entry; or to the country which accepts him.

Article 36. When an alien has been excluded or deported from Ecuador, the Migration Service of the National Civil Police shall circulate his personal particulars and other identification particulars to all its offices in the Republic and to the Consular Department of the Ministry of Foreign Affairs, for their information and for circulation to all the diplomatic and consular missions of the Ecuadorian foreign service, in order to prevent the granting of visas and his admission to the country.

Chapter VI. Offences, contraventions and penalties

Article 37. In accordance with the penal action taken in the case of breaches of the law constituting offences under ordinary law, the following shall be liable to a term of imprisonment of six months to three years and a fine of 2,000 to 20,000 sucres:

I. An alien who, having been excluded or deported from Ecuadorian territory, enters or seeks to enter the country again without the prior authorization required under article 16 of this Law.

II. A person who fills out, signs, issues or obtains a visa, passport or any other migration document arbitrarily, using false information or by falsely claiming to possess Ecuadorian nationality.

III. A person who, on his own or another's behalf, advises, assists, transports, or clandestinely or fraudulently introduces aliens into the national territory or provides them with work or

accommodation in violation of the laws and regulations governing the status of aliens.

IV. A person who, on his own or another's behalf, advises, assists or helps to provide travel documents for Ecuadorians to work or seek to work in another country, by fraudulent means or without the specific authorization to leave the country issued for that purpose by the Migration Service of the National Civil Police.

Article 38. In accordance with the public penal action taken in the case of offences constituting police contraventions of the fourth class, a fine of 1,000 to 10,000 sucres shall be imposed in respect of:

I. A person whose action or failure to act violates the obligations, duties or responsibilities arising under the laws and regulations relating to the status of aliens or to migration, in cases not constituting criminal offences or in cases where the aforesaid laws and regulations do not provide for another penalty.

Chapter VII. Economic provisions

Article 39. For the performance of the functions pertaining to the Migration Service, the National Civil Police shall also be afforded the following resources:

I. All property, deposits and securities owned by the Departments of Immigration and Security and their respective offices in the Republic, which shall be legally transferred to the National Civil Police, under the supervision of the State Controller-General's Office, without prejudice to the third transitional provision of the Law on the Status of Aliens and the fifth transitional provision of this Law.

II. The dues derived from migration inspections carried out in connexion with the arrival and departure of ships and aircraft, whether engaged in regular international transport or not, outside the authorized hours, which shall amount to 200 sucres in each case, payable by the agents authorized by the operator, except in the case of vehicles used for transport between the national frontier zones and the adjacent zones of foreign territories, in which case no charges shall be levied.

III. The dues derived from exit permits, entailing the purchase of stamped migration control cards numbered successively and costing 20 sucres for each Ecuadorian or each alien, whether immigrant or non-immigrant, having political domicile in the country, who applies for authorization to leave the national territory. However, non-immigrant aliens in transit shall be expressly exempt, and special exemption shall also apply to all persons having civil domicile in towns situated within Ecuadorian territory adjoining foreign frontiers.

IV. Budget appropriations for programmes relating to immigration, the status of aliens and public security coming under the National Civil Police and the State Budget Office, as from the financial year 1972, and apportioned in the manner prescribed by the Minister of the Interior, except for the annual sum of 470,000 sucres to be allocated to the Ministry of Foreign Affairs

for the programme to be carried out by the Office of the Director of the Consular Department under the Law on the Status of Aliens, the distribution of the said sum to be undertaken by the Minister for Foreign Affairs

V. All payments of the various charges and dues collectable in the process of migration control, shall be entered on vouchers clearly indicating the nature of the charge levied and the account to which it is to be credited.

VI. The sums shall be credited to the special "Migration Service" account opened with the Central Bank of Ecuador, which shall be un-

blocked in accordance with the annual scale of budget apportionments issued on the basis of an agreement signed by the Ministry of the Interior and the Ministry of Finance, with effect from 1 January each year.

VII. The arrangements for payment into the special "Migration Service" account shall be carried out in accordance with the orders of the Commander-in-Chief of the National Civil Police as soon as, under the Transfer Agreement, the sums in question have been credited to the account of the Paymaster of the Migration Service.

...

4. Reform and codification of the 1947 Electoral Law ⁴

(Extracts)

TITLE I

The right of suffrage

Article 1. The right to vote is a political right and a civic duty. Its organization and exercise shall be subject to the provisions of this Law.

Article 2. Ecuadorians, male or female, over 18 years of age, able to read and write, in full possession of their citizenship rights and fulfilling the requirements of this Law, are electors.

Voting is obligatory for all citizens.

Article 3. The status of elector confers the following rights:

(1) The right to elect those who are to exercise the functions of the Public Power; and

(2) The right to be elected and to fill the various offices deriving therefrom, subject to the limitations imposed by the law.

Article 4. There shall be direct and indirect elections: all citizens entered in the appropriate electoral registers shall vote in the former; the National Congress, entities enjoying functional representation and such entities under public or private law as have the duty to do so under the Constitution or the law shall vote in the latter.

Article 5. The following shall be elected by popular, direct and secret ballot: the President and the Vice-president of the Republic; provincial senators and deputies to the National Congress; provincial councillors, municipal councillors, provincial prefects and mayors.

Functionaries and officials shall, as provided by law, be elected by indirect vote.

...

TITLE VI

The elections

Section I. The direct popular vote

Chapter I

1. THE ELECTORAL BOARDS

Article 68. The following shall be elected by direct vote: the President and the Vice-President of the Republic, provincial senators, deputies, provincial councillors, provincial prefects, mayors and municipal councillors.

Article 69. The vote is a secret and personal act and shall be received by the competent electoral board.

In order to vote, citizens shall individually enter the area where the electoral board is operating, which shall be deemed to be comprised within a radius of 50 metres, and care shall be taken, through the Public Forces, to ensure that no persons other than those authorized by law are admitted to such area.

Article 70. The electoral boards shall be installed at 7 a.m., at a public and central place in the parish in the case of an urban parish, or in the main square of the parish in the case of a rural parish, or at such place as the competent provincial electoral tribunal may decide, and shall continue proceedings without interruption until 5 p.m., at which time the boards shall declare the polling closed.

Article 71. Within half an hour, before beginning their proceedings, the members of the board shall present their certificates of appointment; then the board shall, as its first and inescapable obligation, organize itself and draw up a record of its installation, which shall show the following:

(a) The place, date and hour at which the polling station begins operations;

(b) The given names and surnames of the chairman, the secretary and the members present;

⁴ *Ibid.*, No. 389, 8 January 1972. For extracts from the Electoral Law of 18 February 1947, see *Yearbook on Human Rights for 1947*, pp. 89-92.

(c) The number of ballot papers they have received for distribution to the voters;

(d) The given names and surnames of such delegates for each political party or electoral group that has presented candidates as have been designated for the purpose and are present at the time of the board's installation, together with the name of the political party or group they represent.

The certificate of appointment of each delegate shall be signed by the chairman, director or general secretary of the provincial or cantonal political group or organization concerned, without any requirement of their authentication by any authority, since it shall be an inescapable obligation to accept properly accredited delegates.

Refusal without just cause to admit delegates of political groups or parties to the polling station shall be punishable by a fine of 200 to 1,000 sucres, to be imposed by the provincial electoral tribunal on any member of the board who has voted for such refusal.

Article 72. The record of the installation shall be signed by all members of the board; any member who fails to sign the record shall pay a fine of 200 to 1,000 sucres, which shall be imposed by the Supreme Electoral Tribunal. The delegates of political groups or parties may also sign the record.

Failure by the chairman or secretary of the electoral board to sign the record shall be punishable by a fine of 1,000 to 5,000 sucres and a term of imprisonment of six months to one year, imposed by the provincial electoral tribunal; the decision may be appealed to the Supreme Electoral Tribunal within three days.

2. POLLING

Article 73. After the record of the installation has been signed, the chairman of the board shall declare the electoral process open and begun and polling shall take place in the following manner:

1. The chairman of the board shall demonstrate, beforehand, to all present that the ballot-box is empty; he shall then lock the box with a key, which the member of the board designated for the purpose by a majority shall keep in his possession.

2. Citizens shall enter the area in which the elections are being held one by one and, in order to vote, shall present their certificates of citizenship to the electoral board; after verification of the certificate against the electoral registers, the citizen shall be permitted to vote and shall be provided with the ballot-papers for the election.

3. The voter shall then go to the desk designated for the purpose and shall fill out his ballot at the desk. Each citizen shall vote by placing a vertical stroke over the horizontal stroke printed at the left of the name of the single candidate or of the list of candidates, as the case may be.

4. After filling out his ballot papers, the elector shall leave the desk and shall personally deposit his ballot in the ballot-box.

5. The voter shall take as little time as possible to fill out the ballot; both the members of the

board and the delegates of the political parties shall take care to ensure that the voter fills out his ballot at the proper desk and that, in doing so, he gives no indication concerning his vote.

Article 74. After the voter has cast his ballot, he shall sign the appropriate electoral register; a member of the board shall place an indelible mark on one of the voter's thumbs and shall return to him the certificate of citizenship he presented.

Article 75. Where a board refuses, without lawful cause, to admit the vote of a citizen; it shall be punished by the provincial electoral tribunal with a fine of 100 to 200 sucres, to be imposed on each member who unlawfully prevented admission of the vote, without prejudice to any criminal responsibility that may arise.

Article 76. The chairman of the board shall order the detention for seven days of any person who, for the purpose of voting, attempts to make use of a certificate of citizenship to which he is not entitled, and the provincial electoral tribunal shall impose a penalty of 500 sucres fine and a term of imprisonment of three months on the owner of the certificate if he is found guilty.

Article 77. If the delegates of the electoral groups or parties make any comment or protest concerning the vote, the board shall rule on the question immediately, without prejudice to inclusion in the record, if requested by the aforesaid delegates, of the comment or protest expressed and of the ruling thereon.

Article 78. The chairman of the board shall have any person who does not behave properly during the electoral proceeding removed. If in spite of such an order, any disturbance or interference with the orderly conduct of the voting occurs, the chairman may, by a decision of the board, order the detention of the offenders for a period not exceeding seven days.

Article 79. At 5 p.m. the board shall declare the voting closed and shall proceed to fulfil the requirements specified below.

3. PARTIAL COUNT OF THE BALLOTS

Article 80. After the voting has ended at 5 p.m., the electoral board shall proceed to open the ballot-box and count the ballots deposited in it; the count shall continue until it is completed.

The alternate members of the electoral board may, without the right to vote, participate in the count of the ballots together with the principal members.

The count shall be carried out in accordance with the following rules:

- (a) The electoral board shall verify that the number of the ballots deposited in the box corresponds to the number of voters.

Where the number of ballots exceeds the number of citizens who have voted, ballot-papers not supplied by the electoral board shall be eliminated; if there is an excess of votes on ballot-papers issued by the electoral board, the excess shall be drawn by lot. If ballots are short, the fact shall be stated in the record of the count, under the heading "Remarks".

In no circumstances shall a ballot-paper not issued by the electoral board be counted as valid.

(b) The secretary shall read out the vote recorded on each ballot and shall, for verification of its accuracy, pass the ballot to the chairman of the board and also to the other members of the board and the delegates of the political parties and groups if the latter so request.

(c) The other members of the board shall act as tellers and shall note the votes as the ballots are read out; the ballots shall not be destroyed but shall be retained for verification of the results of the count and for other legal purposes.

The secretary shall not take another ballot out of the box, or read it out, until the preceding ballot has been noted. In the event of disagreement between the tellers, the ballot shall be read out again, according to the same procedure.

(d) After the count has been verified, the total number of valid votes obtained by each individual candidate or each list of candidates, as the case may be, shall be entered, in numbers and letters, in the record of the count.

Ballots which indicate the voter's wishes in any intelligible manner shall also be counted as valid.

Ballots on which more than one candidate in the case of one-person elections, or more than one list in the case of multi-person elections, has been marked and ballots not bearing the mark which the voter was required to make shall not be counted as valid.

Ballots bearing more than one mark on a single list shall be counted in favour of that list.

The addition or deletion of a title or of a second given name or surname of a known candidate or the addition of favourable or unfavourable words or phrases with reference to candidates shall not invalidate the vote.

(e) If any delegate of a political group or party who has been present at the proceeding makes any comment or protest, it shall be noted in the record; if the delegate requests a written copy thereof, the chairman shall be required to provide the copy, bearing his signature and that of the secretary, at the expense of the person making the request. If it is found that the certified copies have not been provided, the chairman or person guilty in the matter shall pay a fine of 100 to 500 sucres, to be imposed by the provincial electoral tribunal.

(f) The record shall be signed by all members of the board, subject to a fine of 200 to 500 sucres, to be imposed by the same tribunal. The record shall also be signed by such delegates of the political groups or parties present as wish to sign it.

Article 81. Failure by the chairman or the secretary to sign the record of the count shall invalidate the proceedings; the person responsible for such invalidation shall be subject to the same penalties as are specified in article 72, second paragraph.

Article 82. Valid, invalidated, blank and unused ballot-papers shall be placed in separate packets, each packet being closed, sealed and signed on its cover by the chairman and secretary of the electoral board concerned.

Both the record of the installation and the record of the partial count, in original and duplicate, shall be placed under sealed cover which shall bear the signatures of the chairman and secretary of the electoral board concerned.

After the partial count has been completed, each electoral board shall, through its chairman and secretary, immediately deliver or transmit the aforesaid records and packets, with the required safeguards and on its own responsibility, to the competent provincial electoral tribunal in order that the final count may be carried out.

Article 83. In the case of elections for the office of President of the Republic and the office of Vice-President of the Republic, the relevant records shall, as soon as the electoral process is completed, be transmitted under sealed and signed cover by the chairman and secretary of the board concerned to the appropriate provincial electoral tribunal which shall, in turn, within a period not exceeding 24 hours from the time of receiving them, transmit them to the Supreme Electoral Tribunal for such purposes as are prescribed by law. In both cases, the delivery or transmittal of the records shall be carried out with the necessary safeguards on the responsibility of the electoral board or provincial electoral tribunal concerned.

The electoral records and the corresponding packets which are to be counted by the provincial electoral tribunal shall be kept by that tribunal in its archives. In the case of elections for the office of President of the Republic and the office of Vice-President of the Republic, after the Supreme Electoral Tribunal has received the records of installation and partial count and the corresponding packets, it shall immediately place them in the custody of the representatives of the Central Bank of Ecuador which shall keep them in its vaults, at the disposal of the highest electoral body for the final count or of the National Congress for the appropriate legal purposes.

4. FINAL COUNT OF THE BALLOTS

Article 84. Within five days after the polling, the president of the competent electoral tribunal shall convene a public hearing for the purpose of carrying out the final count, which shall take place within the following five days, and he shall specify the place, date and time of the hearing. The candidates and delegates of political groups and parties that have participated in the election may attend the hearing.

When the tribunal has been installed, it shall proceed first of all to examine the validity of the records of each electoral board whose ballots are to be counted and shall declare any invalidation that may be necessary under the provisions of this Law. It may not for any reason neglect to examine each and every one of the records of the electoral boards that have functioned during the election, even on the ground of possible defects or irregularities provided that such defects or irregularities do not invalidate the results. The tribunal shall, however, note such defects and irregularities.

The secretary of the tribunal shall proceed to compute the total number of valid votes obtained by each list in the case of multi-person elections,

or by each candidate in the case of one-person elections, in accordance with the partial-count records that have been received, which he shall read out and whose accuracy may be verified by the members of the tribunal. Each member shall separately take note of the records read and the number of votes obtained by each list or by each candidate, as the case may be.

If the tribunal does not meet within the time-limit specified in the first paragraph of this article, it shall meet within a five-day time-limit following a further convocation.

In order to make a count of the packets received after the aforesaid hearing, the tribunal shall hold another public hearing, following the same procedures as were established for the first hearing.

If a provincial electoral tribunal delays more than 15 days in initiating the count, or does not make the count owing to failure to convoke a hearing or to absence of its members without just cause, the Supreme Electoral Tribunal shall impose on each of the persons responsible a fine of 500 to 1,000 sucres and shall suspend their citizenship rights for one year.

In that case, the president of the tribunal concerned shall immediately convoke a new hearing, in which the alternates of the penalized persons shall participate, on notice that the same penalties apply, without prejudice to the possibility of compelling them to attend through the action of the Public Forces.

Article 85. After the procedures specified in the foregoing article have been performed, at a single meeting, a record shall be prepared in duplicate, noting separately the result of each partial count and all objections that may have been made concerning the procedure followed or any incident that may have occurred and may affect the validity or invalidity of the election; the tribunal may in no circumstances deliberate or decide on any other question, or adjourn, without having completed its functions, unless it has not completed its functions by midnight, in which case it shall continue at 9 a.m. the next day.

If the count and the subsequent adjudication of posts have not been completed at a single meeting before midnight on the date specified in the convocation, the hearing shall continue on the following day, beginning at 9 a.m., at the same place, without the necessity of a further convocation. Such procedure shall be followed in all cases in which, owing to failure to complete the count and the adjudication of posts, it becomes necessary to suspend the hearing and to continue it at one or more successive meetings.

The fact that the hearing has been suspended and subsequently continued shall be reported in the record of the count.

Article 86. The delegates of political groups and parties and the candidates may request and obtain a certified copy of the records, which shall be provided by the secretary of the tribunal with the authorization of the president, without the necessity of a prior order, and on ordinary paper, within 48 hours, subject to a fine of 500 sucres, to be imposed on the secretary by the

Supreme Electoral Tribunal if he fails to provide the copy.

Article 87. The tribunal counting the votes shall proceed to compute the total number of votes obtained by each list or by each candidate, as the case may be.

In the case of a one-person election the tribunal shall declare the candidate who has obtained a majority of the votes to be elected, except in the case of elections for the offices of President of the Republic and Vice-President of the Republic, when it shall confine itself to transmitting the packets of ballots and the corresponding records to the Supreme Electoral Tribunal to be duly counted.

The record of the final count shall be prepared and approved at the same hearing; after it has been signed by the members of the provincial electoral tribunal and by such candidates and delegates of political groups and parties as wish to sign it, the secretary shall proceed immediately to read it out publicly, such reading to serve as notification for the purpose of the appropriate appeals. The secretary shall make a note below the signatures to the effect that he has read out the record.

Article 88. In the event of loss of any record, an authentic copy, taken from the record kept in the appropriate archive, shall be valid.

Article 89. In multi-person elections in which more than two persons are to be elected, the system of electoral quotient and remainder shall be used as described below.

Representation of minorities is a principle of the democratic system, whose application is guaranteed by this Law.

At elections in which two representatives, senators or deputies, are to be elected, one shall belong to the list that has obtained the largest number of votes and the other shall belong to the list with the next largest number of votes, provided that the latter has obtained at least 70 per cent of the number of votes obtained by the former; if the number of votes obtained by the minority list is less than the amount stipulated, both posts shall be adjudicated to the list that has obtained the largest number of votes.

However, when senators and two deputies for one province are elected at the same election, one of the deputies shall belong to the list that has obtained the largest number of votes, and the other, representing the minorities, shall belong to the list with the next largest number of votes if the number of votes obtained by the latter, although less than the percentage prescribed in the preceding paragraph, is at least 50 per cent of the votes obtained by the former.

The total number of valid votes obtained in the electoral subdivision in question shall be divided by the number of representatives to be elected, and the result shall be the first electoral quotient (elimination quotient).

Each of the lists whose valid votes do not number at least half of the aforesaid quotient shall be eliminated in the count.

The total number of valid votes of the lists whose valid votes number at least half of the

first electoral quotient shall be divided by the number of representatives to be elected, and the result shall be the second quotient (distribution quotient), which shall be used for adjudicating the posts.

Each of the lists used as a basis for determining the second quotient shall be entitled to a number of posts equal to the whole number obtained by dividing the total number of its valid votes by the said quotient.

If, after the appropriate adjudication has been made, one or more posts remain unfilled, they shall be adjudicated successively to each of the lists taken into consideration in determining the distribution quotient, beginning with the list which has the largest remainder or with the list which, having obtained no posts through the use of the distribution quotient, follows the aforementioned list in size of remainder; the adjudication shall continue in this way, in descending order, until as many posts as are to be distributed have been adjudicated.

In the adjudication of the posts for each list, consideration shall be given to the order in which the names on it are listed, which shall be the same as on the list registered with the competent tribunal.

...

Chapter II

MUNICIPAL COUNCILLORS AND MAYORS

Article 90. Each canton shall elect the number of councillors prescribed by the Municipal Government Law. Each councillor shall have an alternate. In addition, in the councils of provincial capitals a mayor shall be elected to assume responsibilities for the municipal administration.

Article 91. New elections for part of the membership of the municipal councils shall be held every two years, in conformity with the Municipal Government Law.

The municipal councils shall inform the provincial electoral tribunal of the results of the new elections to their membership, giving the names of those members who remain for the next council.

Article 92. The competent provincial electoral tribunal shall, within the legal time-limit make the count and designate as principals and alternates those entitled to such designation in accordance with the provisions of article 89.

Article 93. After the count has been made, the president of the provincial electoral tribunal shall transmit to each elected person his certificate of election, with which each elected person shall appear, in order to take office, before the said president or such persons as he may delegate, on 1 August, on which date the new council shall hold its first meeting and shall proceed to designate officers, a secretary and other functionaries, in accordance with the Municipal Government Law.

Article 94. The municipal council shall be responsible for considering the excuses, renunciations or incompatibilities of its members, declaring the

post vacant when a legal cause for such declaration exists and calling in the alternate councillor.

Article 95. Where, because members are disqualified or excused from attending, no legal quorum for the functioning of a municipal council exists but there are enough alternates to make up a quorum, the council shall proceed to call in the alternates, in accordance with the Municipal Government Law.

Chapter III

PREFECTS AND PROVINCIAL COUNCILLORS

Article 96. In each province there shall be a prefect and a provincial council, whose powers are determined in the Provincial Government Law.

Article 97. Provincial councils shall consist of nine members in the provinces of Pichincha, Guayas, Azuay and Manabí, seven members in the provinces of Loja, Tungurahua, Cotopaxi, Chimborazo and Los Ríos, and five members in the other provinces.

Article 98. The prefect and provincial councillors shall be elected for four years and may not be immediately re-elected. Elections for part of the membership of the provincial council shall be held every two years, in accordance with the Law. The number of councillors elected shall be alternately "five and four, four and three, or three and two councillors, depending on whether the total number of councillors is nine, seven or five respectively".

Article 99. The competent provincial electoral tribunal shall, within the legal time-limit, make the count and designate as elected the persons entitled to such designation in accordance with the provisions of article 89.

Article 100. The provisions of article 94 shall apply to the provincial councils. The procedure for calling in the alternates shall be that prescribed in the provisions of the Provincial Government Law.

Chapter IV

PROVINCIAL SENATORS AND DEPUTIES

Article 101. Each province shall elect two senators, and the Archipelago of Colón shall elect one senator.

Such elections shall be held every four years, on the first Sunday in June, by popular, direct and secret ballot.

Article 102. Pending the new census of the population of the Republic, the provinces shall elect their deputies in the following numbers:

Each province of the Republic shall elect one deputy for each 100,000 inhabitants and one additional deputy if there is a remainder of 50,000 or more inhabitants. No province shall, in any event, have fewer than two deputies. The Archipelago of Colón shall elect one deputy.

For the conduct of the election of deputies, the figure taken as the basis shall be the projected demographic estimate established by the Census Office, in agreement with the National Planning

and Co-ordination Board, for each province up to 31 December 1970.

In accordance with the said estimate, the Supreme Electoral Tribunal shall establish the number of deputies to be elected by each province.

Article 103. The election of deputies shall be held every two years, on the first Sunday in June, by popular, direct and secret ballot.

Article 104. In order to be a legislator, a person must satisfy the requirements specified in the Constitution of the Republic.

Article 105. The competent provincial electoral tribunal shall make the count of the votes for senators and deputies and shall designate the senators and deputies as principal and alternate, in accordance with this Law. The president of the said tribunal shall transmit a certificate of election to each person elected.

Chapter V

THE PRESIDENT OF THE REPUBLIC AND THE VICE-PRESIDENT OF THE REPUBLIC

Article 106. Every four years, on the first Sunday in June, the election of the President and Vice-President of the Republic shall be held, by popular, direct and secret ballot, using a single ballot-paper which shall be provided by the Supreme Electoral Tribunal, for transmittal by that organ to the provincial electoral tribunals, according to the number of voters entered in the electoral registers of each province.

Article 107. In order to be elected President or Vice-President of the Republic, a person must satisfy the requirements specified in the Constitution of the Republic.

Article 108. The records of the counts shall in each case be delivered or transmitted in duplicate, by the respective electoral boards of each parish, in a closed and sealed envelope signed by the chairman, secretary and members of the board, to the provincial electoral tribunal, which shall in turn transmit it to the Supreme Electoral Tribunal in a single stamped and sealed packet signed by the president, members and secretary of the tribunal.

Article 109. The Supreme Electoral Tribunal shall, immediately upon receipt of the packets, note in a record any failure to satisfy a prerequisite or any indication of violation it finds in the packets and shall keep them in the manner specified in article 83 of this law; it shall proceed to make the appropriate count of the votes within 10 days after receipt of the packets and record the result of the count.

After the regular Congress has been installed, the President of the Tribunal shall transmit to the Congress, on the first day of its session, the supporting documents and the record of the general vote count, a copy of which he shall deposit in the archives of the Tribunal.

Delivery shall be made by the Secretary of the Tribunal in person to the Secretary of the Senate; a record of the delivery shall be prepared in duplicate, signed by both Secretaries, and one copy shall be kept in the archives of the Tribunal.

Article 110. The National Congress shall, within the first eight days following its installation, comply with the provisions of article 83, second paragraph, of the Political Constitution of the Republic.

If the Supreme Electoral Tribunal does not make the count within the time-limit specified in the foregoing article, the count shall be made by the Congress at a public meeting, after four tellers have been designated; the same procedure shall be followed in the event of a recount.

If the Tribunal fails, without good cause, to make the counts, the members responsible shall be liable to suspension of their citizenship rights for two years and to a fine of up to 10,000 sucres.

Article 111. After the President of the Republic and the Vice-President of the Republic have been declared elected, in conformity with the Constitution, the President of the National Congress shall communicate the results of the election to the persons designated and shall inform them of the date and time at which they are to appear before the Congress for the purpose of taking the constitutional oath. Ordinarily, the date shall be 31 August.

Article 112. If the President-elect does not take office in conformity with the foregoing article, the appropriate provisions of the Constitution shall be applied.

Section II. Functional senators

Article 113. The election of the functional senators referred to in article 43 of the Constitution shall be carried out every four years, during the month of June, in the manner prescribed in the following article:

No person may be elected to the post of functional senator unless he has been engaged in the activity he represents for at least one year immediately preceding the date of the election, and a functional senator shall cease to serve in the event of discontinuing such activity.

Article 114. Every four years, during the first week in June, the full professors and assistant professors of the faculties, schools and institutes of Central University, Cuenca University, Loja University and Guyaquil University shall designate a candidate for senator to represent public education; they shall also designate two professors as delegates from each University to be members of the electoral college which shall elect the aforesaid senator from among the candidates proposed.

Article 115. During the second week in June, the professors designated as delegates shall meet at the capital of the Republic on the date set by the Supreme Electoral Tribunal and, presided over by a member of the Tribunal, shall elect by secret ballot the principal senator and the two alternates to represent public education.

Each delegate shall have one vote for the institution he represents. In the event of a tie, a decision shall be taken by drawing lots.

The Supreme Electoral Tribunal shall declare the person obtaining the largest number of votes

to have been elected principal senator and shall declare the next two candidates, in the order corresponding to the number of votes obtained in the electoral college, to have been elected alternates.

Professors who, without good and due cause, fail to exercise the right to vote in the election of the senators referred to in the foregoing articles shall be suspended for one year from the exercise of their respective rights, subject to a decision by the competent university council.

Article 116. Similarly, during the first week in June, the President of the provincial electoral tribunal or his delegate shall, after a convocation which must be made 15 days in advance, convene at the provincial capital the professors in the field of private education within his jurisdiction in order that they may designate the provincial delegate, principal and alternate, to represent them in the election of a senator for private education.

The sectional designation shall be communicated to the Supreme Electoral Tribunal.

The election for the post of senator shall be held at the capital of the Republic, during the month of June, on the date set by the Supreme Electoral Tribunal, at a meeting presided over by the President of the Supreme Electoral Tribunal, or a principal or alternate member thereof.

The election shall be by secret ballot, and the Supreme Electoral Tribunal shall declare the person obtaining the largest number of votes to have been elected principal senator.

The delegates shall elect in the same manner two alternate senators, who shall be declared such by the Supreme Electoral Tribunal in the order of the number of votes they have obtained.

In the event of a tie, a decision shall be taken by drawing lots.

Article 117. During the first week in June, after a convocation issued 15 days in advance, the president of the provincial electoral tribunal shall convene the directors of daily newspapers, magazines and other periodicals, the managers of radio and television stations and the presidents or general secretaries of the academic institutions or scientific or literary societies of the province which were established as bodies corporate at least five years prior to the date of the elections, in order that they may designate the person to represent them in the election of the senator allotted to them in accordance with the Political Constitution.

For the purposes of this Law, non-profit institutions dedicated to the promotion of science or art with a view to its dissemination among the public shall be deemed to be cultural institutions.

Daily newspapers shall have three delegates; non-daily newspapers published at least weekly shall have two delegates; magazines and other periodicals shall have one delegate.

In order to be entitled to such representation, newspapers must be published at least fortnightly and must be of a permanent character. The cultural institutions, academies, scientific societies, radio stations and television stations shall each appoint one representative.

At the meeting to be presided over by the President, or a principal or alternate member, of the Supreme Electoral Tribunal, the delegates referred to in the foregoing paragraphs shall designate the person to represent them at the meeting to be held at the capital of the Republic during the same month of June, on the date set by the Supreme Electoral Tribunal.

Each provincial delegate shall have votes equal in number to the number of votes of the delegates taking part in the election referred to in the foregoing paragraph.

At the aforesaid meeting, the entities indicated shall elect by secret ballot the principal senator and the two alternates.

The House of Ecuadorian Culture shall keep a register of the entities to which this article refers and shall provide the Supreme Electoral Tribunal with a certified list of such entities.

Article 118. Every four years, during the first week in June, the presidents of the provincial electoral tribunals of the Sierra and Oriente and of the Litoral and Archipelago of Colón shall, after a convocation which must be issued 15 days in advance, convene at the provincial capital of their respective jurisdictions two delegates from each cantonal agricultural centre for the purpose of designating the principal provincial delegate and alternate provincial delegate to represent them in the election of a senator for agriculture. Each delegate shall have one vote.

The sectional designation shall be communicated to the Supreme Electoral Tribunal, which shall, during the same month of June, specify the place, date and time for the holding, at the capital of the Republic, of separate elections of a senator for agriculture for the Litoral and Archipelago of Colón and of a senator for agriculture for the Sierra and Oriente, such elections to be held by secret ballot, at a meeting presided over by the President of the Tribunal or by a principal or alternate member of the Tribunal designated by him.

The Supreme Electoral Tribunal shall declare the person obtaining the largest number of votes to have been elected principal senator.

The delegates shall elect in the same manner two alternate senators, who shall be declared such by the Supreme Electoral Tribunal, in the order of the number of votes they have obtained.

Article 119. Similarly, every four years, during the first week in June, the President of the Supreme Electoral Tribunal shall convene the delegates of the chambers of commerce of the Sierra and Oriente and of the Litoral and Archipelago of Colón in order to proceed separately, at the capital of the Republic, at the place, date and time set by the Tribunal, to the election of a principal senator and two alternates for commerce for the Sierra and Oriente and of a principal senator and two alternates for commerce for the Litoral and Archipelago of Colón.

General partnerships, limited partnerships and joint-stock companies, limited-liability companies and corporations affiliated with a chamber of commerce may take part in the designation of a delegate only when more than half of the paid

capital stock of the company is held by Ecuadorians.

For the purposes of this provision, the chambers of commerce, meeting in general assembly, shall elect one principal delegate and one alternate.

The delegates must be Ecuadorians by birth and must appear in person with their respective credentials, signed by the president and secretary of the chamber; the said credentials shall also specify the number of Ecuadorians affiliated with the chamber.

On the date and at the time designated, presided over by the President of the Supreme Electoral Tribunal or by one of its principal or alternate members, the assembly shall proceed to elect the said senator by secret ballot.

Each delegate shall represent a number of votes corresponding to the number of Ecuadorians affiliated with each chamber, in the ratio of one vote for each 30 affiliated persons. The chambers having less than 30 affiliated persons shall be entitled to one vote.

The provisions of the last paragraph of article 118 shall apply to this election.

Article 120. Every four years, during the second week in June, after a convocation which must be issued 15 days in advance, the President of the Provincial Electoral Tribunal shall convene, at the provincial capital, a meeting of delegates representing the workers' associations recognized in the Labour Code, having juridical personality and having been active for at least one year, for the purpose of designating, by secret ballot, the provincial delegates, principal and an alternate, to represent them in electing a senator to the National Congress.

The results of this sectional designation shall be communicated to the Supreme Electoral Tribunal.

The election of the principal senator and two alternates, for the Sierra and Oriente, as well as for the Costa and Archipelago of Colón, shall be held separately at the capital of the Republic, in the same month of June, at the place, date and time indicated by the Supreme Electoral Tribunal at a meeting to be presided over by the President of the Tribunal or one of its principal or alternate members.

Each provincial delegate shall have as many votes as the number of delegates who participated in the election of the provincial delegates referred to in the first two paragraphs of this article. The Supreme Electoral Tribunal shall declare the persons obtaining the largest number of votes to have been elected principal senators; the two alternates shall be declared elected in the order of the number of votes they have obtained.

Article 121. The procedure set forth in article 119 shall also be followed for the purpose of electing senators for industry for the Litoral and the Archipelago of Colón and for the Sierra and Oriente.

Article 122. In the case of the elections to be held in accordance with articles 114, 115, 116, 117, 118, 119, 120 and 121, if no candidate has obtained an absolute majority of votes in the first election, a new election shall be held, confined

to the two persons who have received the largest number of votes.

Article 123. The functional senator for the Armed Forces shall be the Chief of the Armed Forces Joint Command; the alternates shall be the other Branch Commanding Officers who are part of the Joint Command in order of seniority.

Article 124. The functional senator for the Civil Police shall be the Chief Commissioner of Police; the alternates being, in turn, the two general officers next to the principal in seniority.

Article 125. If one or more of the entities referred to in article 43, second paragraph, of the Constitution should for any reason fail to designate their functional senator or senators, or if the latter should fail to be present, the National Congress shall be deemed to be constituted and shall carry on its work without such senators; this, however, shall not prevent the organizations and institutions concerned from requesting, at any time, that the Supreme Electoral Tribunal should convene them and set a date for a new election.

Article 126. The President of the Supreme Electoral Tribunal shall transmit the appropriate certificates of election to those who have obtained a majority of votes or have been drawn by lot in the event of a tie.

TITLE VII

Functions of the legislature

Article 127. Three days prior to the date on which the Congress is to begin its session, the members of the Senate Chamber who are in the capital of the Republic shall hold a preparatory meeting presided over by the Vice-President of the Republic, shall appoint a secretary from among those present and shall determine whether or not there is a constitutional quorum. The members of the Chambers of Deputies who are present in Quito shall likewise hold a preparatory meeting, shall appoint a director and a secretary from among those present and shall determine whether or not there is a constitutional quorum. If not, the members of both chambers who are present, whatever their number, shall appeal to those who are absent, directly or through the governors concerned, to appear as soon as possible; otherwise the alternates will be summoned.

The preparatory meetings shall be subject to the rules of procedure which were in effect during the last congress held under the Constitution of 1946.

Article 128. On the opening day of the Congress, the Senate Chamber shall be installed with the Vice-President of the Republic presiding and shall proceed to elect its Vice-President and Secretary; the latter shall be a non-member. Similarly, the Chamber of Deputies shall be installed under the presidency of its Director and shall elect a President, Vice-President and Secretary, the latter likewise being a non-member.

The aforesaid elections shall be held by secret ballot and an absolute majority of the members present, there having first been designated two tellers in each chamber who shall communicate

the results to the President of the Republic through committees which they have appointed for the purpose.

Article 129. If, despite being requested to do so, legislators fail to attend, without giving any reason to justify their conduct, the Chamber in question shall impose upon them the penalty prescribed in article 31 of the Constitution.

Article 130. Once Congress has been installed, each legislator shall submit to the Chamber to which he belongs, for purposes of accreditation, the certificate attesting to his election; accreditation shall be completed within eight days at the most.

TITLE VIII

Invalidation of polls and counts

Article 131. Popular and direct polls shall be deemed null and void in the following cases:

(a) When held on a date other than that indicated in the convocation issued by the Supreme Electoral Tribunal;

(b) When held in the absence of the Chairman and Secretary of the electoral board;

(c) If the Electoral Register is found to have been substituted, the records of installation and the partial counts falsified, or the ballot-boxes tampered with;

(d) If the records of installation and the records of the partial count do not bear the signatures of the chairman and secretary of the electoral board;

(e) If the packets containing the ballot-papers duly filled out, invalidated or returned blank do not bear the signature of the chairman of the electoral board concerned, or, failing that, the signature of the secretary of the same board. Similarly, the absence of the signature of the chairman or secretary of the provincial electoral board on the packets to be transmitted to the Supreme Electoral Tribunal shall be grounds for invalidation. In respect of the persons responsible for such invalidation, the Supreme Electoral Tribunal shall apply the penalties prescribed in article 72.

Article 132. In deciding the cases referred to in the foregoing article, the following rules shall be taken into account:

(a) The records of an electoral board or tribunal shall not be deemed to be invalid by reason of any incapacity or ineligibility of one of its members, provided that he is a citizen in possession of political rights, having been legally appointed for the discharge of the office and that the incapacity or ineligibility was not declared by the competent organ before he took office;

(b) Fraudulent insolvency shall render a person unfit to serve on an electoral board or tribunal, on condition that it has been the subject of an executory judicial decision; however, if an insolvent person serves *de facto*, the polls shall not be invalidated;

(c) A conscript who fails to report for service in the regular Armed Forces and who has been convicted under an executory decision, notified to

the provincial electoral tribunal concerned, shall not be qualified to serve on an electoral tribunal or board; however, if such a person serves *de facto*, the polls shall not be invalidated;

(d) Where a minor serves as secretary of an electoral board, the polls shall be invalid;

(e) Service on an electoral board of a member appointed by another board within the same parish shall not invalidate the polling;

(f) Provincial electoral tribunals may empower their members to designate on the polling day, in case of absence, such members as may be necessary to constitute the electoral boards;

(g) Both the certificate of appointment of a member of an electoral board and the record of the taking of such office shall entitle the holder of the office to perform the functions connected therewith;

(h) Performance of the functions of a member of an electoral board implies, *per se*, acceptance and taking of office, no other formalities being required;

(i) Where more than one person has been appointed a member of the same electoral board, the office shall go to the one who is present first at the installation of the board;

(j) Revocation of a member's appointment shall be effective where the person concerned is known to have been so notified;

(k) An error in the surname or given name of a member shall not cause the polling to be invalid;

(l) Participation in an electoral board of a person having the same name as the appointed member shall not invalidate the polls organized by that board even if an objection is raised at the time of participation; the member who was present at the installation shall continue to serve on the board;

(m) The chairman or the secretary of the board shall not be deemed to be absent if they should absent themselves momentarily. In the event of a definitive absence, the board shall proceed to appoint a replacement, making a note of the fact in the record;

(n) An evident error in the electoral records shall not render the polls invalid, without prejudice to correction of such error by the competent electoral organ; and

(o) Amendments to the record of the election shall be notarized below the record by the secretary; however, the absence of such notarizations shall not cause invalidity unless they affect the essential part of the document, and in such a way that it is impossible to determine the result of the polling from any of the copies thereof.

Article 133. The invalidity of partial and final counts in elections of provincial senators, deputies, provincial councillors and prefects, municipal councillors and mayors shall be declared by the provincial electoral tribunal.

The decision taken in the matter shall be notified to the entities which have designated candidates.

Article 134. Appeals against the declaration of invalidity referred to in the foregoing article shall

be made to the Supreme Electoral Tribunal. This remedy may be sought only by those political parties or groups which have put forward candidates for the invalidated election, such political groups or parties being represented by their leaders, or the candidates in question within three days following the notification referred to in the foregoing article. The appeal shall be submitted to the tribunal which verified the count, which shall refer the matter to the Supreme Electoral Tribunal within 24 hours so that it may rule thereon within 10 days of receipt of the documentation.

Article 135. Invalidated polls shall not be taken into account when the counts are made.

Article 136. If the final result of a provincial election depends on polls which have been invalidated in one or more parishes so that the invalidation would cause a change in the order of the lists, the Supreme Electoral Tribunal shall as soon as possible call for a new election in the parish in question and shall arrange for the provincial electoral tribunal directly and closely to supervise the new electoral process so that the will of the citizens is not improperly reflected.

Once the results of the new elections are known, the provincial electoral tribunal shall proceed to announce the final results and to apportion the offices in question, in accordance with the rules laid down in this Law.

Article 137. The final counts shall be invalid where:

- (a) The electoral tribunal has conducted the counts without a legal quorum;
- (b) The relevant reports do not bear the signature of the president and the secretary; and
- (c) The record is found to have been falsified.

Article 138. If the final count of any province is declared invalid by the Supreme Electoral Tribunal, the latter shall make a recount immediately.

Article 139. Ballots which are signed or left blank shall not be counted for purposes of the returns.

Article 140. Once the record of the count has been read and the performance of this procedure has been duly certified, the candidates and delegates who have appeared at the public hearing may appeal to the Supreme Electoral Tribunal against declarations of invalidity of records and polls within 24 hours from the time of certification of the public reading of the record.

Appeals may be made in respect of declarations of validity only where such declarations have not been agreed on unanimously by the provincial electoral tribunal concerned.

Appeals against the adjudication of posts may be made to the Supreme Electoral Tribunal within 24 hours from the time of certification of the public reading of the record.

Article 141. Appeals must be made within the specified time-limit to the appropriate provincial electoral tribunal so that it can, in turn, refer the matter to the Supreme Electoral Tribunal within 24 hours, together with the necessary documentation.

Article 142. Without prejudice to any review that may be made by the National Congress, the Supreme Electoral Tribunal shall be responsible for hearing and ruling on cases involving invalidations in elections for the office of President and Vice-President of the Republic and ordering legal proceedings to be taken against the person or persons responsible where the act appears to be punishable.

Article 143. Apart from the circumstances specified in this Law as grounds for invalidating elections or counts, the absence of any other legal requirement shall not give rise to invalidity, without prejudice to the liability of persons or bodies that have failed to comply with such requirement.

The provisions of this article shall not prevent the competent organ from declaring the incapacity or incompatibility of an elected person.

Article 144. Appeals against the final count made by the Supreme Electoral Tribunal in the case of elections to the office of President or Vice-President of the Republic may be made to the National Congress within three days thereafter, the appeal being supported by a statement of grounds as specified in this Law.

Article 145. The plenary Congress shall declare elected as President and Vice-President of the Republic the citizens who have obtained the largest number of votes, shall inform them of their election and shall administer the oath of office to them in accordance with article 84 of the Constitution.

The provincial electoral tribunals shall declare the senators, deputies, provincial prefects, mayors, provincial councillors and municipal councillors and shall draw up their certificates of appointment, except where an appeal has been made.

In the event of appeal against the declarations of the provincial electoral tribunals, the Supreme Electoral Tribunal shall, in issuing its definitive ruling, draw up and order the provincial tribunal concerned to draw up the certificate of appointment in the manner prescribed by law.

Once the certificates have been drawn up, the electoral process shall be deemed to be completed.

TITLE IX

Excuses and renunciations

Article 146. The functions of members of electoral tribunals and boards shall be mandatory, and appointed members may be excused or renounce office only for the following reasons:

- (1) Illness or physical impediment which renders the holding of office impossible;
- (2) Domestic misfortune, such as the death or serious illness of parents, children, spouses or siblings, occurring up to 20 days prior to the date on which the member was to begin the exercise of his functions or while he is exercising his functions;
- (3) Being over 65 years of age;
- (4) Having accepted a public office, appointment to which and removal from which are the prerogative of the Executive.

Article 147. The grounds set forth in subparagraphs (1) and (2) of the foregoing article shall also apply to citizens who have failed to fulfil their electoral obligations.

TITLE X

Electoral safeguards

Article 148. Except at times of international conflict, soldiers may not be called to the reserve, nor may citizens be assembled for military training during the eight days before or after elections.

Article 149. On election day and on the eight preceding days, no personal public service may be required of citizens over and above the discharge of their functions; nor may any coercive process be initiated for the collection of national or municipal taxes or duties or any sentence involving personal constraint be pronounced or executed against any citizen.

Any authority contravening the provisions of this article shall be liable to a fine of 100 to 1,000 sucres, to be imposed by the provincial electoral tribunal.

Article 150. Any concentration of troops or other demonstration of public armed force is prohibited on election days, and in the places where elections are being held. This prohibition does not apply to the armed patrols whose duty it is to secure and maintain order during the exercise of the suffrage.

Electoral tribunals may request and obtain the immediate co-operation of the Public Forces when such aid is required to preserve order.

Article 151. Any violation of electoral guarantees by the Public Forces shall be imputed to the immediate superiors having caused such violation or having failed to prevent it, if they were in a position to do so. Such officers shall be liable to the penalties prescribed by the law, without prejudice to the fine imposed by the provincial electoral tribunal, which shall be 200 to 1,000 sucres.

Article 152. No authority, official or public employee may order or effect the detention of a voter on polling day unless that voter has committed an offence punishable by imprisonment or an offence against the electoral process.

Article 153. No authority of whatsoever nature may intervene directly or indirectly in the functioning of electoral units or tribunals.

Agents of the Public Forces may intervene only in compliance with orders of chairmen of electoral boards or members of electoral tribunals.

Any authority infringing this provision shall be liable to a fine of 500 to 2,000 sucres.

Article 154. If a person attempts to meddle with the functions of electoral tribunals or boards, the chairman or president concerned or whoever is acting in his place shall order him to withdraw and, if necessary, shall arrange for his expulsion from the place where the election is being held or the premises where the tribunal is functioning.

Article 155. The chairman of the electoral board or president of any of the tribunals shall refuse to allow interference by the Public Forces,

or by any official, with the free exercise of the rights of citizens or of functions of the aforesaid electoral organs.

Any chairman or president who, without making an appropriate complaint or protest, permits any abusive treatment of citizens or of the members of the board or tribunal by members of the Public Forces shall be liable to a fine of 100 to 1,000 sucres, which shall be imposed by the electoral tribunal concerned.

If any members of such bodies have been removed from the locality of their functions or detained or arrested, for whatsoever reason or motive, the election or count or acts of the tribunal shall be suspended until the persons removed or detained have returned, without prejudice to any appropriate criminal action which may be taken against the culprit or culprits.

Article 156. Any person tampering with the ballot boxes or altering electoral documents shall be punished by the electoral tribunal concerned with a fine of 1,000 to 5,000 sucres and a term of imprisonment of one month to one year.

Article 157. Unless taken *in flagrante delicto*, members of electoral tribunals and boards may not be summoned, arrested or detained on any pretext by any authority of whatsoever nature on the days on which these bodies are meeting.

Any authorities or agents of the Public Forces infringing the guarantees laid down in this article shall be liable to a fine of 100 to 1,000 sucres and a term of imprisonment of one to three months, such penalties to be imposed by the electoral tribunal concerned.

Article 158. An authority doing violence to, or arresting or detaining a member of an electoral body or a delegate of a political party or group accredited to such a body in the exercise of his functions shall be punished by the electoral tribunal concerned with a fine of 100 to 1,000 sucres or a term of imprisonment of two to six months; the plea that the act was committed on the orders of a superior shall not be deemed valid.

Members of electoral tribunals and delegates of political parties or groups shall be entitled to enter and leave police premises or places of detention or prisons freely for the purpose of ascertaining the legality or illegality of any arrest of citizens during the election days.

Article 159. Action may be taken at the popular instance to report to any member of the provincial electoral tribunal any threats or acts of violence against a citizen on polling day, as well as the seizure or destruction of voting papers, by authorities or officers of the Public Forces or by private persons.

The tribunal shall punish the offender with a fine of 500 to 2,000 sucres and, where necessary, shall bring the act to the attention of the competent judge so that he may institute appropriate criminal proceedings.

Article 160. On election days and from the eve thereof the sale or distribution of alcoholic beverages shall be prohibited, subject to confiscation and to a fine of 1,000 to 5,000 sucres which shall be imposed by the provincial electoral

tribunal; action to report infringements of this article may also be taken at the popular instance.

Article 161. Any citizen receiving payment for his vote shall be liable to a term of imprisonment of one to three months and a fine of 200 to 1,000 sucres.

Any public employee or official paying an elector for his vote shall be liable to a term of imprisonment of three to six months, a fine of 1,000 to 5,000 sucres and the suspension for two years of his citizenship rights.

Article 162. Persons infringing the electoral guarantees shall enjoy no immunities or privileges and shall be subject to the special jurisdiction of the electoral tribunals or of ordinary judges, as appropriate, and to the penalties and sanctions laid down by the Constitution and by the law.

The competent authorities shall make available to electoral boards and tribunals, when so requested by these bodies, any detachments of the Public Forces required to prevent riots and disturbances calculated to restrict the liberty of electors or of the aforesaid bodies. If there are no officers of the Public Forces in the places where the aforesaid bodies are functioning, they may appoint private individuals to render such service, if necessary in rotation.

Any refusal of such services shall be punished by the chairman or president of the board or tribunal with a fine of 100 to 500 sucres and with imprisonment for one to three days.

TITLE XI Procedure

Jurisdiction and competence

Article 163. Persons responsible for the electoral infringements specified in this Law shall be tried and punished as follows:

(a) Members of the Supreme Electoral Tribunal and Ministers of State, by the Council of State;

(b) Members of the provincial electoral tribunals, by the Supreme Electoral Tribunal; and

(c) Members of electoral boards, authorities, public officials and private persons, by the provincial electoral tribunals.

Article 164. On election day the members of the tribunals and chairmen of the electoral boards may order the detention of persons infringing the provisions of this Law and must immediately remand them to the competent authority for trial.

Trial

Article 165. Offences relating to the exercise of suffrage shall be punished in accordance with the provisions of the Penal Code.

The penalties prescribed in this Law shall be imposed by the electoral organs concerned, in accordance with the procedure established for the trial of fourth-class contraventions and appeals against the decisions may be made, within three days after notice thereof has been given, to the Supreme Electoral Tribunal.

Where, in addition, a case involves an electoral act punishable under the Penal Code, the records of the case shall be transmitted to the competent judge.

Article 166. In the case of electoral infringements action is at the public instance, but only Ecuadorian citizens may prefer charges or report such infringements, subject to the following limitations:

(a) Reports against Ministers of State and members of the Supreme Electoral Tribunal may be filed only by national directors of political parties or groups, pursuant to a decision of their governing bodies;

(b) Reports against the members of provincial tribunals and electoral boards or against authorities and public officials may be filed only by provincial directors of political parties or groups, pursuant to a decision of their governing bodies.

Article 167. The plenary Supreme Electoral Tribunal shall rule on appeals in electoral matters and its decision shall give rise to a writ of execution.

Prescription

Article 168. The time-limit for an action for the prosecution of infringements of an essentially electoral nature as specified in this Law shall be two years.

Article 169. The penalties provided for in this Law shall be subject to limitation as follows:

(a) In the case of penalties involving deprivation of liberty, a period equal to that of the sentence;

(b) In the case of penalties consisting of a fine, a period of one year;

(c) The prescription period in respect of the fine to be paid by anyone failing to vote without good cause shall be two years;

(d) In the case of imprisonment and a fine, the prescription period shall be the length of time designated for the term of imprisonment.

Article 170. The time for the prescription of action shall be reckoned from the time of commission of the infringement and, in the case of the penalty, from the time when the judgement becomes executory.

All time-limits must be declared by the court of its own motion or at the request of a party.

TITLE XII General provisions

Article 171. Citizens submitting an application to public or private institutions serving a social or public purpose shall attach the certificates showing that they voted in the last election or, if they did not vote, produce the document justifying their abstention, drawn up by the electoral tribunal concerned.

Article 172. For 30 days prior to the convocation of elections and 30 days after the voting, electoral organs shall be granted exemption from postal and telegraph charges.

Article 173. The appointments of principal and alternate members of provincial electoral tribunals shall lapse if the persons elected fail to take office within 10 days after their designation counting from the date of receipt of the certificate of appointment, as certified by the secretary of the tribunal in question.

Persons failing to take office shall be subject to the penalties prescribed in this law.

The Supreme Electoral Tribunal shall appoint persons to replace them.

Article 174. Alternate members of the Supreme Electoral Tribunal and of the provincial electoral tribunals shall be called upon to serve when principal members are temporarily absent.

If the absence of principal members of provincial electoral tribunals becomes permanent by reason of excuse, ineligibility, death or failure to attend five consecutive meetings, the Supreme Electoral Tribunal shall appoint the replacements.

Article 175. Members of electoral tribunals shall enjoy immunity from the date of the convocation of the elections until 60 days after the final counts have been made.

Members of electoral boards shall enjoy immunity as from the date of taking office until six days after the pools.

If taken *in flagrante delicto*, such members shall not enjoy immunity; immunity shall likewise not apply in cases involving the electoral infringements specified in and punishable under this Law.

Article 176. Members, officials and employees of organs of the Electoral Service may not sit on the governing bodies of political parties or participate in election campaigns, without prejudice to their right to vote, which it is their duty as citizens to exercise. Persons infringing this provision shall be punished by dismissal from their post by the appropriate electoral organ.

Article 177. A person who by deception or fraud obtains for his use more than one certificate of citizenship, even though using different names, shall be liable to a fine of 2,000 to 10,000 sucres and a term of imprisonment of two to five years; such penalties to be imposed by the provincial electoral tribunal concerned in accordance with the procedure prescribed for the trial of fourth-class contraventions and appeals against the decision may be made, within a period of three days, to the Supreme Electoral Tribunal, which shall rule on the case within six days.

Article 178. A political party may not be registered under the same name as that used by another party previously entered in the register of the Supreme Electoral Tribunal or under a name which may be confused with one already registered.

Article 179. The following remedies shall be available:

- (1) Appeals concerning the registration of lists;
- (2) Invalidation of the polls;
- (3) Invalidation of the counts;
- (4) Appeals concerning the validity of the polls;

(5) Appeals concerning the distribution of posts;

(6) Appeals concerning the penalties imposed in respect of electoral infringements;

(7) Such others as are provided by law.

Article 180. All remedies shall be sought from the provincial electoral tribunal, concerning whose decision recourse may be had to the Supreme Electoral Tribunal within the time-limits prescribed in this Law.

Article 181. Only political parties or groups whose candidates have stood for election or the candidates themselves may seek remedies in respect of pre-electoral and electoral acts, without prejudice to the remedy available in this respect under article 179, paragraph (6).

Article 182. Mayors and provincial prefects may not be re-elected. Likewise, persons who have held office either as mayor or provincial prefect, within the same province, may not be candidates or declare candidacies for such office until a period of four years has elapsed from the time of their tenure as mayor or provincial prefect.

Article 183. If, in a cantonal, provincial or national election, it is found that the number of votes declared invalid is larger than the number of valid votes cast the Supreme Electoral Tribunal shall declare the election invalid and shall call for a new election. Convocation shall be made within eight days after the date on which the text of the report of the final count is read out.

Article 184. Invalidation of an election may not be requested after a time-limit of eight days, reckoned from the date on which the final count was made.

Article 185. The unfitness of an elected person to hold office may be invoked before he assumes office or while he is in office.

Article 186. If in a particular territorial section of the Republic it has not been possible to hold an election as scheduled, the election shall be convoked eight days after the impediment has ceased to exist.

The same shall apply in the case of indirect elections.

Article 187. Persons appearing with weapons of any kind in the place where the elections are being held shall, in addition to the penalty of confiscation, be fined 50 to 200 sucres by the chairman of the electoral board or president of the provincial electoral tribunal.

This penalty shall be given effect by the provincial electoral tribunal.

Article 188. The proceeds of the fines imposed by electoral tribunals for electoral infringements shall accrue to the "Supreme Electoral Tribunal" account in the Central Bank of Ecuador, to be administered in accordance with article 21 of this Law.

Article 189. Subject of the penalty of a fine of 1,000 to 5,000 sucres and a term of imprisonment of two to six months imposed by the provincial electoral tribunal concerned, no authority, official or public employee or head of a

private enterprise may require his subordinates or workers to join any political party or to contribute financially to its support, or require them to vote for particular candidates or lists.

Article 190. A citizen who, having the duty to vote, fails to do so without good cause shall incur the following penalties:

(a) A fine of 500 to 5,000 sucres according to the offender's economic means, and ineligibility for a public post or office for a period of one year, or one of these penalties;

(b) If he is a public employee or official, he shall *de facto* lose the post or office he holds.

The penalties of loss of employment or ineligibility for election or appointment are cumulative. For the purposes of the aforesaid penalties, all citizens employed by the Central Bank of Ecuador, the Development Banks, the Institute of Social Security and other autonomous public institutions shall also be considered public employees or officials. An exception shall be

made in the case of settlers in the eastern provinces who do not reside in the parish centre and do not have easy access to it.

Article 191. The following grounds shall justify non-fulfilment of the duty to vote:

(1) Illness or physical handicap which makes it impossible to fulfil the aforesaid duty; in such cases a sworn medical report must be submitted;

(2) Domestic misfortune consisting in the death or serious illness of parents, children, spouse or siblings occurring on election day or within the eight days immediately preceding election day; in the latter case appropriate evidence must be provided.

Transitional provisions

...

Final article. This Law shall take effect as of the present date, without prejudice to its publication in the *Registro Oficial*.

FINLAND

NOTE ¹

I. Legislation

1. RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON

Act No. 343 of 5 May 1972 on the Abolition of Capital Punishment from the Penal System (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK*—Official Statute Gazette of Finland—No. 343/72)

In practice, no sentence imposing the death penalty has been executed in Finland in peace time since 1826. This practice was confirmed by Act No. 728 of 2 December 1949, which abolished capital punishment in time of peace. The total abolition of capital punishment from the penal system was effectuated by the first mentioned Act which came into force on 1 June 1972.

2. EQUALITY BEFORE THE LAW

Decree No. 455 of 8 June 1972 on the Equality Council (*AsK* No. 455/72)

For the promotion of civil equality between men and women and for the preparation of reforms aimed at achieving such equality, a special organ, the Equality Council, was established by this Decree to function in connexion with the Office of the Council of State.

The tasks of the Equality Council are:

(1) To function as a co-ordinative organ for the research work carried on in various fields concerning civil equality between men and women;

(2) To prepare, in collaboration with the appropriate authorities, the institutes of the State and the municipal and rural communes, labour market organizations and other collective bodies, reforms aimed at achieving equality;

(3) To follow and promote the implementation of equality in community planning and to take initiatives and make proposals in order to develop the research, education and information concerning equality;

(4) To take initiatives and to make proposals in order to develop the legislation and administration affecting equality;

(5) To follow the developments abroad concerning the civil equality of men and women;

(6) To carry on research and planning especially ordered by the Office of the Council of State.

The Equality Council is composed of a chairman, a vice-chairman and, at most, 11 members appointed by the Council of State for three years at a time at most.

The various authorities shall, upon request, give the Equality Council information and opinions concerning matters assigned to it.

3. RIGHT TO PRIVACY

Act No. 543 of 11 July 1972 on the Supplement of the Penal Code by Provisions concerning the Infringement upon Privacy (*AsK* No. 543/72)

In order to safeguard a person's privacy at home against such intrusions which have become possible by modern technical devices and which are not covered by the old provisions concerning the protection of home and privacy, a new article 3 *b* was inserted by this Act to chapter 24 of the Penal Code.

According to this new article, anyone who illicitly, by a technical device, listens or records on tape what is happening in the private dwelling-place of another person, shall be sentenced for eavesdropping to a fine or an imprisonment of one year at most. To a similar penalty shall be sentenced anyone who illicitly, by a technical device, watches or pictures a person in his private dwelling-place. Even a preparatory measure consisting of setting a technical device into a person's private dwelling-place for such a purpose is punishable by a fine or an imprisonment of six months at most.

4. RIGHT TO TAKE PART IN THE GOVERNMENT; ELECTORAL RIGHTS

(a) Act No. 357 of 12 May 1972 amending the Parliament Act (*AsK* No. 357/72)

By this Act the age at which a person obtains the right to vote, was lowered from 20 to 18 years. The age when a person becomes eligible to the membership of Parliament remains at 20.

(b) Act No. 358 of 12 May 1972 amending the Act on Parliamentary Election (*AsK* No. 358/72)

This Act lowered the age, at which a person shall be enrolled in the register of voters from 20 to 18 years. At the same time, certain provisions regulating the voting procedure were amended in order to better fulfil the present requirements.

(c) Act No. 360 of 12 May 1972 amending the Communal Act (*AsK* No. 360/72)

This Act lowered the age at which a person obtains the right to vote in communal elections from 20 to 18 years. The age when a person

¹ Note prepared by Mr. Voitto Saario, government-appointed correspondent of the *Yearbook on Human Rights*.

becomes eligible to communal positions of trust remains at 20.

(d) Act No. 361 of 12 May 1972 on Communal Elections (*AsK* No. 361/72)

This Act replaced the previous Act on the same subject, of 7 February 1964. By the new Act, the age at which a person may be enrolled in the register of voters in communal elections was further lowered from 20, to which it was lowered in 1968, to 18 years. At the same time the voting procedure was revised in order to better fulfil the present requirements.

5. RIGHT TO WORK

Act No. 592 of 28 July 1972 amending the Constitution Act (*AsK* No. 592/72)

According to article 6, paragraph 2, of the Constitution Act in its previous form, the labour of the citizens was to be under the special protection of the State. This provision was somewhat ambiguous as to whether it really guaranteed to citizens the right to work. In order to eliminate this ambiguity, article 6, paragraph 2, was amended by the Act mentioned above to the effect that it was made obligatory for the State to arrange a possibility for Finnish citizens to work. Even before this amendment, the State had, in fact, assumed the obligation, together with the municipal and rural communes, to combat unemployment by all possible means. These efforts have been effectuated by ordinary legislation.

6. THE RIGHT TO ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

Act No. 66 of 28 January 1972 on Public Health (*AsK* No. 66/72)

The purpose of this Act is to codify the provisions of various acts concerning public health and, at the same time, to bring them up to date and to carry out the reforms which were considered necessary. The Act comprises all functions related to sanitation and the care of the sick.

The supreme direction, guidance and supervision of the work for public health is vested in the National Board of Health. This organ shall each year prepare a State plan for the organization of the work envisaged in the Act for the next five years. The plan shall be submitted for approval to the Council of State. In the district of each county, the work for public health is guided and supervised by the County Government. In each municipal and rural commune, this work shall be taken care of by the appropriate communal authorities. For this purpose, there shall be a Board of Health in each commune, consisting of at least 10 and at most 12 members elected by the Communal Council for a term of four years at a time.

Each municipal and rural commune shall:

(1) Maintain health instruction, including educational work concerning public health and birth control and the arrangement of health inspections;

(2) Organize the care of the sick among its inhabitants, including doctor's inspection and cure

and medical treatment, as well as the arrangement of first aid in its area;

(3) Take care of the organization of the ambulance service;

(4) Maintain resistance work against dental sicknesses, including instruction and preventive measures, as well as the inspection and cure of the inhabitants;

(5) Maintain school health care, including the supervision of the sanitary circumstances of schools and the sanitation of the pupils and special doctor's inspections necessary for the discovery of the health conditions of the pupils.

For the performance of all these tasks, there shall be a health centre in each commune. Some of the functions may be performed by mobile health units. Each Board of Health shall every year draw up a plan for the performance of its tasks for the next five years. Its work is regulated by a statute adopted by the Communal Council and approved by the National Board of Health.

For the establishment of health centres and their functioning, a Government subsidy shall be granted in accordance with the classification of the communes, taking into account their economic capacity. It has been estimated that the State subsidy to local health centres will be about 170 million marks per year and will increase in the next few years by about 30 million marks per year. The charges collected from the patients will decline gradually, and the health insurance compensation will be transferred to health centres at the same pace.

Detailed provisions on the enforcement of this Act are given by Act No. 67 of 28 January 1972 (*AsK* No. 67/72).

7. RIGHT TO EDUCATION

Act No. 28 of 14 January 1972 on Study Support (*AsK* no. 28/72)

This Act aims at the improvement of the economic possibilities of those Finnish citizens who, after completing the compulsory school education, carry on studies in some educational institute functioning under public supervision. In certain cases, as provided for by a decree, study support may be granted to Finnish citizens who are carrying on studies abroad, as well as to foreigners who are carrying on studies in Finland.

A study support can be given in the form of a State guarantee for a loan, a subsidy for the payment of interest or a scholarship.

Decisions on the granting of study support and other measures provided for by this Act are made by the State Study Support Centre, a special organ for this purpose.

II. International agreements

Decree No. 627 of 28 July 1972 (*AsK* No. 627/72) brings into force the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature at Lake Success, New York, on 21 March 1950.

FRANCE

Development of human rights in 1970, 1971 and 1972¹

The civil law texts adopted during this period to which it seemed necessary to draw attention relate in various ways to the protection of persons: the protection of individuals in their private life, the protection of persons required to appear before a court of justice or to undergo penalties after sentencing, protection against racist activities and protection of children.

In the social sphere, greater public awareness of the evolution of economic structures has highlighted problems relating to vocational training and the protection of workers, especially in connexion with temporary or part-time activities.

A list of the international conventions to which France has recently acceded is likewise provided.

I. Civil and individual rights

1. Amnesty

A text of limited scope was adopted on 21 December 1972,² granting amnesty for "police offences committed prior to 1 September 1972 in connexion with conflicts relating to agricultural, rural, artisanal or commercial disputes or labour disputes".

2. Individual rights

The Act of 17 July 1970³ strengthening the guaranty of the individual rights of citizens makes an important contribution to the protection of human rights in several ways:

Protection of individuals in their relations with the judicial apparatus;

Functioning of the political jurisdiction (State Security Court);

Protection against abusive intrusions into private life;

Improvement of the system for the execution of sentences.

With regard to the first of these topics, the replacement of the system of detention pending trial by "judicial supervision" and "provisional detention" reflects the desire to leave all individuals, even accused persons or those committed for trial, at liberty as far as possible.

"Judicial supervision" consists in imposing obligations and prohibitions on a person suspected of having committed acts punishable by a correctional penalty or more serious acts without depriving him completely of his liberty. The accused may be compelled or forbidden to live in certain places, undertake certain journeys or activities or frequent certain persons. This system is based largely on the experience acquired with probation in connexion with the execution of sentences.

This system is situated midway between liberty and imprisonment. It is prescribed by an order of the examining judge or the court to which the accused is committed for trial; the judge concerned has a wide measure of discretion in choosing among the obligations or prohibitions available in the light of the personality of the person accused or committed for trial and the circumstances of the case.

The provisions of judicial supervision may be made more or less flexible, and if the person concerned refuses to conform he may even be placed in provisional detention.

Henceforth, "provisional detention" will only be possible in correctional cases if basic conditions are fulfilled; the judge must refer to those conditions in an order with a statement of reasons (see annex below, p. 112, the quotation from article 144).

Detention in correctional cases must not be unnecessarily prolonged. Consequently, it can be ordered only for four months. If further extensions are sought, the judge must review the situation and issue an order with a statement of reasons.

These new rules are not applicable to criminal cases, where the examining judge is free to assess the desirability of imprisonment and is not required to give the reasons for his decision.

However, in all cases orders refusing applications for release which may be formulated at any time by persons accused or committed for trial must contain a statement of reasons.

This reform, as a whole, is important. The spirit inspiring it may be characterized by the following quotation from article 16 of the Act: "In all (prior) legislative provisions the words 'detained pending trial' shall be replaced by the words 'provisionally detained', the words 'detention pending trial' shall be replaced by the words 'provisional detention' and the words 'provisional liberty' shall be replaced by the word 'liberty'."

¹ Note prepared by Mr. Etienne Dufour, government-appointed correspondent of the *Yearbook on Human Rights*.

² Act 72-1127, *Journal officiel*, December 1972, p. 13283.

³ Act 70-643, *Journal officiel*, July 1970, p. 6751 (extracts given in annex below, p. 112).

A decree concerning the implementation of this Act was issued on 23 December 1970.⁴

A second section of the Act amends the Act of 15 January 1963 establishing the composition, rules and procedure of the State Security Court in such a way as to bring them more into line with the rules of ordinary law followed in criminal cases. The duration of surveillance, fixed at 48 hours, may be extended by the *ministère public* or the examining judge to a maximum of 6 days (instead of 10 days). The duration of surveillance may be extended to 12 days when a state of emergency has been proclaimed. Surveillance is controlled by the *ministère public*.

Under the heading "protection of private life" the Act establishes the following principle:

Everyone has the right to respect for his private life. Judges may, without prejudice to compensation for the injury sustained, prescribe any measure, such as sequestration, attachment and so on, calculated to prevent or put an end to intrusions into private life; these measures may, if the matter is urgent, be ordered in summary proceedings

Penalties of imprisonment and a fine are established to punish in particular the issue or use of photographs or recordings reproducing the picture or words of persons who are in a private place without their consent.

The Act also contains some important innovations relating to the various systems for the execution of sentences. By giving the judges wide discretion in the choice of ways in which sentence can be executed, the Act reflects the concern that the sentence should contribute to the personal and if possible the social rehabilitation of the offender.

Thus the so-called "semi-liberty" system has been expanded and made more flexible; a court which imposes a sentence of imprisonment for six months or less may decide that the sentence will be served under the semi-liberty system, which allows the sentenced person to engage in an occupation, pursue his education or undergo medical treatment outside the place of imprisonment.

The granting of simple suspension of enforcement of the sentence has been expanded; it was previously confined to first offenders, i.e. persons who had not been sentenced before, but it can now be granted to persons who have already been sentenced to a penalty of imprisonment not exceeding two months.

Suspension may be granted for one part of the sentence only (imprisonment or a fine).

The system of probation has also been made more flexible. If the person concerned fulfils all the obligations imposed on him, the sentence, together with all or part of the probation, is considered void in every respect.

The Act also provides that in some circumstances references to sentences imposed on minors shall be expunged from the judicial record.

Lastly, the criminal penalty of rigorous imprisonment has been abolished. A system of criminal supervision oriented towards re-education and social rehabilitation has been set up for persistent offenders.

As a follow-up to these reforms, an Act of 29 December 1972⁵ "simplifying and supplementing provisions concerning the criminal procedure for sentences and their execution" contains provisions relating to the parole system, generalizes the institution of the judge responsible for the execution of sentences, gives him wider scope for action and authorizes the criminal judge to free the sentenced person from the occupational disabilities relating to the sentence or to waive inscription of the sentence in the judicial record.

An important decree of 12 September 1972⁶ amended several articles of the Code of Criminal Procedure in order to bring them into line with the evolution of ideas concerning penitentiary policy. These provisions provide for a confrontation, within a committee on the execution of sentences to be established in each prison, between the judge responsible for the execution of sentences and those responsible for the administration and operation of each establishment. These provisions improve the detention system, the imposition, application and supervision of disciplinary sanctions, and working conditions. They provide for leave permits and the development of the semi-liberty system. It should be noted that these new standards are in line with the recent work of the Council of Europe on the treatment of prisoners.

Furthermore, under a decree of 16 September 1971⁷ the Minister of Justice has the power to make the detention system more flexible by granting a special system entailing certain advantages. The special system concerns persons prosecuted or sentenced for offences under the Act of 29 July 1881 on the press or for offences committed for political reasons.

Three decisions of the *Conseil d'Etat* relating to the guaranty of individual freedoms, rendered in connexion with expulsion proceedings against aliens, are worthy of mention.

In one decision,⁸ the *Conseil d'Etat* states that the expulsion of an Algerian citizen who was serving a sentence of six months' imprisonment in France was not justified on the grounds of "absolute urgency", which would have made it unnecessary for the administration to respect the formalities laid down in articles 24 and 25 of the ordinance of 2 November 1945 (prior notification and right to be heard by a commission).

⁵ Act 72-1226, *Journal officiel*, December 1972, p. 13783.

⁶ Decree 72-852, *Journal officiel*, September 1972, p. 9996.

⁷ Decree 71-769, *Journal officiel*, September 1971, p. 9323.

⁸ Decision 68919 of the *Conseil d'Etat*, 16 January 1970, *Rec.*, p. 25.

⁴ Decree 70-1223, *Journal officiel*, December 1970, p. 11995.

The same solution was applied to the case of a woman of German nationality⁹ who availed herself of similar provisions contained in the Convention on Establishment and Navigation between the Federal Republic of Germany and France, signed on 27 October 1956

The same decision states that the person with regard to whom an expulsion order has been immediately enforced has an extended period of time in which to bring the matter before the French courts.

On the other hand, another decision¹⁰ applying the same provisions of articles 24 and 25 of the 1945 ordinance states that the formalities of prior notification and the possible referral of the case to a commission are linked and are mandatory only if the Minister of the Interior has not invoked "absolute urgency" in connexion with the expulsion. Since the urgency was not contested in the case in point, the fact that the complaints were not communicated does not constitute an irregularity.

3. Conscientious objectors

The Act of 10 June 1971¹¹ concerning the National Service Code contains provisions allowing young men who for philosophical or religious reasons refuse to bear arms to perform their national service in a non-combat military unit or in a civilian organization performing work of public interest.

The same Act contains details concerning the scope and exercise of civil and political rights in the case of members of the armed forces.

4. Action against racism

In response to certain recent events and the public indignation they aroused, an Act concerning action against racism was adopted on 1 July 1972.¹² This Act defines as a criminal offence or a correctional offence everything which, through acts, writing, the spoken words, pictures and so on constitutes an incitement to discrimination, hatred or violence directed against persons because they belong or do not belong to a given ethnic group, nation, race or religion. The Act is aimed, *inter alia*, at all such acts committed through the written or spoken press, by posters or by any other means of dissemination. It also prescribes penalties for abuses which may have been committed for racist reasons by persons vested with public authority, and for acts such as refusal to employ a person for racial reasons.

5. Family law—parental authority

Pursuing the reform of the major divisions of the Civil Code, the legislature completed, with

the Act of 4 June 1970¹³ on parental authority, the emancipation of married women begun in the 1965 reform of matrimonial régimes.

Whereas the Civil Code conferred the effective exercise of paternal authority exclusively on the father as head of the family, parental authority over children is henceforth vested in both the father and the mother, who have equal rights and obligations.

Moreover, parental authority is defined with a view to the well-being of the child. "Authority is vested in the father and the mother to protect the security, health and morality of the child".

Under the heading "Educative assistance", the Act also regulates intervention by the children's judge with a view to taking "appropriate measures if the health, security, or morality of an unemancipated minor are endangered or if the conditions of his upbringing are seriously compromised".

Other provisions concern delegation, loss or partial withdrawal of parental authority and parental authority over the property of a minor child.

Other provisions of the Civil Code are likewise amended, establishing the equal rights and duties of both spouses within the family.

Article 214: "The spouses ensure together the moral and material direction of the family. They bring up the children and prepare their future".

Article 215 states that henceforth the family's place of residence shall be chosen by agreement between the spouses and no longer determined by the husband alone.

A decree of 23 December 1970¹⁴ embodied the necessary amendments to the rules of civil procedure with a view to facilitating the implementation of the aforementioned Act.

6. Child welfare

In order to strengthen the prevention and discovery of acts constituting ill-treatment of children, the legislature, by an Act of 15 June 1971,¹⁵ amended article 62 of the Criminal Code to reinforce the obligation to denounce cruelty or privation inflicted on minors under 15 years of age, and amended article 378 of the Criminal Code so as to make the requirements of professional secrecy inapplicable to doctors or other persons called upon to inform the administrative authorities or to testify in court about similar acts which come to their attention in connexion with the exercise of their profession.

7. Freedom of association

With regard to freedom of association, the *Conseil d'Etat* checks the lawfulness of the reasons given by the Government to justify the dissolution by decree of political bodies or movements. Dissolution is confirmed or annulled according to

⁹ Decision 79364 of the *Conseil d'Etat*, 11 December 1970, *Rec.*, p. 763.

¹⁰ Decision 76714 of the *Conseil d'Etat*, 9 January 1970, *Rec.*, p. 15.

¹¹ Act 71-424, *Journal officiel*, June 1971, p. 5659.

¹² Act 72-546, *Journal officiel*, 2 July 1972, p. 6803 (extracts given in annex below, p. 113).

¹³ Act 70-459, *Journal officiel*, 5 June 1970, p. 5227.

¹⁴ Decree 70-1276, *Journal officiel*, 30 December 1970, p. 12217.

¹⁵ Act 71-446, *Journal officiel*, June 1971, p. 5787.

whether or not the groups have provoked armed demonstrations in the streets or incited people to commit acts injurious to the republican form of government.¹⁶

8. Action against crime

In order to check "certain new forms of delinquency", an Act of 8 June 1970¹⁷ inserted in the current provisions of the Criminal Code concerning violence a reference to destruction or damage committed by groups as a result of concerted action. Entering a building or place used for a public service by means of false pretences, violence or assault and battery, or remaining in such a building or place illegally, are made subject to penalties in the same way as illegal entry into a private residence. Furthermore, the penalties for violence against officials responsible for the maintenance of law and order or civil officers responsible for the administration of justice and for illegal restraint or arrest by persons without a warrant are made more severe.

Similarly, in response to the development of certain types of crime, an Act of 9 July 1971¹⁸ increased the severity of the penalties prescribed for those who take hostages, commit illegal restraint or kidnap minors and demand a ransom, and so on.

II. Social law

1. Part-time work

Certain categories of persons desire to work only a limited number of hours a week, in order to combine the exercise of an occupation with various obligations (for example, bringing up children, health care, illness of a spouse and so on). Measures along those lines would give people greater freedom with regard to their employment. Despite certain reservations on the part of trade unions, ideas in this sphere are making progress. A first step was taken recently with the adoption of provisions making it possible for civil servants to be permitted to work half-time in certain circumstances.¹⁹

2. Temporary work

The development of the practice of undertaking temporary work has encouraged the establishment of enterprises or bureaux specializing in placing people in temporary employment. It was feared that this might give rise to abuses, leading to the adoption of the Act of 3 January 1972²⁰ on temporary work, which is designed

to protect the workers. The Act lays down a number of special rules relating to the contract of employment, the representation of the staff, participation of workers in the results of expansion (see ordinance 67-693 of 17 August 1967), continuing vocational training (see Act 71-575 of 16 July 1971) and social security.

3. Régime for salaried employees

An Act was adopted on 22 December 1972²¹ concerning equal remuneration of men and women.

4. Vocational training and apprenticeship

Further to the Act of 31 December 1968,²² designed to encourage the adaptation of persons to economic changes and to prevent loss of employment, the need to help workers to acquire new occupation skills has been stressed.

In that spirit, a very important agreement was concluded between the national French employer's centre and the major trade unions of 9 July 1970 concerning the granting of vocational training leave, remuneration during such leave, the maintenance of the rights of the workers concerned in the enterprise and so on.

The legislature sought to stimulate those efforts by an Act of 16 July 1971²³ which provides for continuing vocational training within the framework of what it has been agreed to call continuing education. The purpose of the Act is defined as follows:

Continuing vocational training is part of continuing education. Its purpose is to permit the adaptation of workers to changes in techniques and working conditions, to promote their social advancement by access to various levels of culture and occupation qualification and their contribution to cultural, economic and social development.

The Act deals with the organization of continuing training, the part to be played by enterprises, local bodies, occupational and trade union bodies, training leave, State assistance and so on.

An Act of the same concerning apprenticeship²⁴ brought the previous provisions concerning the training of apprentices up to date and defined the obligations of employers under the apprenticeship contract. Decrees for the implementation of that Act were issued on 12 April 1972.²⁵

5. Family allowances

An Act of 23 December 1970²⁶ supplemented existing assistance by establishing an "orphan

¹⁶ Four decisions of the *Conseil d'Etat*, 21 July 1970, Plenary Assembly, 76179 and 76232, 76233, 76234, 76230, 76231 and 76235, *Rec.*, pp. 499, 500, 501 and 504.

¹⁷ Act 70-480, *Journal officiel*, June 1970, p. 4324.

¹⁸ Act 71-553, *Journal officiel*, July 1971, p. 6859.

¹⁹ Act 70-523, *Journal officiel*, June 1970, p. 5788; Decree 70-1271, *Journal officiel*, December 1970, p. 12212.

²⁰ Act 72-1, *Journal officiel*, January 1972, p. 141.

²¹ Act 72-1143, *Journal officiel*, December 1972, p. 13411.

²² See *Yearbook on Human Rights for 1969*, p. 73.

²³ Act 71-575, *Journal officiel*, July 1971, p. 7035.

²⁴ Act 71-576, *Journal officiel*, July 1971, p. 7041.

²⁵ Decrees 72-280, 281, 282, 283, *Journal officiel*, April 1972, p. 3911 *et seq.*

²⁶ Act 70-1218, *Journal officiel*, December 1970, p. 11955.

allowance" to be paid to persons without a spouse who assume effective permanent responsibility for a child who has lost both father and mother, or for a child brought up by his mother whose filiation is established only with regard to the latter.

6. Collective agreements

An Act of 13 July 1971²⁷ amended certain provisions of the Labour Code concerning collective agreements, their scope of application, procedures for their extension, and remuneration of mandatory clauses. The last-named clauses will henceforth include the conditions of employment and remuneration of part-time and temporary personnel.

III. International conventions

The French Parliament authorized the ratification of signature by France of the following Conventions:

Protocol relating to the Status of Refugees, signed at New York on 31 January 1967²⁸

Convention signed at The Hague on 5 October 1961 concerning the Protection of Minors²⁹

International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature in New York on 7 March 1966³⁰

The following have been published:

²⁷ Act 71-561, *Journal officiel*, July 1971, p. 6939.

²⁸ Act 70-1076 of 25 November 1970, *Journal officiel*, November 1970, p. 10851.

²⁹ Act 72-621 of 5 July 1972, *Journal officiel*, July 1972, p. 7178.

³⁰ Act 71-392 of 28 May 1971, *Journal officiel*, May 1971, p. 5211.

European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe—by decree of 18 March 1970;³¹

International Labour Convention No. 105 concerning the Abolition of Forced Labour, adopted at Geneva on 25 June 1957—by decree of 21 February 1970;³²

Convention on Offences and Certain Other Acts Committed on Board Aircraft, opened for signature at Tokyo on 14 September 1963—by decree of 19 February 1971;³³

Protocol relating to the Status of Refugees, signed at New York on 31 January 1967—by decree of 9 April 1971;³⁴

International Labour Convention No. 106, concerning Weekly Rest in Commerce and Offices, adopted at Geneva on 26 June 1957—by decree of 23 September 1971;³⁵

International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature in New York on 7 March 1966—by decree of 2 November 1971;³⁶

International Labour Convention No. 122 concerning Employment Policy—by decree of 3 December 1971.³⁷

³¹ Decree 70-526, *Journal officiel*, March 1970, p. 2837.

³² Decree 70-177, *Journal officiel*, March 1970, p. 2324.

³³ Decree 71-151, *Journal officiel*, February 1971, p. 1957.

³⁴ Decree 71-289, *Journal officiel*, April 1971, p. 3752.

³⁵ Decree 71-830, *Journal officiel*, October 1971, p. 10004.

³⁶ Decree 71-801, *Journal officiel*, November 1971, p. 11100.

³⁷ Decree 71-997, *Journal officiel*, December 1971, p. 12292.

ANNEX

A. Act 70-643 of 17 July 1970

(Extracts)

...

SUB-SECTION 2. PROVISIONAL DETENTION

Article 144. In correctional cases, if the penalty impossible is imprisonment for two years or more, and if the obligations imposed under judicial supervision are inadequate with respect to the functions defined in article 137, provisional detention may be ordered or maintained:

1. When the provisional detention of the accused is the only means of preserving the evidence or material clues or to preventing pressure on witnesses or a conspiracy to deceive on the part of the accused and their accomplices.

2. When such detention is necessary to main-

tain public order in the face of disturbances caused by the offence, to protect the accused, to put an end to the offence or prevent its recurrence or to ensure that the accused remains at the disposal of the judicial authorities.

Provisional detention may also be ordered, in the conditions mentioned in article 141-2, when the accused deliberately fails to comply with the obligations of judicial supervision.

Article 145. The order of the examining judge prescribing provisional detention must contain a statement of reasons specially conceived in the light of the elements of the case with reference to the provisions of article 144. It may be issued at any stage of the preliminary investigation.

The detention may not exceed four months. However, at the end of that period the examining judge may extend it by an order containing a statement of reasons as stated in the preceding paragraph. No extension exceeding four months may be ordered.

The order mentioned in the first paragraph of this article shall be notified orally to the accused by the examining judge and a copy of the full text of the order shall be given to him; he shall signify that he has received it by signing the file on the proceedings.

The orders mentioned in this article shall be issued after prior consultation with the *procureur de la République*, and, where appropriate, the formulation of comments by the accused or his counsel.

Article 146. In criminal cases, provisional detention shall be prescribed by a warrant issued by the examining judge without any previous order.

If it becomes apparent during the preliminary investigation that the case cannot continue to be qualified as criminal, the examining judge may, after transmitting the file to the *procureur de la République* for the purposes of his intervention, order either that the accused shall remain in detention in accordance with article 145, or that he be released, whether under judicial supervision or not.

Article 147. In all cases, the release of the accused, whether under judicial supervision or not, may be ordered *ex officio* by the examining judge after obtaining the views of the *procureur de la République*, provided that the accused undertakes to present himself at all stages of the proceedings as soon as he is required to do so and to keep the examining judge informed of all his movements.

The *procureur de la République* may likewise request such release at any time. The examining judge shall take a decision on such requests within five days of their submission.

Article 148. In all cases, release may be requested of the examining judge at any time by the accused or his counsel, subject to the obligations mentioned in the preceding article.

The examining judge must immediately transmit the file to the *procureur de la République* for the purposes of his intervention. At the same time he shall, by registered letter, notify the party

who has instituted a civil action, who may submit comments.

The examining judge must render a decision, in an order containing a special statement of reasons in the conditions laid down in article 145, no later than five days after the file has been transmitted to the *procureur de la République*.

Release, when granted, may be accompanied by judicial supervision measures.

When a party has instituted a civil action, the order of the examining judge cannot be issued less than 48 hours after that party has been notified.

If the examining judge does not render a decision within the period mentioned in the third paragraph of this article, the accused may submit his application direct to the *chambre d'accusation* which, on the basis of the written intervention of the *procureur général* containing a statement of reasons, shall render a decision within 15 days after receiving the application; otherwise, the accused shall automatically be released, unless verifications relating to his application have been ordered. The *procureur de la République* likewise has the right to bring the matter before the *chambre d'accusation* on the same conditions.

Article 148-1. Release may also be requested, whatever the circumstances, by any person accused or committed for trial at any stage of the proceedings.

When a case is referred to a court entertaining jurisdiction, it is for the latter to render a decision concerning provisional release; prior to referral of the case to the assize court and in the interval between sessions of that court, this power is vested in the *chambre d'accusation*.

If the case is appealed to the Court of Cassation and pending a decision by that Court, the decision concerning an application for release shall be rendered by the last court to consider the merits of the case. If the appeal to the Court of Cassation concerns a judgement of the assize court, decisions concerning detention shall be rendered by the *chambre d'accusation*.

If it is decided that a court is incompetent to try the case, and generally whenever the case is not referred to any court, applications for release shall be considered by the *chambre d'accusation*.

...

B. Act 72-546 of 1 July 1972

(Extracts)

TITLE 1. AMENDMENTS TO THE ACT OF 29 JULY 1881 CONCERNING FREEDOM OF THE PRESS

Article 1. Article 24 of the Act of 29 July 1881 concerning freedom of the press shall be completed by a fifth paragraph reading as follows:

Persons who, by any of the methods enumerated in article 23, incite discrimination, hatred or violence against a person or group of persons because of their origin or because they belong or do not belong to a given ethnic group, nation, race or religion, shall be punished by imprisonment of not less than one month and

not more than one year and a fine of not less than 2,000 or more than 300,000 francs or by either of these penalties.

Article 2.-I. The first paragraph of article 23 of the aforementioned Act of 29 July 1881 shall read as follows:

Persons who by speeches, cries or threats uttered in public places or meetings, or by writings, printed matter, drawings, engravings, paintings, emblems, pictures or any other medium for writing, words or pictures sold, distributed, offered for sale or exhibited in public places or meetings, or by posters or notices exhibited to the public, directly incite a person or persons to commit an act constituting a crime or an offence, shall be punished, if such incitement is followed by an overt act, as accessory thereto.

II. The following words shall be deleted from articles 26, 30 and 32 of the aforementioned Act of 29 July 1881:

- (a) In article 26: "and in article 28";
- (b) In articles 30 and 32: "and in article 28".

Article 3. The second paragraph of article 32 of the aforementioned Act of 29 July 1881 shall read as follows:

Defamation by the same methods of a person or a group of persons because of their origin or because they belong or do not belong to a given ethnic group, nation, race or religion shall be punishable by imprisonment of not less than one month or more than one year and a fine of not less than 300 or more than 300,000 francs, or by either of these penalties.

Article 4. The second and third paragraphs of article 33 of the aforementioned Act of 29 July 1881 shall read as follows:

Insults uttered in the same manner against private persons shall be punishable, when not preceded by provocation, by imprisonment of not less than five days or more than two months and a fine of not less than 150 or more than 60,000 francs, or by either of these penalties.

If the insult is uttered, in the conditions specified in the preceding paragraph, against a person or group of persons because of their origin or because they belong or do not belong to a given ethnic group, nation, race or religion, the maximum term of imprisonment shall be six months and the maximum fine 150,000 francs.

Article 5.-I. The second sentence of paragraph 6 of article 48 of the aforementioned Act of 29 July 1881 shall read as follows:

However, proceedings may be initiated *ex officio* by the *ministère public* when the defamation or insult has been uttered against a person or group of persons because of their origin or because they belong or do not belong to a given ethnic group, nation, race or religion.

II. An article 48-1, reading as follows, shall be inserted in the aforementioned Act of 29 July 1881:

Article 48-1. Any association which has been duly declared at least five years before

the date on which the events took place and which according to its statutes seeks to combat racism may exercise the rights reserved for the party instituting a civil action with regard to the offences mentioned in articles 24 (last paragraph), 32 (second paragraph) and 33 (third paragraph) of the present Act.

However, when the offence has been committed against persons considered as individuals, the action of the association shall not be admissible unless it can prove that it has obtained the consent of the person concerned.

TITLE II. REPRESSION OF RACIAL DISCRIMINATION

Article 6. An article 187-1, reading as follows, shall be inserted in the Criminal Code:

Article 187-1. Any person vested with public authority or any citizen holding public office who deliberately refuses to grant a person the benefit of a right to which he is entitled because of that person's origin or because he belongs or does not belong to a given ethnic group, nation, race or religion shall be punished by imprisonment of not less than two months or more than two years or by a fine of not less than 3,000 or more than 30,000 francs or by either of these penalties.

The same penalties shall be applicable when the acts have been committed in respect of an association or society or members thereof because of the origin of some or all of those members or because they belong or do not belong to a given ethnic group, nation, race or religion.

Article 7. Article 416 of the Criminal Code shall read as follows:

Article 416. The following shall be punished by imprisonment of not less than two months or more than one year and a fine of not less than 2,000 or more than 10,000 francs or by either of these penalties:

1. Any person providing or offering to provide goods or services who, without legitimate reason, refuses, either personally or through his agent, to provide such goods or services because of the origin of the persons requesting them or because that person belongs or does not belong to a given ethnic group, nation, race or religion, or who makes his offer subject to a condition based on origin or on belonging or not belonging to a given ethnic group, nation, race or religion.

2. Any person who, in the conditions mentioned in paragraph 1, refuses goods or services to an association or a society or a member thereof because of the origin of some or all of the members or because the latter belong or do not belong to a given ethnic group, nation, race or religion.

3. Any person who by reason of his occupation or duties employs on his own behalf or on behalf of others one or more agents who, without legitimate reason, refuses to employ or dismisses a person because of his origin or because he belongs or does not belong to a given ethnic group, nation, race or religion or who makes an offer of employment subject to

a condition based on origin or on belonging or not belonging to a given ethnic group, nation, race or religion.

The court may order that the sentence be publicly displayed in the conditions laid down in article 51 and published wholly or in part in the newspapers which it designates, at the expense of the sentenced person, provided that the cost does not exceed the maximum fine imposable.

TITLE III. MISCELLANEOUS PROVISIONS

Article 8. An article 2-1, reading as follows, shall be inserted in the preliminary title of the Code of Criminal Procedure:

Article 2-1. Any association which has been duly declared at least five years before the date on which the events took place and which according to its statutes seeks to combat racism may exercise the rights reserved for the party instituting a civil action with regard to the offences mentioned in articles 187-1 and 416 of the Criminal Code.

Article 9. A paragraph 6 reading as follows shall be inserted after paragraph 5 of article 1 of the Act of 10 January 1936 concerning private combat groups and militias:

6. Or who incite discrimination, hatred or violence against a person or group of persons because of their origin or because they belong or do not belong to a given ethnic group, nation, race or religion, or who propagate ideas or theories tending to justify or encourage such discrimination, hatred or violence.

Article 10. The first paragraph of article 63 of the Act of 29 July 1881 concerning freedom of the press shall read as follows:

The increase in penalties resulting from repeated offences shall be applicable only to the offences mentioned in articles 24 (fifth paragraph), 32 (second paragraph) and 33 (third paragraph) of the present Act.

The present Act shall be implemented as an Act of the State.

GABON

1. Act No. 14/72 of 29 July 1972 supplementing the Constitution¹

Article 1. Article 4 of the Constitution of 21 February 1961, abrogated by Act No. 2/68 of 29 May 1968, shall be reinstated to read as follows:

Article 4. The Gabonese Democratic Party shall ensure the participation of the electorate in all exercises of the franchise. It shall guarantee national unity and shall work for the economic and social advancement of the country. It shall establish the necessary link between the Government and the Gabonese people.

No person may hold an elective public office unless he is invested by the Party.

Article 2. Article 8 shall be supplemented by the following paragraph:

The Vice-President of the Government shall ensure the dispatch of current business in the event of the absence of the Head of State.

Article 3. Articles 9 and 10 shall be replaced by the following provisions:

New article 9. In the event of temporary disability duly certified by the Supreme Court,

the duties of the President of the Republic shall, with the exception of the powers referred to in articles 16, 17 and 18, be provisionally discharged by the Vice-President of the Government.

The powers vested in the President of the Republic by virtue of article 19 may be exercised provisionally by the Vice-President of the Government only with the prior consent of the Political Bureau of the Gabonese Democratic Party and the Presidents of the National Assembly and the Supreme Court.

New article 10. In the event of a vacancy in the office of President of the Republic, for whatever reason, certified by the Supreme Court at the instance of the Government, or of the National Assembly, or of the Political Bureau of the Gabonese Democratic Party, the President of the Republic shall be replaced provisionally by the Vice-President of the Government until the election by universal direct suffrage of the new President of the Republic, which shall take place within three months after certification of the vacancy.

Article 4. This Act shall be enforced as a constitutional law of the State and shall be published forthwith.

¹ *Journal officiel de la République gabonaise*, No. 41, 20 December 1972.

2. Ordinance No. 25/72/PR supplementing Act No. 6/70 of 12 June 1970 on conditional release²

Article 1. Article 2 of Act No. 6/70 of 12 June 1970 establishing rules for conditional release shall be supplemented by a fourth paragraph reading as follows:

An application for conditional release may be resubmitted twice. A decision rejecting the third application shall be final. After each rejection, no further application may be made within a period of six months from the date of notification of the rejection. No application for conditional release may be made if the remainder of the term to which the convicted person was sentenced is less than three months.

Article 2. This Ordinance shall be enforced as a law of the State and shall be published forthwith.

² *Ibid.*, No. 9, 1 August 1972. For the text of Act No. 6/70, see *Yearbook on Human Rights for 1970*, p. 95.

3. Act No. 15/72 of 29 July 1972 adopting part I of the Civil Code of the Gabonese Republic ³

Summary

Part I of the Civil Code comprises a preliminary title and book I. The preliminary title consists of chapter I, dealing with the mandatory effect of laws and ordinances, administrative acts, treaties and international agreements; chapter II, dealing with conflict of domestic laws; chapter III, dealing with the irregular exercise of rights; chapter IV, dealing with the status of aliens, international conflicts of laws and the effects in Gabon of judgements rendered in foreign countries; chapter V, dealing with the competence of Gabonese and foreign authorities; and Chapter VI, dealing with the effect in Gabon of judgements rendered in foreign countries. Book I, entitled "Persons", consists of title I, dealing with natural persons; title II, dealing with marriage, divorce and separation; title III, dealing with matrimonial property; title IV, dealing with cohabitation and irregular unions; title V, dealing with filiation; title VI, dealing with filiation by adoption; title VII, dealing with maintenance obligations; title VIII, dealing with minors; and title IX, dealing with disabilities and mental state.

³ *Journal officiel de la République gabonaise*, No. 41, 20 December 1972.

GERMAN DEMOCRATIC REPUBLIC

NOTE ¹

I. Measures taken for the implementation of human rights during the years 1956-1971

In harmony with the political, economic and cultural development of the socialist society in the German Democratic Republic, a significant normative development of the basic rights of the citizens and a further improvement of the legal guarantees of the basic rights by legislation and jurisdiction have taken place since the foundation of the German Democratic Republic in 1949.

In accordance with its policy aimed at the implementation of the purposes and principles of the Charter of the United Nations, the German Democratic Republic has always attached great importance to the fundamental resolutions of the United Nations in the field of human rights. In 1968, for example, there were numerous activities to commemorate the twentieth anniversary of the adoption of the Universal Declaration of Human Rights. In this connexion, one of the highlights of the ceremonies on the occasion of this anniversary was a speech held by Herr Otto Winzer, Minister of Foreign Affairs of the German Democratic Republic, in Berlin on 9 December 1968, in which he elaborated the position of the German Democratic Republic on the guaranteeing and implementation of human rights. The Foreign Minister said *inter alia*:

A socialist society can materially guarantee the freedom, dignity and development of the human being as demanded by the Universal Declaration of Human Rights. It does not need human rights because of metaphysical and celestial commandments.

The socialist Constitution of the German Democratic Republic states that exploitation of man by man has been abolished forever. For this reason the beginning of the basic rights part of the socialist Constitution reads that freedom from exploitation, oppression and economic dependence guarantees full and equal rights to all citizens. This stipulation and its expression in reality are really capable of securing equality of rights. The exercise of power by the working people and the constitutional responsibility associated with this, according to which power is to serve the welfare of the people and to guarantee the all-round development of man, to uphold his dignity and to guarantee the rights accorded to him which are embodied in the Constitution, characterize the position of the citizen of the German Democratic Republic.

The right to work and to a place of work, the right to protection of health and of labour, and the right of every citizen of the German Democratic Republic to the care of society in old age and in invalidity are the realization of the right to social security declared by the Universal Declaration of Human Rights....

In the German Democratic Republic the constitutional upkeep of human rights and their being made use of by all citizens, form a harmonious unity. This harmonious unity of the development, firm constitutional establishment and real use of human rights is brought about by the socialist conditions of society. To the extent that the social system of socialism advances along its continuous course of development, as well as the extent that the socialist consciousness and moral attitude of the citizens of the German Democratic Republic develop, so also do these rights to a fuller and more comprehensive extent.

The Universal Declaration of Human Rights lays down that everyone "is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality"....

In the German Democratic Republic the entire activity of the state is directed, in accordance with the Declaration of Human Rights, at developing comprehensively educated socialist personalities.

With its integrated socialist system of education, the German Democratic Republic has not only implemented the right to education as laid down in its own Constitution and in the Universal Declaration of Human Rights. This system also places every citizen in the position to freely develop his own person and to lay claim in practice to his economic, social and cultural rights through the general obligation to attend school for 10 years, through cost-free tuition, through the availability of the higher educational establishments and through a whole network of institutions for the further education of working people. Such a person conscious of his duty to socialism also fulfils, as the Declaration of Human Rights stipulates, his "duties to the community in which alone the free and full development of his personality is possible"....

Freed from the limitations of private ownership of the means of production and free from the oppressive burden of a profit economy, socialist society offers the citizens of the German Democratic Republic the opportunity

¹ Note furnished by the Government of the German Democratic Republic.

of optimally realizing the claim to have and exercise rights "without distinction of any kind, such as . . . social origin, property, birth or other status", as is demanded by the Universal Declaration of Human Rights.

Arising from this nature of the realization of human rights in the German Democratic Republic and in its socialist order of society comes the compelling logic that it is also a State of peace. . . .

The principle of peace is expressly protected in the Constitution of the German Democratic Republic. This takes effect both in the strict prohibition of militarist and revanchist propaganda and of the manifestation of religious, racial and national hatred and through making the norms of international law on the punishment of war crimes and of the non-application of the statute of limitations for such crimes to law within the State.

Since its foundation there has been a continued development in the German Democratic Republic for the ever better implementation of human rights; this development is continuing in harmony with the dynamic nature of a socialist society and its objective of a better satisfaction of the material, political and cultural needs of the people. The decisions of the Eighth Congress of the Socialist Unity Party of Germany (SED) of 1971, which are a guideline for achieving the objective of an ever better satisfaction of the people's needs, were welcomed by the people of the German Democratic Republic and met their approval. (See, e.g., "Directive of the Eighth Congress of the Socialist Unity Party of Germany on the Five-Year Plan for the Development of the National Economy of the German Democratic Republic for the Period from 1971 to 1975" in *Neues Deutschland*, Berlin, 23 June 1971, Special Supplement).

A. Constitution of the German Democratic Republic

On 9 April 1968, the Constitution of the German Democratic Republic of 6 April 1968,² which regulates in detail the fundamental rights of the citizens, entered into force. Extracts from the Constitution appear below.

PART I. FOUNDATION OF THE SOCIALIST SOCIAL AND STATE ORDER

Chapter 1. Political foundations

Article 2. (1) All political power in the German Democratic Republic is exercised by the working people. Man is the centre of all efforts of a socialist society and its State. The social system of socialism is constantly being perfected.

(3) The exploitation of man by man has been abolished forever. What the hand of man has

wrought belongs to the people. The socialist principle: "from each according to his abilities, to each according to his work" is being put into practice.

(4) The most important driving force of a socialist society is the identity between social requirements and the political, material and cultural interests of the working people and their collective groups.

Article 4. All power serves the welfare of the people. It ensures a peaceful life, protects socialist society and guarantees a systematic increase in living standards, the free development of man, the preservation of human dignity and the rights stipulated in this Constitution.

Article 5. (1) Citizens of the German Democratic Republic exercise their political power through democratically elected popular representative bodies.

(2) The popular representative bodies are the foundation for the system of organs of the State. In their activities they base themselves upon the active participation of citizens in the preparation, implementation and control of their decisions.

Chapter 2. Economic foundations, science, education and culture

Article 9.

(2) The national economy of the German Democratic Republic serves the strengthening of the socialist order, the constantly improving satisfaction of the material and cultural needs of the citizens, the development of their personality and their socialist relations in society.

Article 10. (1) Socialist property exists in the following forms: as nationally-owned property of society as a whole, as joint co-operative property of collectives of working people, and as the property of social organizations of citizens.

(2) It is the duty of the socialist State and its citizens to protect and increase socialist property.

Article 11. (1) The personal property of citizens and the right of inheritance are guaranteed.

Personal property serves to satisfy the material and cultural needs of citizens.

(2) The rights of authors and inventors are protected by the socialist State.

(3) Property and the rights of authors and inventors shall not be used in a way contrary to the interests of society.

Article 12.

(2) The socialist State ensures the use of nationally-owned property for the greatest good of society. This is served by a socialist planned economy and a socialist economic law. The utilization and management of nationally-owned property is in principle carried out by the nationally-owned enterprises and state institutions. The State can assign by contract the utilization and management of such property to co-operative or social organizations and associations. Such an assign-

² For the text of the Constitution, see *Gesetzblatt*, part I, 1968, p. 199.

ment shall serve the public interest and the increase in social wealth.

...

Article 15.

...

(2) In the interests of the welfare of citizens, the State and society shall protect nature. The competent bodies shall ensure the purity of the water and the air, and protection for flora and fauna and the natural beauties of the homeland; in addition this is the affair of every citizen.

...

PART II. CITIZENS AND ORGANIZATIONS
IN SOCIALIST SOCIETY

Chapter 1. Basic rights and basic duties of citizens

Article 19. (1) The German Democratic Republic guarantees to all citizens the exercise of their rights and their participation in the guidance of social development. It guarantees socialist legality and legal security.

(2) Respect for and protection of the dignity and freedom of the personality are mandatory for all State organs, all social forces and each individual citizen.

(3) Free from exploitation, oppression and economic dependence, every citizen has equal rights and manifold opportunities to develop his abilities to the full extent and to unfold his talents in a socialist society unhindered, in free decision, for the welfare of society and for his own benefit. Thus he puts into practice the freedom and dignity of his personality. The relations between citizens are governed by mutual respect and assistance, by the principles of a socialist morality.

(4) The conditions for acquiring and losing the citizenship of the German Democratic Republic are stipulated by law.

Article 20. (1) Every citizen of the German Democratic Republic has the same rights and duties, irrespective of nationality, race, philosophy or religious confession, social origin or position. Freedom of conscience and freedom of belief are guaranteed. All citizens are equal before the law.

(2) Men and women have equal rights and have the same legal status in all spheres of social, State and personal life. The promotion of women, particularly with regard to vocational qualification, is a task for society and the State.

(3) Young people are especially promoted in their social and vocational development. They have every opportunity for responsible participation in the development of the socialist order of society.

Article 21. (1) Every citizen of the German Democratic Republic is entitled to participate fully in shaping the political, economic, social and cultural life of the socialist community and the socialist State. The principle: "participate in working, in planning and in governing" shall be applied.

(2) The right to co-determination and participation in shaping social life is guaranteed by the fact that citizens:

Democratically elect all organs of power, and participate in their activities and in planning, managing and shaping social life;

May demand account of their activities from the popular representative bodies, their deputies, and the heads of State bodies and economic bodies;

Express their will and their demands with the authority of their social organizations;

Can turn to the social, State and economic bodies and institutions with their concerns and proposals;

Can express their will through plebiscites.

(3) The implementation of this right to co-determination and co-shaping is at the same time a high moral obligation for each citizen.

The exercise of social or State functions is recognized and supported by society and the State.

Article 22. (1) Every citizen of the German Democratic Republic who is 18 years of age on election day has the right to vote.

(2) Every citizen can be elected to local popular representative bodies if he has reached the age of 18 on election day. He can be elected to the People's Chamber if he has reached the age of 21 on election day.

(3) The management of the elections by democratically formed electoral commissions, popular discussion on basic questions of policy and the nomination and examination of candidates by the voters are inalienable socialist electoral principles.

Article 23. (1) The defence of peace and the socialist homeland and its achievements is the right and the honourable obligation of citizens of the German Democratic Republic. Every citizen has the obligation to serve and to make a contribution to the defence of the German Democratic Republic in accordance with the laws.

(2) No citizen shall participate in warlike actions which serve the oppression of a people or in the preparation of such actions.

(3) The German Democratic Republic can grant asylum to citizens of other States or to stateless persons if they are persecuted for their political, scientific or cultural activity in defence of peace, democracy and the interests of the working people, or because of their participation in the social and national liberation struggle.

Article 24. (1) Every citizen of the German Democratic Republic has the right to work. He has the right to employment and its free selection in accordance with social requirements and personal qualifications. He has the right to pay according to the quality and quantity of the work. Men and women, adults and young people have the right to equal pay for equal work output.

(2) Socially useful activity is an honourable duty of every citizen able to work. The right to work and the duty to work form a unity.

(3) The right to work is guaranteed:

By the socialist ownership of the means of production;

By the socialist planning and management of the social process of reproduction;

By the steady and planned growth of the socialist productive forces and labour productivity;

By the consistent implementation of the scientific-technical revolution;

By the constant education and further training of citizens; and

By the uniform socialist labour law.

Article 25. (1) Every citizen of the German Democratic Republic has an equal right to education. Educational facilities are open to all. The integrated socialist educational system guarantees every citizen a continuous socialist education, training and higher training.

(2) The German Democratic Republic ensures the march forward of the people to a socialist community of universally educated and harmoniously developed people imbued with the spirit of socialist patriotism and internationalism, and possessing an advanced general and specialized education.

(3) All citizens have the right to participate in cultural life. Under the conditions of the scientific-technical revolution and increasing intellectual demands, this becomes of growing significance. The State and society encourage the participation of citizens in cultural life, physical culture and sport, for the complete expression of the socialist personality and for the growing fulfilment of cultural interests and needs.

(4) In the German Democratic Republic general ten-year secondary schooling is compulsory; this is provided by the ten-year general polytechnical secondary school. In certain cases the secondary schooling may be completed within the framework of vocational training or the further education of the working people. All young people have the right and the duty to learn a vocation.

(5) Special schools and training establishments exist for mentally and physically handicapped children and adults.

(6) The solution of these tasks is ensured by the State and all social forces in joint educational work.

Article 26. (1) The State ensures the possibility of transfer to the next higher stage of education up to the highest educational institutions, the universities and colleges; this is done in accordance with the performance principle, social requirements, and taking into consideration the social structure of the population.

(2) There are not tuition fees. Training allowances and free study materials are granted according to social aspects.

(3) Full-time students at the universities, colleges and technical schools are exempted from tuition fees.

Grants and allowances are given according to social aspects and performance.

Article 27. (1) Every citizen of the German Democratic Republic has the right, in accordance with the spirit and aims of this Constitution, to express his opinion freely and publicly. This right is not limited by any service or employment relationship. Nobody may be placed at a disadvantage for using this right.

(2) Freedom of the press, radio and television is guaranteed.

Article 28. (1) All citizens have the right to assemble peacefully within the framework of the principles and aims of the Constitution.

(2) The use of material prerequisites for the unhindered exercise of this right, of assembly buildings, streets and places of demonstration, printing works and means of communication, is guaranteed.

Article 29. Citizens of the German Democratic Republic have the right of association, in order to implement their interests in agreement with the principles and aims of this Constitution, by joint action in political parties, social organizations, associations and collectives.

Article 30. (1) The person and liberty of every citizen of the German Democratic Republic are inviolable.

(2) Limitations are permissible only in connexion with punishable acts or curative treatment and must be legally based. In this respect the rights of such citizens may be limited only in so far as is legally permissible and unavoidable.

(3) Every citizen has the right to the assistance of State and social organs for the protection of his liberty and the inviolability of his person.

Article 31. (1) Postal and telecommunication secrecy is inviolable.

(2) It may be limited only on a legal basis if it is necessary for the security of the socialist State or for criminal prosecution.

Article 32. Every citizen of the German Democratic Republic has the right to move freely within the State territory of the German Democratic Republic within the framework of the laws.

Article 33. (1) When abroad, every citizen of the German Democratic Republic has the right to legal protection by the organs of the German Democratic Republic.

(2) No citizen of the German Democratic Republic may be extradited to a foreign State.

Article 34. (1) Every citizen of the German Democratic Republic has the right to leisure time and recreation.

(2) The right to leisure time and recreation is guaranteed:

By the legal limitation of the daily and weekly working time,

By a full-paid annual holiday and by the planned extension of the network of nationally-owned and other social recreation and holiday centres.

Article 35. (1) Every citizen of the German Democratic Republic has the right to the protection of his health and working capacity.

(2) This right is guaranteed by the planned improvement of working and living conditions, public health, a comprehensive social policy, the promotion of physical culture, school and public sports activities and tourism.

(3) Material security, medical aid, medicaments and other medical benefits are granted free of

charge in case of illness and accidents on the basis of a social insurance system.

Article 36. (1) Every citizen of the German Democratic Republic has the right to social care in case of old age and invalidity.

(2) This right is guaranteed by an increasing material, social and cultural care and the care of elderly and disabled citizens.

Article 37. (1) Every citizen of the German Democratic Republic has the right to a dwelling space for himself and his family in accordance with economic possibilities and local conditions. The State is obligated to implement this right by promoting the construction of housing, the maintenance of existing housing, and public control of the just distribution of dwelling space.

(2) There is legal protection against eviction.

(3) Every citizen has the right to the inviolability of his home.

Article 38. (1) Marriage, family and motherhood are under the special protection of the State.

Every citizen of the German Democratic Republic has the right to respect for, protection and promotion of his marriage and family.

(2) This right is guaranteed by the equality of man and wife in married life and family, by social and State assistance to citizens in promoting and encouraging their marriage and family. Large families, mothers and fathers living alone receive the care and support of the socialist State through special measures.

(3) Mother and child enjoy the special protection of the socialist State. Maternity leave, special medical care, material and financial support during childbirth and children's allowances are granted.

(4) It is the right and the supreme duty of parents to educate their children to become healthy, happy, competent, universally educated and patriotic citizens. Parents have a right to a close and trustful co-operation with the social and State educational institutions.

Article 39. (1) Every citizen of the German Democratic Republic has the right to profess a religious creed and to carry out religious activities.

(2) The churches and other religious communities conduct their affairs and carry out their activities in conformity with the Constitution and the legal regulations of the German Democratic Republic. Details can be settled by agreement.

Article 40. Citizens of the German Democratic Republic of Sorb nationality have the right to cultivate their mother tongue and culture. The exercise of this right is encouraged by the State.

Chapter 2. Enterprises, towns and local communities in a socialist society

Article 41. The socialist enterprises, towns, local communities and associations of local communities are, within the framework of central State planning and management, self-responsible communities in which citizens work and shape their social relations. They safeguard the basic rights of citizens, the effective linking of indivi-

dual and social interests, and a multifold social-political and cultural-intellectual life. They are protected by the Constitution. Interference with their rights is permissible only on the basis of law.

Article 42. (1) In the enterprises, the activities of which provide the basis for the creation and increase of social wealth, the working people co-operate directly in the management with the assistance of their elected bodies. Details are regulated by law or statutes.

(2) In order to increase social productivity the State authorities, enterprises and co-operatives may form associations and companies as well as other forms of co-operative collaboration.

Article 43. (1) The towns, local communities and associations of local communities in the German Democratic Republic mould the conditions necessary for the constantly better satisfaction of the material, social, cultural and other joint requirements of citizens. To achieve this, they work together with the enterprises and co-operatives of their area. All citizens participate by the exercise of their political rights.

(2) The popular representative bodies elected by citizens are responsible for the implementation of the social functions of towns and local communities. They decide their affairs on their own responsibility on the basis of the law. They are responsible for a rational utilization of all public assets at their disposal.

Chapter 3. The trade unions and their rights

Article 44. (1) The free trade unions, organized in the Confederation of Free German Trade Unions, are the all-embracing class organization of the working class. They safeguard the interests of the workers, office workers and intelligentsia through comprehensive co-determination in the State, the economy and the social sphere.

(2) The trade unions are independent. Nobody may limit or obstruct their activities.

(3) Through their organizations and organs, their representatives in the elected organs of State power and their proposals to the State and economic bodies, the trade unions play a determining role:

In shaping a socialist society;

In the planning and management of the national economy;

In the implementation of a scientific-technical revolution;

In the development of working and living conditions, health protection and labour safety, cultural working environment, and cultural and sports activities of the working people.

The trade unions co-operate in the enterprises and institutions in drafting the plans, and are represented on the advisory councils of the associations of nationally-owned enterprises, and on the production committees of the enterprises and integrated works. They organize the permanent production councils.

Article 45. (1) The trade unions have the right to conclude agreements with government authorities, enterprises managements and other leading economic bodies on all questions concerning the

working and living conditions of the working people.

(2) The trade unions play an active part in shaping the socialist rule of law. They have the right to initiate legislation, and to exercise social control in safeguarding the legally-guaranteed rights of the working people.

(3) The trade unions administer the social insurance system for workers and office workers on the basis of the self-administration of the insured. They participate in the comprehensive material and financial aid for citizens in case of illness, accidents at work, invalidity and old age.

(4) All State organs and economic managers must ensure close and trusting co-operation with the trade unions.

Chapter 4. Socialist production co-operatives and their rights

Article 46. (1) The agricultural production co-operatives are voluntary associations of farmers for the purpose of joint socialist production, for the ever better satisfaction of their material and cultural needs, and for supplies to the population and the national economy. They are themselves responsible, on the basis of the law, for shaping their working and living conditions.

(2) Through their organizations and their representatives in the State organs the agricultural production co-operatives take an active part in the State planning and direction of social development.

(3) The State helps the agricultural production co-operatives to develop socialist large-scale production on the basis of advanced science and technology.

(4) The same principles apply to the socialist production co-operatives of fishermen, gardeners and craftsmen.

...

PART IV. SOCIALIST LEGALITY AND THE ADMINISTRATION OF JUSTICE

Article 86. Socialist society, the political power of the working people, and their State and legal system are the basic guarantees for the observance and enforcement of the Constitution in the spirit of justice, equality, fraternity and humanity.

Article 87. Society and the state guarantee the rule of law by involving the citizens and their organizations in the administration of justice and the social and State control of the observance of socialist law.

Article 88. The responsibility of all leading employees in the State and economy towards citizens is guaranteed by a system of reporting back

...

Article 90. (1) The administration of justice serves to implement socialist legality, protect and develop the German Democratic Republic and its State and social order. It protects the freedom, peaceful life and rights and dignity of man.

(2) It is the joint concern of the socialist society, its State and all citizens to combat and prevent crime and other violations of law.

(3) Citizens' participation in the administration of justice is guaranteed. Details are laid down by law.

Article 91. The generally accepted norms of international law relating to the punishment of crimes against peace and humanity and of war crimes are directly valid law. Crimes of this kind do not fall under the statute of limitations.

Article 92. Jurisdiction in the German Democratic Republic is exercised by the Supreme Court, the district courts, the regional courts and the social courts within the framework of the tasks assigned them by law. In military matters jurisdiction is exercised by the Supreme Court, military tribunals and military courts

...

Article 94. (1) Only persons loyally devoted to the people and their socialist State, and endowed with a high measure of knowledge and experience, human maturity and character may be judges.

(2) The democratic election of all judges, lay judges and members of social courts guarantees that justice will be administered by men and women from all classes and sections of the people.

Article 95. All judges, lay judges and members of social courts are elected either by popular representative bodies or directly by the citizens. They account to their electors for their work. They may be recalled by their electors if they violate the Constitution or the laws or commit a serious breach of their duties.

...

Article 97. With a view to safeguarding the socialist State and social order and the rights of citizens the public procurators' office supervises the strict adherence to socialist legality on the basis of laws and other statutory regulations. It protects citizens from violations of the law. The public procurators' office directs the struggle against penal offences and ensures that persons who have committed crimes or other legal offences are called to account before the court.

...

Article 99. (1) Legal responsibility is determined by the laws of the German Democratic Republic.

(2) An act is punishable only if it was defined in law at the time of its commission, if the offender has acted in a culpable way, and if his guilt is proved beyond doubt. Penal laws have no retroactive effect.

(3) Every prosecution must be in accordance with the penal laws.

(4) The rights of citizens may be limited in connexion with a criminal proceeding only to such an extent as is legally permissible and indispensable.

Article 100. (1) Detention on remand may only be authorized by a judge. Persons under arrest must be brought before a judge not later than one day after their arrest.

(2) Within the framework of their responsibility the judge or the public procurator have to

examine at any time whether the conditions for detention on remand still prevail.

(3) The public procurator must inform the next of kin of the arrested person within 24 hours after the first judicial interrogation. Exceptions to this rule are permissible only if by such notification the purpose of the investigation is jeopardized. In this case notification takes place after the reasons for the jeopardy have ceased to exist.

Article 101. (1) No one shall be deprived of his lawful judge.

(2) Special courts are inadmissible.

Article 102. (1) Every citizen has the right to be heard in court.

(2) The right to defence is guaranteed throughout the whole criminal procedure.

Article 103. (1) Every citizen may submit petitions (proposals, suggestions, applications or grievances) to the popular elected bodies and their deputies, or to State and economic organs. This right also applies to social organizations and collectives of citizens. They may be exposed to no disadvantage as a result of exercising this right.

(2) The organs responsible for a decision must deal with such proposals, suggestions or grievances of citizens or collectives within the legally-prescribed time and notify the applicants of the results.

Article 105. (1) In the case of complaints against decisions of local State organs, competence lies with the head of the organ which made the challenged decision. If the head of the organ does not change the decision, the complainant is entitled to appeal to the grievance commission of the competent popular representative body.

(2) The tasks and rights of the grievance commissions are regulated by decree.

Article 106. (1) In the case of damages inflicted on a citizen or his personal property as the

result of unlawful actions of employees of State organs, liability lies with the State organ whose employee caused the damage.

(2) The conditions and procedure of state liability are regulated by law.

...

B. Other legislation

With a view to further developing and implementing the right to work and social security (articles 22 to 25), the right to education and to participation in cultural life (articles 26 and 27), the right of men and women to marry and to found a family, and to enjoy equal rights (article 16), the right to a nationality (article 15) and the right to legal protection (articles 3 to 12), as proclaimed in the Universal Declaration of Human Rights, the People's Chamber of the German Democratic Republic had passed the following fundamental laws by 1971:

Labour Code of the German Democratic Republic, revised version of 23 November 1966 (*Gesetzblatt*, part I, 1966, p. 127)

Law on the Integrated Socialist Education System of 25 February 1965 (*Ibid.*, part I, 1965, p. 83)

Family Code of the German Democratic Republic of 20 December 1965 (*Ibid.*, part I, 1966, p. 1)

Penal Code of the German Democratic Republic of 12 January 1968 (*Ibid.*, part I, 1968, p. 1)

Code of Criminal Procedure of the German Democratic Republic of 12 January 1968 (*Ibid.*, part I, 1968, p. 49)

Law on Social Courts of 11 June 1968 (*Ibid.*, part I, 1968, p. 229)

Law on Citizenship of the German Democratic Republic of 20 February 1967 (*Ibid.*, part I, 1967, p. 3)

Copyright Law of 13 September 1965 (*Ibid.*, part I, 1965, p. 209)

II. Measures taken in 1972 to further implement the right to social security and to increase the standard of living of the people

Joint Decision of the Central Committee of the Socialist Unity Party of Germany (SED), the National Executive of the Confederation of Free German Trade Unions and the Council of Ministers of the German Democratic Republic on social policy measures to implement the main task of the Five-Year Plan as adopted by the Eighth Congress of the SED of 27 April 1972

The Central Committee of the Socialist Unity Party of Germany, the National Executive of the Confederation of Free German Trade Unions and the Council of Ministers of the German Democratic Republic have decided:

To increase pensions and social benefits paid to 3.4 million citizens;

To take measures to make life easier for working mothers and young married couples, and to increase the birth-rate;

To improve housing conditions for workers and salaried employees and to bring the rents for newly-built flats more into line with incomes.

These decisions are a consistent continuation of the path outlined in the main task of the 1971-1975 Five-Year Plan, which consists in further raising the material and cultural standard of living of the people on the basis of a high rate of development in socialist production, an increase in effectiveness, in scientific and technical progress and a growth of labour productivity.

The successful implementation of the decisions taken at the Eighth SED Party Congress, the progress reached in the continuous and stable development of our national economy, the lessen-

ing of existing disproportions and the energetic struggle for fulfilling the plan give us the assurance that the favourable development of our socialist economy will continue. It is therefore possible now to put into practice a substantial part of the social policy programme adopted by the Eighth SED Party Congress. The working people of the German Democratic Republic can see in these measures the fruit of their efforts and diligent labour.

The measures taken now will require large financial and material funds which have to be produced anew every year. There is no doubt that these measures will inspire the working class, the co-operative farmers, the intelligentsia and all other working people to further add to the economic strength of our country, through good work and creative initiatives, and to contribute to the all-round consolidation of the German Democratic Republic through high performances in socialist emulation, in socialist rationalization and in raising labour productivity. The working people themselves put into practice the saying: "what was decided at the Eighth Party Congress, will become reality".

These significant measures show how the main task of the Five-Year Plan adopted by the Eighth Party Congress is being realized, how everything is done for the benefit of the citizens, for the happiness of the people, in the interest of the working class and all working people.

A. The raising of pensions and the improvement of social benefits

The following measures shall be carried out as of 1 September 1972:

(I) NEW CALCULATION AND RAISING OF PRE-1968 PENSIONS AND OF THE MINIMUM PENSIONS PAID OUT BY SOCIAL INSURANCE³

1. The old-age pensions and disability pensions fixed before 1 July 1968 will be:

(a) Recalculated in accordance with the provisions of the new pension law, or

(b) Increased by a fixed percentage, whichever is more beneficial to the pensioner. The percentage of increase depends on the year when the pension was first paid out, and the number of working years, and ranges between 10 and 30 per cent of the present pension.

2. Minimum pensions for old-age pensioners and invalids shall be raised as follows according to the number of working years:

Working years	Present minimum pension in marks (M)	New minimum pension in marks (M)	Increase (M)
Below 15 . . .	160	200	40
15-24 . . .	170	210	40
25-34 . . .	170	220	50
35-44 . . .	170	230	60
45 and more . . .	170	240	70

3. In the case of widow's and orphan's pensions the old-age or disability pension of the deceased shall be recalculated in accordance with the provisions of the new pension law so as to determine from them the new widow's or orphan's pension.

The minimum pension shall be:

For widows . . . M200 (previously M160)

For orphans who have

lost both parents . . M150 (previously M90)

For orphans who have

lost one parent . . . M100 (previously M65)

The same applies to those widow's and orphan's pensions which were fixed after 1 July 1968 but were computed on the basis of the deceased's pension determined under the previous pension law.

4. Accident pensions.

(a) Accident pensions paid out to persons who are more than 50 per cent disabled shall be recalculated on the basis of the income the pensioner would have earned in 1968 in the same job; for this purpose a minimum monthly income of 250 marks is taken.

(b) Accident pensions paid out to persons who are less than 50 per cent disabled shall be calculated on the basis of a minimum monthly average income of 250 marks.

(c) The minimum pensions for accident pensioners who are more than $66\frac{2}{3}$ per cent disabled shall be raised from 170 to 240 marks per month.

5. Pensions for miners paid out when a person becomes unfit for the job shall be recalculated in accordance with the provisions of the new pension law.

6. War-disability pensions shall rise from 160 to 240 marks monthly. The income ceiling (pension without other allowances plus other monthly income) up to which war-disability pensions are paid to the full amount shall be increased from 210 to 300 marks.

7. Spouses' allowances shall rise from 45 to 75 marks monthly.

8. Regulation for persons entitled to two pensions:

(a) Old-age pensions and disability pensions paid as a second pension shall be recalculated or raised in accordance with the provisions applicable to full pensions, including an increase of the respective minimum pension.

After these increases it shall be determined on the basis of the provisions of the new pension law which pension is to be paid to the full amount and which as a second one.

This also applies to accident pensions paid as a second pension.

(b) Widow's pensions paid as a second pension shall be increased to at least 40 marks monthly.

³ See Decree on the Granting and Calculation of Pensions from the Social Insurance System (*Gesetzblatt*, part II, 1968, p. 135); Decree of 10 May 1972 on the Recalculation and Increase of Pensions from the Social Insurance System fixed before 1 July 1968 (*ibid.*, 1972, p. 301); Second Decree of 10 May 1972 on the Granting of Pensions from the Social Insurance System (*ibid.*, p. 306).

9. Social insurance pensioners who also get an old-age pension for intellectuals shall have their spouse's allowance increased.

10. Pensions computed under the new pension law.

The new minimum pensions, the increase in the spouse's allowance and the calculation of accident pensions on the basis of a monthly income of at least 250 marks shall also apply to pensions already computed under the new pension law.

Monthly maintenance allowances for divorced spouses shall be paid according to the amount fixed by the court, with the maximum amount being 200 marks monthly (till now maximum was 160 marks).

The provisions limiting the maximum of old-age and disability pensions to 85 per cent of the wage or salary subject to social insurance contribution payments shall be abrogated.

(II) FURTHER MEASURES TO IMPROVE PENSION PAYMENTS AND TO SOLVE RELATED PROBLEMS ⁴

1. Disability pensioners may have an income from work up to the amount of the respective minimum wage or salary, without their disability pension being cancelled.

2. Blind persons receiving a special allowance, or persons receiving special home-nursing money shall be exempt from making contributions to the compulsory social insurance fund regardless of the amount of their own earnings from work.

3. Working people who after 26 weeks of illness are no longer entitled to sick pay may receive payments for a total of 18 months, if it is considered that their capacity to work will be restored within the next 12 months.

4. The voluntary supplementary pension insurance scheme will be improved as follows:

(a) The following temporary arrangement is made: in computing the supplementary pension for men who on 1 March 1971 were over 50 years of age and women who on 1 March 1971 were over 45 years of age, the duration of their participation in the voluntary supplementary pension insurance is increased by the number of years and months by which they have passed the age-limit specified above.

For this purpose it is required that they join the voluntary supplementary pension insurance scheme not later than 31 December 1972 and have had, by March 1971, a monthly income of over 600 marks.

⁴ Second Decree of 10 May 1972 on the Granting of Pensions from the Social Insurance System (*Gesetzblatt*, part II, 1972, p. 306); Sixth Decree of 10 May 1972 on the Improvement of Social Insurance Services (*ibid.*, p. 310); Second Decree of 10 May 1972 on the Improvement of the Voluntary Supplementary Pension Insurance Scheme and of Social Insurance Services in Case of Incapacity to Work (*ibid.*, p. 311).

(b) The minimum period of five years' participation in the voluntary supplementary pension insurance scheme required at present for the granting of attribution times in case of invalidity is no longer applicable.

(III) IMPROVEMENT OF SOCIAL BENEFITS ⁵

1. Increase of social welfare payments:

(a) Social welfare rates are raised for main recipients from 120 to 175 marks and for dependents of lawful age from 55 to 75 marks.

(b) The maximum amounts of rent allowances shall no longer be subject to locality classification. The social welfare payment plus rent allowance may reach 200 marks.

(c) Pensions and pension increases shall be fully included in social welfare payments. However, it must be ensured that the total income of single persons who received till now a social welfare payment in addition to their pension shall rise by at least 20 marks monthly, and that that of married couples who received till now social welfare payments in addition to their pensions shall rise by at least 40 marks monthly.

2. In State homes for the aged and nursing homes the meal allowance shall be raised by 0.50 marks per day.

3. The pocket money for occupants of homes for the aged and nursing homes shall be raised to at least 60 marks per month.

(IV) MEASURES TO BE TAKEN AS OF 1 JULY 1973 TO IMPROVE PENSION PAYMENTS AND TO SOLVE RELATED PROBLEMS

1. Women who have given birth to five and more children shall receive an old-age pension of 200 marks per month even if they do not have a claim to an old-age pension from an occupational activity subject to compulsory social insurance.

2. Able-bodied widows and widowers shall receive after the death of their spouse a monthly pension of 200 marks for a period of 2 years provided that the pre-conditions for a claim to a widower's or widow's pension in the old age are fulfilled. If the deceased was a member of the voluntary supplementary pension insurance scheme, a pension amounting to the calculated supplementary widow's or widower's pension is paid under the same conditions.

3. Disabled persons who were not able to take up work and acquire the right to a pension, shall receive a monthly benefit of 200 marks on completing 18 years of age. If these persons require nursing, a home-nursing money shall be paid out in addition to this pension in accordance with the legal regulations.

⁵ See Second Decree of 10 May 1972 on the Further Improvement of Social Welfare Services (*Gesetzblatt*, part II, 1972, p. 312).

4. Accident insurance, as for work accidents, is extended to all accidents which happen during all organized social, cultural or sports activities.

5. The home-nursing money amounting to 40 to 60 marks per month, paid by the social insurance or the social welfare system, shall be increased by 20 marks per month.

6. Old-age pensioners with dependents who require daily or day and night nursing shall receive for them a home-nursing money of the social insurance system in addition to the spouses' or children's allowances.

7. The group of persons entitled to special home-nursing money, money for the blind, home-nursing money or care at home is enlarged as follows:

(a) The payment of a special home-nursing money is extended to: severely disabled who, because of their injury, shall have to receive the same benefit as the recipients of a special home-nursing money received up to now; and persons who, because of a mental handicap, are unfit to attend school or to undergo rehabilitation and who cannot reasonably use their upper extremities and require a high degree of care.

(b) Persons requiring daily or day and night care and who do not have a claim to home-nursing money from the social insurance system shall receive home-nursing money from the social welfare system amounting from 60 to 80 marks per month provided that the net income of the spouse or, in the case of minor children requiring care, the net income of the parents, does not exceed 750 marks per month.

Thirty per cent of the income exceeding this sum is put down to the home-nursing money. The amount of the tax-free income increases with every minor child.

(c) When they are 3 years old (at present 6 years), children shall receive:

A special nursing allowance or an allowance for the blind;

A nursing allowance when they require daily or day and night care,

if one parent is not able to exercise his profession because of this care.

(d) Elder citizens and persons requiring care who are looked after at home shall have to pay for this care only 30 per cent of the monthly income exceeding 250 marks. The right to a nursing allowance is not affected by the payment of benefits for care at home.

8. Persons obliged to pay maintenance allowances and having a monthly net income of up to 750 marks shall no longer have to refund social welfare allowances (at present tax-free income of 300 marks or 400 marks respectively). If the net income of the person obliged to pay maintenance allowances exceeds 750 marks, only 30 per cent of the exceeding sum shall be assessed (till now 50 per cent); income from overtime work, additional shifts etc. shall not be included here.

B. Measures to make life easier for working mothers and young married couples and to increase the birth rate

The following measures will become effective as of 1 July 1972:

(I) MEASURES TO MAKE LIFE EASIER FOR WORKING MOTHERS⁶

1. All women working full time with three or more children under 16 in their family will in future work only a 40-hour week, but keep full pay. Their minimum annual holiday will be increased to 21 working days. If they are on shift work they will get a minimum annual holiday of 24 working days.

All women working full time with two children under 16 in their family will in future have a minimum annual holiday of 18 working days. If they are on shift work they will also work only a 40-hour week, keeping full pay, and get a minimum annual holiday of 21 working days.

2. Maternity leave is increased from 8 to 12 weeks. Thus, leave on full pay in connexion with childbirth will be increased to a total of 18 weeks.

3. Working people living alone, when given time off to tend their sick children, shall receive from the third day up to a maximum of 13 weeks per year the legal sick pay they would receive when the payment of the wage equivalent has ceased.

4. Single mothers working full time, who have no crèche accomodation for their children and are, therefore, obliged to stop working for a certain period, shall receive for this period a monthly pay amounting to the sum of the legally fixed sick pay (when the wage equivalent is no longer paid), and in any case the following minimum sums:

with one child	250 marks
with two children	300 marks
with three and more children	350 marks.

Mothers working part-time shall receive a percentage of these minimum sums.

Special provisions will be made for girl students and mothers, who are still apprentices in a job.

⁶ See Decree of 10 May 1972 on the Introduction of the Forty-hour Working Week and the Increase of the Minimum Annual Holiday for Mothers with Several Children Working Full Time (*Gesetzblatt*, part II, 1972, p. 313); Fifth Decree of 10 May 1972 on the Improvement of Social Insurance Services (*ibid.*, p. 307); First Regulation of 10 May 1972 of the Fifth Decree on the Improvement of Social Insurance Services (*ibid.*, p. 308); Decree of 10 May 1972 on the Financial Support of Girl Students with Child at Higher and Technical Schools (*ibid.*, p. 321); Decree of 10 May 1972 on the Promotion of Girl Students with Child and Expectant Mothers Studying at Higher and Technical Schools (*ibid.*, p. 320).

(II) MEASURES TO PROMOTE YOUNG MARRIED COUPLES AND TO INCREASE THE BIRTH RATE⁷

1. The childbirth grant is generally fixed at 1,000 marks for every child.

2 (a) Young married couples up to 26 years of age, whose monthly, gross income as workers, employees,⁸ co-operative farmers or students does not exceed 1,400 marks at the time of marriage and who are contracting their first marriage may claim a credit to help them to find accommodation: to pay their share if they are joining a workers' building co-operative; to buy a prefabricated house or build a private house as their permanent residence. The amount of this credit for accommodation is determined by the necessary costs; the repayment and interest-rate shall be governed by the legal regulations. Up to 5,000 marks of this credit are interest-free. The credit may be claimed during the first 18 months after contracting the first marriage. The repayment of this interest-free credit shall be made within 8 years by reasonable instalments, starting not later than 3 years after the credit has been claimed.

(b) Young married couples up to 26 years of age, whose monthly gross income as workers, employees, co-operative farmers or students does not exceed 1,400 marks at the time of marriage and who are contracting their first marriage may also claim within three years after contracting the first marriage, an interest-free tied credit of up to 5,000 marks for furniture, household equipment, radio and television sets, household cloths etc. The repayment of this interest-free credit shall be made within eight years by reasonable instalments, starting with the day the credit was claimed.

(c) Part of the repayable credit of 5,000 or 10,000 marks will be written off as follows:

On the birth of the first child	1,000 marks
On the birth of the second child, another	1,500 marks
On the birth of the third child, another	2,500 marks

If, on the birth of a third child, the remaining credit sum is lower than the sum to be remitted, the difference between these sums will be refunded.

These benefits when claiming and repaying a credit are also granted to young married couples when one of the partners is a worker, employee, co-operative farmer or student.

3. Young married couples up to 26 years of age, whose monthly gross income as workers, employees, co-operative farmers or students does not exceed 1,400 marks at the time of marriage,

who are contracting their first marriage and who are prepared to reconstruct or modernize by their own efforts a flat they got from the local authorities or from their parents and which is situated in a building owned by the local authorities, an enterprise or a co-operative, shall be supported by a credit claimed by the owner from the corresponding credit institution.

The interest rate and the repayment of this credit by the owner shall be governed by the legal regulations.

4. Families with three or more children under 18 years shall receive a reduction of railway return fares of 33¹/₃ per cent for joint trips within the German Democratic Republic. They shall enjoy this reduction against presentation of their identity card for citizens of the German Democratic Republic or a confirmation of the competent local council. This reduction of fares becomes effective if at least three persons of the family are travelling.

C. Measures to improve the housing conditions of workers and employees⁹

The following measures will become effective as of 1 July 1972:

1. (a) The rent for newly-built flats occupied after 1 January 1967 shall be reduced to the rent level of 1966 for all workers, employees and co-operative farmers having an average monthly gross family income of up to 2,000 marks. The decision of the Council of Ministers of 17 March 1966 on rent covering building costs shall be abrogated for those persons.

(b) Monthly rents are generally fixed for Berlin, capital of the German Democratic Republic, at 1 to 1.25 marks per square metre and 0.80 to 0.90 marks per square metre for all other counties.

(c) The costs for hot water and built-in furniture shall remain stable.

The costs for central heating shall not exceed the maximum sum of 0.40 marks per square metre (now up to 0.60 marks per square metre).

(d) If the new computation results in higher rents or higher costs, the rent and costs paid so far shall remain unchanged.

(e) These regulations shall be applied in accordance with government accommodation norms. This applies also to families where either the wife or the husband are a worker, employee or co-operative farmer.

2. The rent remains unchanged for citizens having a monthly gross family income of over 2,000 marks. The same applies to the costs for central heating, hot water and built-in furniture.

3. Regulations on rent allowances for families having many children shall remain unchanged.

⁷ See Decree of 10 May 1972 on the Increase of Government Childbirth Grants and the Extension of Maternity Leave (*Gesetzblatt*, part II, 1972, p. 314); Decree of 10 May 1972 on the Granting of Credits at Favourable Terms to Young Married Couples (*ibid.*, p. 316).

⁸ Employees: working people, including intellectuals, who have an employment contract and receive a salary.

⁹ See Decree of 10 May 1972 on Improving the Housing Conditions for Workers, Employees and Co-operative Farmers (*Gesetzblatt*, part II, 1972, p. 318).

4. The rents for old flats and for newly-built flats occupied before 1966 shall remain unchanged.

5. Legal regulations on flat management shall be changed as follows:

They are to be amended to the effect that workers, employees and families with three and more children rank before all other citizens in getting flats, notably newly-built flats;

The local authorities and the enterprises shall, in co-operation with the housing commissions of the trade union management of the enterprises, see to it that newly-built flats are preferably

offered to workers, employees and families with three and more children, and that at least 60 per cent of the newly-built flats are offered to production workers;

Steps are to be taken to ensure that the social structure in the modern new housing developments accords with the social-economic composition of the population of the German Democratic Republic.

The functions of the bodies of the workers' and peasants' inspection and of the workers' control of the trade unions shall include the control of the distribution of flats in the respective enterprise and territory.

FEDERAL REPUBLIC OF GERMANY

Survey of legislation, judicial decisions and international agreements¹

The present survey covers the period from 1 January 1971 to 31 December 1972. In accordance with past practice, the various human rights are presented in the order followed in the Universal Declaration of Human Rights of 10 December 1948 (hereinafter referred to as the Universal Declaration). References to the Universal Declaration and to the corresponding articles of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the first Covenant) and the International Covenant on Civil and Political Rights (hereinafter referred to as the second Covenant), both of 16 December 1966, are given under the section headings.

Although it has been necessary to summarize in part so as not to go beyond the prescribed length, important modifications and additions to case law and legislation have, as usual, been covered in detail.

ABBREVIATIONS

AZ	<i>Aktenzeichen</i> (Ref. No.)
BayObLGSt	<i>Bayerische Entscheidungen des Obersten Landesgerichts in Strafsachen</i> (Decisions of the Supreme Court for Criminal Matters in Bavaria)
BayVBl	<i>Bayerische Verwaltungsblätter</i> (Bavarian Journal of Administration)
BGB	<i>Bürgerliches Gesetzbuch</i> (Civil Code)
BGBI	<i>Bundesgesetzblatt, Teil I und II</i> (Federal Law Gazette, Parts I and II)
BGHSt	<i>Entscheidungen des Bundesgerichtshofs in Strafsachen</i> (Decisions of the Federal High Court in Criminal Matters)
BGHZ	<i>Entscheidungen des Bundesgerichtshofs in Zivilsachen</i> (Decisions of the Federal High Court in Civil Matters)
BVerfGE	<i>Entscheidungen des Bundesverfassungsgerichts</i> (Decisions of the Federal Constitutional Court)
BVerwGE	<i>Entscheidungen des Bundesverwaltungsgerichts</i> (Decisions of the Federal Administrative Court)
DÖV	<i>Die Öffentliche Verwaltung</i> (Public Administration)
DVBl	<i>Deutsches Verwaltungsblatt</i> (German Journal of Administration)
EGBGB	<i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i> (Law Introducing the Civil Code)
FamRZ	<i>Zeitschrift für das gesamte Familienrecht</i> (Journal of Family Law)
GG	<i>Grundgesetz</i> (Basic Law)
JZ	<i>Juristenzeitung</i> (Law Journal)
MDR	<i>Monatsschrift für Deutsches Recht</i> (German Law Monthly)
NF	<i>Neue Folge</i> (New Series)
NJW	<i>Neue Juristische Wochenschrift</i> (New Weekly Journal of Law)
StGB	<i>Strafgesetzbuch</i> (Penal Code)
StPO	<i>Strafprozessordnung</i> (Code of Criminal Procedure)
VerwRspr	<i>Verwaltungsrechtsprechung</i> (Administrative Court Case Law)

¹ Note prepared by Dr. Mila von Hippel, government-appointed correspondent of the *Yearbook on Human Rights*.

1. Protection of human dignity

(*Universal Declaration, preamble and art. 1; first and second Covenants, preambles*)

The courts in the Federal Republic of Germany rarely invoke article 1 (1) of the Basic Law, which governs the protection of human dignity, so as not to depreciate this, the principal fundamental right. In the following four cases reviewed, human dignity was the basis of the court's decision.

The Federal Constitutional Court dealt at considerable length with the scope of human dignity and artistic freedom in a decision of 24 February 1971 (*BVerfGE* 30, p. 173; *DVBl* 1971, p. 684; *DÖV* 1971, p. 554; *NJW* 1971, p. 1645). The decision is also interesting in connexion with the problem of the so-called "third-party effect" of fundamental rights and in this respect reference is made to the comments in section 5 below. The decision concerns the proceedings regarding a constitutional complaint by a publishing company against judgments by the Hamburg Higher Regional Court and the Federal High Court banning the sale of the novel *Mephisto* by Klaus Mann. It was banned because it was said to detract from the personality of the late Gustav Gründgens, the famous actor, on whose life the book, written by Mann in 1942 after he had emigrated, was based. The Federal Constitutional Court upheld the ban, commenting as follows: "The meaning and purpose of the basic right of artistic freedom as defined in the first sentence of article 5 (3) of the Basic Law is principally to protect certain processes based on the individuality of art and governed by aesthetic considerations . . . from any violation whatsoever by public authority. . . . To this extent the guarantee of artistic freedom amounts to a ban on interference with the methods, substance and tendencies of artistic activity, . . . 'committed' art (also) is covered by the guarantee of freedom. The independence and autonomy of art is unconditionally guaranteed in the first sentence of article 5 (3). Any attempts to restrict the guarantee of artistic freedom by narrowing the concept of art, by giving it a wider interpretation or through analogy with restrictions imposed by other constitutional provisions must, in view of the unequivocal terms of the first sentence of article 5 (3) of the Basic Law (guarantee of artistic liberty), prove unsuccessful." After explaining in detail that artistic freedom was not a component part of the right to freedom of speech and was therefore not subject to its restrictions, nor limited by the rights of others or by general or moral law, the court derived the only possible limitation from the dignity of man as guaranteed by article 1 of the Basic Law. "The obligation which article 1 (1) of the Basic Law imposes on all State authority to afford every individual protection for his human dignity" also applied after death. The court then stated that the lower courts acknowledged the substantial element of conflict between the inviolability of human dignity and the guarantee of artistic freedom in terms of constitutional law. Although, it said, these courts had been one-sided in concentrating on such conflict in the social sphere ignoring the novel's aesthetic

reality, in other words had, in weighing up the values, concentrated almost entirely on whether the principle of "correct and true account" had been violated, the Federal Constitutional Court upheld their decisions in so far as the violation of human dignity was concerned. Thus it held that the ban on the book's dissemination was justified because *Mephisto* presented a falsifying and negative portrait of Gründgens. The objection that the unqualified ban was incompatible with the principle of proportionality could not be sustained because it was not a case of interference by a public authority. The courts merely had to specify an individual legal relationship under civil law. Accordingly, the Federal Constitutional Court could only examine whether the two parties to the dispute had received the same treatment in respect of their claims. This had been the case, since no irrelevant or arbitrary considerations had been established.

In a decision of 4 July 1972 (*DÖV* 1972, p. 787), the Federal Administrative Court was of the opinion that the part of an identity card headed "permanent marks" could not be objected to on constitutional grounds. As long as physical characteristics recognizable by any person are described in such a way in an identity card that the person concerned will not be offended, e.g. "left leg shortened", such references did not offend against personal dignity nor violate general personal rights.

In a decision of 14 July 1971 (*NJW* 1971, p. 2034; *BGHSt* 24, p. 173), the Federal High Court declared the minimum penalty of 5 years' imprisonment for highway robbery under section 316 (a) *StGB* could not, out of consideration for human dignity and the rule-of-law principle, be seen out of proportion to the gravity of the crime and the frequency of the offence. Nor did this minimum penalty conflict with article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms since it was neither inhuman nor degrading.

Invoking the right to the free development of personality pursuant to article 2 (1) of the Basic Law, an employee had requested an amendment to the register of births because, owing to a change in his sex brought about by an operation, the entry was no longer correct. The Federal High Court, by a decision of 21 September 1971 (*BGHZ* 57, p. 63; *NJW* 1972, p. 330), acknowledged "that a person . . . whose change from one sex to the other has proved more or less successful may be justified in wanting to be classified as a member of that sex at law also". It maintained that in those cases, too, in which such a new classification served human dignity and the free development of personality, the judge could not establish the new sex simply by applying the existing law but could only do so on the basis of a pertinent statutory provision, which still did not exist.

2. The principle of equal treatment

(*Universal Declaration, arts. 2 and 7; first Covenant, arts. 2 and 3; second Covenant, arts. 2, 3 and 26*)

In contrast to previous years, a more detailed account will be given of decisions establishing

equal treatment for men and women, because the courts, in international private law cases, nowadays handle questions, such as a woman's right to use her maiden name, the nationality of children of mixed marriages, decisions on parental authority after divorce, and similar legal problems, more from the point of view of fundamental rights. Fundamental rights are also valid in international private law, i.e. by virtue of the definition of "public order" (*ordre public*, article 30 *EGBGB*). Here, the criterion is not a purely abstract or general examination of the applicable foreign law in terms of the Basic Law, but rather how far the basic right in question must be applied in relation to a specified case, taking into account the autonomy of foreign legal systems.

In one case put before the Federal Constitutional Court by the Federal High Court (submission decision of 20 December 1972, *Juristische Schulung* 1973, p. 378), a divorced couple was in dispute over the question of parental authority over their legitimate child which had acquired the nationality of its father, a foreigner. According to the law of the father's country, only the father is entitled to custody, whereas the care of sons is initially the responsibility of the mother, but later of the father; in the case of divorce, the court decides in the interest of the child's well-being who should have custody. In this case, the court submitting the case saw a possible contravention of German public order which requires equal treatment for men and women.

In a nationality case submitted to the Federal Constitutional Court (submission decision of 24 June 1971, *DÖV* 1972, p. 94; *NJW* 1971, p. 1720; *JZ* 1972, p. 158), the Federal Administrative Court was of the opinion that the provisions of the German Reich and Nationality Law, under which the legitimate children of a German national only acquire German nationality if they do not acquire the nationality of their non-German father, were incompatible with the principle of equal treatment. The court held that the relation of nationality to the father only discriminated against the mother and was therefore unconstitutional. The court submitted that the mother's rights had been affected in that, under the aliens law, mother and child could be separated, and that if the mother were abroad she was entitled to German protection for herself, but not for her child, nor was unequal treatment justified by factual differences. The argument that the child's economic situation depended on his father's gainful activity and that, accordingly, it was expedient that the child should be brought up in his father's country was not sound. In the court's view it was even doubtful whether this fact could still be regarded as typical of the modern family; in any event it could not deem permissible the application of different rules in deducing nationality. Discrimination against the mother in such cases constituted a violation of her basic rights even in consideration of the necessity to avoid, if possible, giving the child dual nationality. Legitimate children of a German woman ought, the court said, to be able to acquire German nationality by birth in the same way as the legitimate children of a German man.

The Hanover Regional Court, in its decision of 21 April 1972 (*NJW* 1972, p. 1625), considered the applicability of German basic rights legislation to the transfer of parental authority. The court decided that the provisions of the law of a Middle East State, which would have been applied on the strength of German international private law, according to which parental authority for children of the marriage of a German woman with a national of that State would fall, in the event of divorce, to the father only, was incompatible with the equal rights principle embodied in article 3 (2) of the Basic Law and could therefore not be applied.

The decision of the Bavarian Supreme Court of 1 February 1971 (*MDR* 1971, p. 395; *NJW* 1971, p. 989) concerned the right of married women to use their maiden name. The question the court had to answer was whether a woman of German and Austrian nationality was entitled to attach her maiden name to her surname as is possible under German law. The court decided that the wife's name depended not on her personal status but on the legal relationship between the spouses within the meaning of article 14 *EGBGB*. According to this provision, the law of both spouses' native country, in this case Austrian law, was authoritative. As the law of the country of both spouses was involved, its application did not give the husband preferential treatment. Thus a violation of article 3 (2) of the Basic Law (principle of equal treatment) was ruled out. (On this question see also the decision of the Federal High Court of 12 May 1971 (*BGHZ* 56, p. 193), according to which a non-German wife may, under German law, choose between the name she used in her native country and the name which she is entitled to use under the law of the State in which both spouses have their habitual residence.)

The illegitimate status of a German child of an Italian was the subject of a decision of the Karlsruhe Higher Regional Court of 19 September 1972 (*FamRZ* 1972, p. 651). It concerned the entry in the register of births of the paternal recognition of an illegitimate child. The Italian father had objected to the entry because, though he acknowledged paternity, he had procreated the child in adultery, so that recognition violated Italian law. The ground on which rejection of the objection was based was that it prejudiced the status of the illegitimate child and this conflicted with German public order. The court explained that although under international private law the legal relationship between father and illegitimate child was, as a general rule, governed by the law of the State of which the father was a national, it was necessary in each individual case to examine whether the effect of a provision of non-German law was inconsistent with German values so that the provisions in question could not be applied. Although, it said, taking the law of the father's native country as a simple point of reference was a neutral, purely regulatory principle and was not unconstitutional, even if such point of reference were detrimental to the child, the situation was different where the child's basic rights were violated. The court then expounded on the question of discrimination

against the illegitimate child which would ensue if paternal recognition were not entered. With a view to giving as much consideration as possible to foreign law, the court points out that the ban on the recognition of children procreated in adultery has been eased in Italy also with reformed Italian family law no longer providing for such a ban. Thus the failure to make an entry of paternity was unconstitutional. Similarly, the Duisburg Regional Court, in its decision of 23 June 1972 (*Das Standesamt*, a periodical of the registry office, 1973, p. 16), decided in favour of the entry of a Turkish national's acknowledgement of paternity. On grounds of German public order the acknowledgement ban prescribed by the Turkish Civil Code was deemed to be without effect.

The Federal High Court, expounding in general on the principle of equality in its decision of 12 July 1971 (*BGHZ* 56, p. 381), held that the legislator was free to select from the manifold situations in life the elements that should form the criteria for determining equal or unequal treatment, whilst at the same time observing the limits of discretion.

In its decision of 4 November 1971 (*BVerfGE* 32, p. 173), the Federal Constitutional Court went very far in its application of the equality rule when it gave the following general interpretation of the legal concept underlying the Redress of National Socialist Wrongs to Members of the Public Service Act: "It is arbitrary to treat those who meet all the requirements of the relevant provisions and have in particular proved their ability but could not enter the public service because the public authority has, for reasons of persecution, refused to meet its obligations under the law (in this specific case the initiation of the habilitation procedure), different from those who had already been members of the public service and then been dismissed for reasons of persecution".

As regards the controversial question whether a person can demand equal treatment on the strength of an administrative practice which is not consistent with the law, the Administrative Court of Baden-Württemberg held in its decision of 8 February 1971 (*DVBl* 1972, p. 186; *NJW* 1971, p. 954) that the principle of equality could not lead to sanctioning a breach of the law apt to undermine the legal system. But this was not the case if, in expectation of a retroactive regulation dispensing with fees, no more fees had been charged in the period envisaged for retroactive effect. The court said that the person being assessed could invoke such an administrative practice.

The Federal Constitutional Court, in its decision of 23 March 1971 (*BVerfGE* 30, p. 409; *DÖV* 1971, p. 383), found that it was reconcilable with the requirement of equality that under the law of 14 July 1904 compensation is only paid to innocent foreigners held in custody if reciprocity is guaranteed, since it is one of the legitimate and traditional responsibilities of the State to seek protection for its own citizens in other countries.

In its decision of 24 August 1971 (*NJW* 1972,

p. 119), the Federal Social Court concluded from the still existing partial inequality of average incomes of men and women and the resulting lower contributions which women paid to the pensions insurance fund that lower pensions for women were justified.

Concerning Bavarian applicants for university places in Bavaria having preference over other applicants, the Bavarian Constitutional Court, in its decision of 15 January 1971 (*BayVerfGH* 24, p. 1), enlarged on the question of unequal treatment according to the principle of "homeland and origin" (article 3 (3) *GG*). The court held that consideration of the applicant's geographical relationship with the university was a concession granted out of social considerations but did not constitute any privilege on the basis of "homeland and origin" (but see also the *numerus clausus* decision of the Federal Constitutional Court, which is commented upon in section 17 below).

Government economic planning and the principle of equal opportunities (article 3 (1) *GG*) as between all citizens were the subject of the decision of the Federal Administrative Court of 8 September 1972 (*Jus* 1973, p. 242). If the Government distorts competition by the sale of grain that has not been subject to levies and thus forces down the selling price it must enable importers of grain which has been subjected to levies to sell it without loss. Otherwise it would be violating the principle of equal opportunities and was therefore obliged pursuant to article 3 (1) of the Basic Law to reduce the rate of levy by means of subsidy. [The system of levies is practised within the European Economic Community in order to protect the agricultural markets of member States against lower world market prices.] Whilst, according to this decision by the Federal Administrative Court, the Government is under obligation to accord traders equal treatment, private companies do not, according to previous decisions of this court (cf. decision of 22 February 1972, *Jus* 1972, p. 596), under the Basic Law, have any general claim to equal opportunities in competition with the Government itself. They are merely protected against any arbitrary privileged treatment of public enterprises.

3. Protection against arbitrary deprivation of liberty

(*Universal Declaration, arts. 3, 4 and 9; second Covenant, arts. 8, 9 and 11*)

During the period under review, the most important taken relating to deprivation of liberty and its enforcement was that of the Federal Constitutional Court of 14 March 1972 (*BVerfGE* 33, p. 1; *NJW* 1972, p. 811; *DVBl* 1972, p. 385). It dealt with the fundamental significance of basic rights for persons serving prison sentences and with the consequences of legislative inactivity. A convict had asserted that his basic rights, especially that of free speech and privacy of mail, had been violated in that a letter he had written to a member of *Aktion Notwende*, an organization for the care of convicts, had been held back because it contained negative comments on the prison director. The plaintiff based

his case on the fact that those basic rights could only be restricted by virtue of a law. No such law on execution of sentence has yet been passed so that the basic rights of prisoners are restricted on the strength of a simple administrative order. After the courts that had heard the complaint had found the withholding of mail to be within the law on the ground that the basic rights of prisoners, owing to the manner and purpose of the punishment, are restricted or suspended in so far as the condition of imprisonment so requires, the prisoner lodged a constitutional complaint. The Federal Constitutional Court upheld the complaint on the ground that case law and legal opinion had in the past for the most part started from the assumption that a prisoner was governed by a "special relationship with public authority". Consequently, "his basic rights have been rendered indeterminate to an intolerable degree". For a transitional period prisoners' basic rights could be restricted without the support of statutory law, but now the legislator's duty to pass a law on execution of sentence had become imperative. The time-limit for the adoption of such law was the end of the current legislative term. By then the "legislator has time to enter a bill oriented to the present-day understanding of basic rights and stating explicitly where and to what extent those rights may be restricted". Later than that the present situation, which was inconsistent with the current interpretation of the Constitution, could no longer be accepted. "If" the court held, "it were possible in the execution of sentence for basic rights to be restricted at random or discretion, this would conflict with the general concept of State authority being bound by basic rights. A restriction may only be considered if such a step is indispensable to achieve a purpose in the interests of the community as a whole which is covered by the values embodied in the Basic Law, and if such step is put into effect in a manner provided for under constitutional law." The court's finding was that although the checking of mail was at present still permissible without a basis in statutory law, the stopping of the letter in this case was not covered by the purpose of the execution of sentence. The letter contained a personal judgment and therefore constituted an expression of opinion which could not be denied protection under article 5 of the Basic Law on the ground that only "valuable" opinions were worthy of protection. Indeed, the "right of free speech is in any case a constituent element of liberal democracy ... in a pluralistic State based on the concept of liberal democracy every opinion (is) worthy of protection, even if it diverges from the dominant opinion". Negative personal judgments also enjoyed protection in so far as they were not restricted under general laws (article 5 (2) GG). In the absence of a law on execution of sentence the authorities could only invoke the purpose of execution. Only if such purpose had rendered the stopping of the letter absolutely necessary would such action have been justified. But negative opinions as such were not liable to disrupt the running of the prison. They were, after all, intended for someone outside the prison. As a "State institution" the prison could not "keep out of public discussion of the measures it takes

... on the grounds of risks which are not specifically defined".

In its decision of 19 December 1972 (*NJW* 1973, p. 380), the Karlsruhe Higher Regional Court expounded as follows on the duration of pre-trial custody in terms of rule-of-law principles: pre-trial detention in excess of 12 months must be confined to exceptional cases. The longer the accused has been detained, the more essential it is that the trial should be conducted quickly.

With reference to article 104 (1) and (2) of the Basic Law, which governs the restriction and deprivation of liberty as well as review of custody, the Krefeld Regional Court, in its decision of 28 June 1972 (*NJW* 1972, p. 2058), held that it was illegal to shut off a detained person from the outside world completely by allowing him no visitors. The court considered it permissible to ban visitors for a limited period of time but only if other, less drastic measures were insufficient and pre-trial custody would be pointless without such a ban.

According to a decision taken by the Stuttgart Higher Regional Court on 23 May 1972 (*MDR* 1973, p. 335), excessive correspondence by a detained person which constitutes an impediment to proper control would prejudice the purpose of pre-trial custody and therefore cannot be demanded by the person concerned.

4. The right to physical integrity

(*Universal Declaration, arts. 2 and 7; first Covenant, arts. 2 and 3; second Covenant, arts. 2, 3 and 26*)

On the question whether an order determining the length and style of hair to be worn by soldiers constituted a violation of the basic right to physical integrity, the Federal Administrative Court, in its decision of 25 July 1972 (*NJW* 1972, p. 1726), held that intrusions which do not cause any pain nor damage to health do not affect this basic right unless the haircut is deemed to be unreasonable malicious treatment, which did not obtain in this case.

5. Judicial and administrative guarantees of due process

(*Universal Declaration, arts. 8 and 10; second Covenant, arts. 2 and 14*)

In several judgments which are the subject of this section of the report, the question arises whether and in what manner basic rights are effective as between private persons (the effect of basic rights on third parties) or whether they merely serve to protect the individual against interference by the State. While not going into details, some decisions assume that basic rights also apply in private law. This is the case, for instance, in the decision of the Federal High Court of 26 April 1972 (*NJW* 1972, p. 1414; for details see section 8 below). The court held that an agreement between the parties to a divorce that one should move to another residence was contrary to public policy since it violated the basic right of freedom of movement.

Whereas it is the emerging opinion that the principal basic rights have effect not only between the individual and the State but also between private persons, the still prevailing opinion differs. In the *Mephisto* decision (see section 1 above), the Court considered that the fundamental rights only indirectly influenced the relationship between private persons. It held that the Constitutional Court merely had to ensure that the application of civil law by the judge was not based on an erroneous conception of the scope of basic rights and therefore did not itself violate the basic rights.

As regards the due constitution of a tribunal, the Federal Social Court, in its decision of 11 February 1971 (*MDR* 1971, p. 522), held that a court presided over by a blind judge was duly constituted so long as it was not necessary to have a visual impression of objects or persons.

One complaint before the Federal Administrative Court—decision of 30 August 1972 (*JZ* 1973, p. 26)—concerned the review of irrevocable law. Nevertheless, the court intimated that such review was possible in accordance with rule-of-law principles, though it “can only be an exceptional case, where, for instance, the law has obviously been arbitrarily interpreted”.

Because an appraisal of appeal indicated that the writ must contain a specific application in spite of the fact that only a discretionary provision existed in this respect, the Federal Administrative Court, in its decision of 13 January 1971 (*VerwRspr* vol. 23, p. 121), held that the complainant's action was impeded with the result that the time-limit for commencing an action had not begun to run, irrespective of whether the belated action actually stemmed from wrong appraisal or not. On the contrary, it was accordingly sufficient to support the appeal if the incorrect appraisal was generally apt to impede the filing of an appeal.

In the decision of the Federal Constitutional Court of 20 July 1971 (*BVerfGE* 31, p. 297; *NJW* 1971, p. 2301), the non-admissibility of attorneys-at-law to proceedings before the labour court is deemed compatible with the right to a legal hearing and with the principle of equality. The court ruled that non-admission was in the interest of the employee because it lowered the cost of the proceedings since, where attorneys are admitted, the employer, being wealthier, would be in a stronger position.

In the opinion of the Düsseldorf Higher Regional Court (decision of 10 February 1971, *MDR* 1971, p. 496), there exists no general principle of law that all decisions by civil courts subject to complaint must be substantiated. Substantiation may, however, prove to be compulsory in individual cases in conformity with the principles of rule of law.

The decision of the Federal Constitutional Court of 26 January 1972 (*DVB1* 1973, p. 361) concerns the question whether and under what conditions procedural powers under public law are subject to forfeiture. According to that decision, the relevant period must not be too short and it must have been possible for the person concerned to invoke the authority of the court,

and he must reasonably have been expected to do so. The court was very generous in fixing the period of time. In conformity with the lower courts it determined that the contested submission of the tax debtor in 1954, which under the old law excluded the possibility to sue, ought to have been brought before the court at the latest by 1961, after generally known superior court decisions had been passed in 1959 and 1960 according to which leave to institute legal proceedings had been declared admissible for the submission pursuant to the Tax Code of the person liable to taxation.

The introduction of data storage and processing systems by the public authorities has far-reaching practical and legal consequences for the citizen. Currently preparations are being made for the introduction of a general identity number for every citizen. Electronic data-processing, which considerably increases the efficiency of administrative procedures, can affect the individual's privacy and his rights in many ways. One example of this is the Ordinance on the Registration of Data (*DEVO* for the Social Insurance Institutions and for the Federal Labour Office of 24 November 1972 (*BGBI* I, p. 2159). Since labour and social legislation constitutes the largest source of specialized data for the authorities, this was the obvious field in which to apply computers. However, the individual citizen finds it even harder than before to check up on the vouchers and notices produced by these systems in what is in any case a complex field of legislation (cf. also the decision of the Regional Social Court of Rhineland-Palatinate of 18 June 1971). On the other hand it is now possible, because of the reliability and speed of the retrieval process, to provide the insured person with regular information about his insurance. Section 17 *DVEO* requires the statutory pension insurance institution to send the insured person a statement of his computer-stored account at least every three years (the “insurance process”). Section 17 (2) *DEOV* reads: “The insured person should check whether the information is correct and complete”, in many cases something he cannot do at all or only with great difficulty, although section 17 (3) *DEVO* also states that “the insurance process does not constitute an administrative act binding on those concerned”.

6. Due process in penal proceedings

(*Universal Declaration, arts. 10 and 11;*
second Covenant, arts. 14 and 15)

The legal status of the accused in penal proceedings was the subject of some judicial decisions worthy of note.

In its decision of 10 November 1971 (*BGHSt* 24, p. 239; *JZ* 1972, p. 59; *NJW* 1972, p. 402), the Federal High Court was concerned with the complaint about the excessive length of a trial. The complainant had argued that the charge against him (of peculation) should be dismissed, since the trial had taken too long and his right to a hearing and decision within a reasonable time (first sentence of article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms) had been violated.

The Federal High Court ruled that the appropriate way to take into account a violation of the accused's right to a speedy conclusion of his trial was not to stop proceedings but to make allowance for the alleged violation in fixing the penalty. In this respect sufficient provision was made under national law. Violation of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms did not give rise to a specific legal consequence under German law.

The Coblenz Higher Regional Court held that proceedings were excessively long only where the right of the accused to a prompt and speedy trial was violated to such an extent that the ensuing delay was equivalent to the withholding of justice. In an action against an industrial enterprise, where the provision of evidence proved difficult, the court, in its decision of 13 October 1971 (*NJW* 1972, p. 404), considered that even a period of nine years for the proceedings was "reasonable".

Because the constitution of a criminal court was not in accordance with regulations, the Federal High Court, in its decision of 16 November 1972 (*NJW* 1973, p. 205), quashed a sentence. The court in question was held to be irregularly constituted because, according to the time-table for the organization of business, the competent presiding judge was at the same time scheduled to preside at the sessions of the court of assizes throughout the year. Since the latter court was large and busy, the presiding judge in the criminal court in question was unable to attend about three quarters of its hearings. The presiding judge had been absent also at the trial of the accused, who later complained about this, and his place had been taken by the next most senior judge. The Federal High Court regarded this not as a temporary permissible absence in an individual case, but as a failure lawfully to constitute the court since it was impossible to preside over two courts at the same time.

In its decision of 21 June 1971 (*NJW* 1971, p. 2320), the Geilenkirchen District Court ruled that the accused, who did not understand the language used in court, was entitled to the services of an interpreter free of charge. Contrary to earlier decisions of other courts, exemption from charges must not be just temporary but permanent. This followed from the fact that the purpose of article 6 (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms was to establish under international law certain minimum rights and freedoms and thereby create what are to some extent new national legal norms whose fundamental significance must be acknowledged. Therefore a wider interpretation of that Convention was necessary. The Convention contained no time-limit to exemption from charges. The requirement of a fair hearing demanded that the accused should not be put at a disadvantage by the chance circumstance that he did not know the language used in court.

In its decision of 14 July 1971 (*BayObLGSt* 1971, p. 128; *Juristische Rundschau* 1972, p. 30), the Bavarian Supreme Court also relies on article 6 of the European Convention for the Protection

of Human Rights and Fundamental Freedoms; on the appeal of the accused, who, found guilty of receiving stolen goods, had complained about the judge's weighing up of the evidence, the Bavarian Supreme Court quashed the sentence. The court's arguments were not based, as would have been possible, on the provisions of the German Code of Criminal Procedure, but directly on article 6 (2) of the above-mentioned Convention. The presumption of innocence, according to the Convention, had to be refuted by logical arguments based on carefully established facts and there had to be sufficient certainty in the light of experience for the sentence; these requirements the court of first instance had not adequately taken into account in finding the accused guilty.

The Bavarian Supreme Court, in its decision of 7 November 1972 (*MDR* 1973, p. 336), also dealt with the right to a hearing in court. It found that this right had been violated if during the trial, at which the party concerned had permission not to appear and was not otherwise represented, expert evidence was introduced of which the party concerned had no previous knowledge and which was taken into consideration in giving judgment against the party. In another case concerning the payment of a fine (decision of 28 May 1971, *BayObLGSt* 1971, p. 91), the court, in consideration of the right to a hearing in court, ordered a stay of proceedings if the party concerned availed himself of his right not to appear and a new incriminating factor emerged with which he could not have reckoned.

In contrast to the decision to refuse pardon to which a person is not entitled (*BVerfGE* 25, p. 352, decision of 23 April 1969), the decision to revoke a grant of pardon, according to the decision of the Federal Constitutional Court of 12 January 1971 (*BVerfGE* 30, p. 108; *DÖV* 1971, p. 384; *DVBt* 1971, p. 395; *NJW* 1971, p. 795), affects a convicted person's rights. Such a revocation is subject to judicial review in accordance with article 19 (4) of the Basic Law.

The law to be applied in respect of security and betterment measures was the subject of a decision of the Federal High Court of 2 March 1971 (*NJW* 1971, p. 948). Police supervision was held to be a security measure, not a penalty, and was therefore not subject to the prohibition of retroactivity laid down in article 103 (2) of the Basic Law. An order for police supervision could therefore also be made under a retroactive provision.

Changes in the law on detention in the Federal Republic of Germany were introduced by the Law to amend the Code of Criminal Procedure of 7 August 1972 (*BGBI* I, p. 1361). The risk of attempted escape would justify detention, according to the revised version of the law, if "considering the circumstances of the individual case there was a risk that the accused would evade penal proceedings" (section 112 (2) (2) *StPO*). The concrete description in the old law was thus replaced by an abstract formulation. In serving a detention order because of the risk of escape, the courts will have to bear in mind that this is always "punishment on suspicion". According to the European Convention for the Protection of Human Rights and Fundamental Freedoms,

the presumption of innocence applies even to persons under grave suspicion, and the Basic Law ranks the right to liberty very highly, second only to the protection of human dignity. The new law also simplifies the requirements for detention imposed to avoid the risk of the offence being covered up and introduces the risk of repetition as a new ground for detention (section 112a *StPO*). However, the new section 122a *StPO* lays down that if a person is detained because of the risk of repetition, detention may not exceed one year. Even where there are no grounds for detention because of the risk of escape and/or the risk of the offence being covered up, a pre-trial detention order can always be served where there is strong suspicion of murder, manslaughter or genocide or of an explosives offence against a person's life or integrity.

The law on compensation for penal measures (*StrEG*) of 8 March 1971 (*BGBI* 1971, p. 157) set aside the law of 20 May 1898 on compensation for persons acquitted on appeal and the law of 14 July 1904 on compensation of acquitted persons for custody awaiting trial and incorporated the most important conditions and requirements for compensation in one piece of legislation. The law distinguishes between compensation for injury as a result of a wrong conviction or a security and betterment measure ordered without conviction, and injury as a result of custody awaiting trial or some other penal measure (sections 1 and 2 *StrEG*). Compensation on grounds of equity may be granted if proceedings were dropped at the decision of either the public prosecutor or the court (section 3 *StrEG*). Prosecution brought about deliberately or through gross negligence continues to preclude compensation (section 5 (2) *StrEG*). Compensation is awarded for the damage to property occasioned by the criminal prosecution and, in the case of imprisonment on the basis of the decision of a court, also other kinds of damage and injury (section 7 (1) *StrEG*). Compensation for each day of imprisonment amounts to DM 10 (section 7 (3) *StrEG*). The obligation to pay compensation is by court order (sections 8 and 9 *StrEG*). Persons entitled to compensation are not only those who have been awarded compensation from public funds but also their legal dependants, who shall be compensated to the extent that they were deprived of their maintenance as a result of the prosecution (section 11 *StrEG*).

The eleventh and twelfth laws to amend the Penal Code of 16 December 1971 (*BGBI* 1971 I, pp. 1977 and 1979) were passed in the context of the increasing cases of air piracy and kidnapping. Under these laws, the German Penal Code will apply to all cases of air piracy, wherever and by whomever they may be committed (section 4 (3) No. 3a *StGB*). Air piracy itself is made a crime under section 316c of the Penal Code and is regarded as a graver offence where a person is killed or weapons are used. The taking of hostages is made a crime under section 239b *StGB* and the failure to report such a plan or its execution is also liable to punishment under section 138 *StGB*. Finally, the penalty for robbery with assault on drivers (section 316a *StGB*) has been changed so that it is now possible in less

serious cases to reduce the prison sentence to one year (section 316a (1) *StGB*).

7. Protection against interference with privacy

(*Universal Declaration, arts. 6 and 12;*
second Covenant, arts. 16 and 17)

Of considerable importance with regard to the protection of privacy is the Federal Central Register Law (*BZRG*) of 18 March 1971 (*BGBI* 1971 I, p. 343). Recorded in the central register are: convictions (previously in the penal register), reopening of proceedings, extradition of aliens, bans on the exercise of an occupation and similar matters, legal incapacitation, placements in educational establishments, dropping of legal proceedings or acquittal due to lack of responsibility for one's actions (sections 3 and 18 *BZRG*). Private persons are not entitled to information from the central register except in respect of entries relating to themselves. A person applying for information on the entries concerning him in the central register (testimonial on conduct) may, if the testimonial is to be presented to an authority and must therefore be sent there directly (first sentence of section 28 (5) *BZRG*), ask for it to be sent first to a district court specified by him where he may examine it. The applicant must be informed of this possibility. If he objects to it being forwarded to the authority, the testimonial must be destroyed by the district court (third sentence *et seq.* of section 28 (5) *BZRG*). The law sets out in detail the conditions for, and restrictions on, the provision of information, the cancellation of entries in the central register as well as the legal consequences of cancellation. Cancellation means that only in exceptional cases may any account later be taken of the action resulting in an entry being made. As a rule, such entries can no longer in legal matters be held against the person concerned and cannot be used to his disadvantage (section 49 *BZRG*). The law's second part contains provisions on entries, information and cancellations in the education register kept under the law on juvenile courts and which replaces the previous judicial educational list.

Protection of privacy must include in particular the inviolability of the home. The Federal Constitutional Court, in its decision of 13 October 1971 (*BVerfGE* 32, p. 54; *DVBl* 1971, p. 892; *DÖV* 1972, p. 1; *NJW* 1971, p. 2299), ruled on a constitutional complaint that the term "home" in article 13 (1) of the Basic Law should be broadly interpreted. It should be understood in the sense of "private living sphere" and should include rooms for study, work and business. The interpretation of the terms "encroachments and restrictions" in article 13 (3) of the Basic Law had, however, to take into account the differing need for protection of the private living sphere and of offices for work, study or business.

The Munich Higher Regional Court, in its decision of 10 March 1972 (*NJW* 1972, p. 2275), also ruled on the inviolability of the home. The issue in question was whether police officers, who had obtained entry to a dwelling on the pretext of wanting to buy drugs which they believed were kept there, had committed a breach

of domestic privacy. This depended on whether the officers had, in order to obtain evidence of drug traffic, acted against the law by using a deception to gain entry. The court held that the action was justified on grounds of supralegal necessity as found in customary law. The danger to the public from drug crimes was so great that the public interest in combating this danger took priority over the interest of the owner of the house in the protection of his home; the court held further that the drugs could have been discovered with such speed and thoroughness only by means of a deception. The conduct of the police officers had therefore been reasonable and in such a case the protection of the home guaranteed in the Basic Law assumed secondary importance.

The secrecy of mail, post and telecommunication, one of the essential basic rights for the protection of privacy, was the subject of a decision by the Karlsruhe Higher Regional Court of 24 August 1972 (*NJW* 1973, p. 208). The court had deemed pornographic printed material presented during the trial evidence for the crime, although the public prosecutor had discovered the prohibited contents of the postal consignment only by violating postal secrecy. The customs postal authority had, on its own initiative and despite the absence of legal grounds for its action, forwarded the consignment to the public prosecutor. The court therefore concluded that, since the public prosecutor had received the material in violation of article 10 of the Basic Law (secrecy of mail, post and telecommunication), it could not be used as evidence in penal proceedings. The court then considered whether in exceptional cases the use of evidence obtained in violation of postal secrecy might be admissible, for instance, in connexion with grave offences against the law. The court felt that only in the most exceptional cases and certainly not in the present instance should the interests of the prosecution, to the detriment of postal secrecy, take precedence over the interests of the individual. Never should the weighing up of the one against the other lead to "the toleration and perpetuation of violations of the Basic Law". Whereas in the aforementioned case a basic right was violated in obtaining evidence in a case on which the Hamburg Higher Regional Court ruled on 11 October 1972 (*Juristische Schulung* 1973, p. 320), evidence was used in the proceedings which had been obtained by chance in the course of legal telephone monitoring. The court found that the use of such evidence was admissible, although the telephone monitoring had been ordered in connexion with another suspected offence and could not have been ordered on account of the offences for which the accused had been brought to trial.

In its decision of 8 March 1972 (*NJW* 1972, p. 1123; *DVBl* 1972, p. 383), the Federal Constitutional Court considered the relationship between the doctor's duty of secrecy, the protection of the personal sphere and police investigations. The issue in question was the admissibility of the seizure of a doctor's records on a patient now facing criminal proceedings (complainant) and which, after the death of the doctor, were in the possession of the doctor's successor in the

practice. Whereas the lower court had ruled that the seizure was legal, the Federal Constitutional Court found that the seizure was in violation of the Basic Law and based its decision on an interpretation of the Code of Criminal Procedure in conformity with the Basic Law. It argued that medical records concerned the patient's private sphere and were therefore subject to the protection which the Basic Law guaranteed the citizen in accordance with the dignity of man and the right to the free development of his personality. A person receiving medical attention was entitled, in the opinion of the Constitutional Court, to expect that everything he told the doctor concerning his health would remain secret. Only thus could the trust necessary for effective medical care be maintained. The protection due to the individual's interest in the secrecy of such information could only be refused when an overriding public interest urgently required this, for example to combat the danger of epidemics. In such cases any necessary infringement should be proportionate to the situation. The interest in solving crimes did not in general justify the seizure of medical records. The fact that the records were in the possession of the successor to the practice made no difference, the court considered, to its interpretation of the constitutional issue. There was no material reason why the protection accorded the individual by the Basic Law should have a time-limit in such a case.

In its decision of 19 July 1972 (*MDR* 1973, p. 25), the Federal Constitutional Court dealt with the question whether, like members of other professions, social workers are entitled under the Basic Law to withhold testimony. The court held that in exceptional cases and under certain very strict conditions a limitation of the requirement to testify could be derived directly from the Constitution, if, by the nature of the evidence, the questioning of a witness would infringe the right to free development of the personality, in particular the privacy of the individual, which is protected in article 2 (1) in conjunction with article 1 (1) of the Basic Law. The obligation of a social worker to give evidence did not, in fact, violate the right under the Basic Law of persons seeking advice that their private sphere be respected. The court referred to long-standing precedents according to which not all aspects of private life enjoyed the absolute protection of the Basic Law. In contrast to other professions, that of social worker was not characterized by highly personal relations of trust where in principle everything was confidential. Towards his clients the social worker acted not just as a personal helper and adviser but, most particularly, as an agent for the provision of State assistance. In so doing he had to make available to the official authorities much information concerning the private life of his clients, a function which was recognized also by his clients. The social worker was not, therefore, entitled to withhold testimony.

Some carefully formulated criteria were laid down by the Federal Constitutional Court in its decision of 9 March 1971 (*BVerfGE* 30, p. 250; *NJW* 1971, p. 1603) to define the right of the State to encroach on the private sphere in the sense of free economic activity by means of

economic planning measures taken under the Safeguarding Law (Law on Measures to Safeguard the Economy against External Influences of 29 November 1968). The court reiterated its long-held view that "the principle of the rule of law requires that the individual should be free of unnecessary interference by the State". However, in the court's opinion, it was for the legislator to determine methods and aims; such political decisions were not unconstitutional because they were based on imprecise forecasts (i.e. economic forecasts). The principle of the rule of law prohibited only such laws encroaching on the private sphere which were absolutely inappropriate for their purpose. The constitutionality of a law could therefore be examined only to a limited extent. The court considered that measures taken under the Safeguarding Law and which, although in theory not entirely inappropriate, had not actually achieved their purpose, were compatible with the principle of the rule of law. It therefore rejected the constitutional complaints against a special turnover tax levied under the Safeguarding Law from a certain date on particular exports.

8. The right to freedom of movement and the right to emigration

(*Universal Declaration, art. 13;*
second Covenant, art. 12)

Certain legal restrictions on the right to leave a country—including therefore the right to the issue of a passport—are in conformity with the Basic Law. According to the decision of the Federal Administrative Court of 1 February 1971 (*NJW* 1971, p. 820), a passport could be refused if the applicant was suspected of trying to evade criminal proceedings pending against him or the execution of sentence in the Federal Republic. The court pointed out, however, that the passport authorities had no discretionary powers but were obliged in each case to examine the applicant's intention on the basis of established facts and issue the passport if there emerged no facts pointing to an attempt to evade justice.

Whereas most cases concern a complaint about an encroachment on the right of free movement by direct State intervention, the decision of the Federal High Court of 26 April 1972 (*NJW* 1972, p. 1414) deals with an agreement by a divorced couple by which the defendant had undertaken to change his place of residence; when he failed to do this the plaintiff went to court to enforce the agreement. The Federal High Court held that the agreement was null and void for the reason that a renunciation of the basic right to freedom of movement could only be admissible in exceptional cases and for very grave reasons but, generally, such a renunciation, as in the present case, offended against public morals (section 138 *BGB*). The court avoided, however, taking issue with the question whether basic rights protected against State action should as a rule enjoy priority over general provisions of civil law between private persons as well.

9. The right of asylum; deportation; extradition

(*Universal Declaration, art. 14;*
second Covenant, art. 13)

In its decision of 29 April 1971 (*BVerwGE* 38, p. 87), the Federal Administrative Court dealt with questions of the right to asylum, the status of refugees and the protection of marriage and family under articles 12, 26 and 34 of the Convention Relating to the Status of Refugees, article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and articles 6 (1) and 16 (2) of the Basic Law. The plaintiff had applied for asylum in the Federal Republic of Germany, which had been granted on the grounds that, although the plaintiff himself was not entitled to asylum, his wife had refugee status in France under the Convention. In the interest of equal treatment for married people and protection of the family the plaintiff was entitled to the same status. On the complaint of the Commissioner for Asylum Affairs the grant of asylum was revoked. The Federal Administrative Court found that revocation was legal, since the fact that the plaintiff's wife had been granted asylum in France did not entitle her husband to be given the same status in the Federal Republic of Germany; the plaintiff would have to go to France if he wanted to acquire refugee status under the Convention. The purpose of the Convention relating to the Status of Refugees was to facilitate the assimilation of refugees into the host country. The Convention was therefore essentially concerned with national status; it did not create an international refugee status recognized in all States party to the Convention. The special protection for marriage and family under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 6 of the Basic Law did not obviate this conclusion, for under both the plaintiff could only acquire his wife's status. Since his wife had no refugee status in the Federal Republic, but only in France, he could acquire no rights by virtue of her status in the Federal Republic.

The Coblenz Higher Administrative Court ruled in its decision of 16 May 1972 (*DVBf* 1973, p. 85) on the legality of a deportation. The complainant, after serving a prison term of several years for manslaughter, was to be deported to a country where, he claimed, he was threatened with political persecution and therefore applied for asylum. Under the first sentence of section 14 (1) of the Aliens Law, an alien may not be deported to a country where, because of his political convictions, his life or liberty are at risk. Under the second sentence, this restriction does not apply to an alien who has been convicted by due process of law of a particularly grave crime. This provision is based on article 33, paragraph 2 of the Convention Relating to the Status of Refugees of 28 July 1951. The court examined whether deportation despite possible political persecution was compatible with the second sentence of article 16 (2) of the Basic Law where the right of asylum is guaranteed without restriction. The court felt that there was no reason why the makers of a national constitution should

not grant persons liable to political persecution rights going beyond general or contractual international law. However, in the light of the history of the Basic Law, the court denied that the makers of the Constitution had wanted to place an obligation on the State authorities going beyond the principles laid down in the Geneva Convention. The right of asylum guaranteed in the Basic Law did not therefore, preclude in individual cases the deportation of an alien to his own country, even if he was liable to political persecution, when the person was, as in the present case, a dangerous criminal. Nevertheless, the principle of proportionality, which was also of fundamental constitutional importance, had to be respected. A judgment had to be made as to whether the danger arising from the alien's further residence in the federal territory was not significantly less than the danger threatening him if he were deported.

The decision of the Federal High Court of 17 February 1972 (*BGHSt* 24, p. 307; *MDR* 1972, p. 529) dealt with the right to a hearing in court in connexion with extradition proceedings. The court held that a person already extradited had the right to a second hearing in court if permission for extradition on account of a further offence was being sought. The accused had to be given the opportunity, within an appropriate time, to make a statement on the second request.

The decision of 10 March 1972 (*DVBl* 1972, p. 874) of the Frankfurt/Main Administrative Court was concerned with an incorrect deportation. A woman from New Zealand who was visiting the Federal Republic of Germany was deported because the German immigration authorities had wrongly required a visa in her passport on entering the country. The authorities were sentenced to pay the costs of the complainant's journey back to the Federal Republic.

10. The right to a nationality

(*Universal Declaration*, art. 15;
second Covenant, art. 24)

Nationality constitutes the most comprehensive legal status as regards the citizen's rights and duties. The Basic Law grants many basic rights only to nationals. Acquisition and loss of a nationality usually take place according to certain formal and precisely specified rules. Nevertheless, in its decision of 14 December 1972 (*MDR* 1973, p. 431), the Federal Administrative Court held that in exceptional cases and in the light of the principle of the rule of law protection should be extended to a citizen whose German nationality had been certified by mistake in 1952 and which should now be regarded as his definite and inalterable legal status. The complainant was by birth an Austrian. After the *Anschluss* with Austria he acquired German nationality, only to lose it again after 1945. Later, the competent authority considered the complainant's application for naturalization unnecessary since he had lived in Brünn during the war and there acquired first Czechoslovak and then, under the German-Czechoslovak Treaty of 20 November 1938,

German nationality by virtue of "collective naturalization". The complainant was issued with a German passport and identity card and from 1952 to 1965 was treated as a German citizen. In 1965 the competent authority informed him that there had been a legal mistake in establishing his citizenship in 1952 and that it could not uphold its previous decision. The complainant had never been a Czech national and could therefore not have acquired German nationality by collective naturalization. The court pointed out the importance of establishing a legally correct situation, particularly as regards the law on nationality questions, in view of the far-reaching consequences attending the possession or lack of a nationality and because other States might also be affected; nevertheless, in the court's opinion the re-establishment of a legally correct situation could not take priority over all other considerations. In view of all the circumstances of the case, the trust the complainant had developed on the basis of the authority's behaviour had a prior claim to protection. The authority was ordered to issue to the complainant documents certifying his German nationality.

11. Protection of marriage and the family

(*Universal Declaration*, art. 16; *first Covenant*, art. 10; *second Covenant*, arts. 23 and 24)

Several decisions have dealt in the period under review with questions of the capability of contracting marriage and the right to marry in the case of marriages with aliens. The decision of the Federal Constitutional Court of 4 May 1971 (*BVerfGE* 31, p. 58; *NJW* 1971, p. 1509) considered whether it was compatible with article 6 (1) of the Basic Law, which accords marriage and family the special protection of the State, if German authorities and courts refused the right to marry to a foreigner and a German woman divorced in a German court according to German law, because in the country of the foreigner the divorce is not recognized. The Federal Constitutional Court ruled that the contested decisions constituted an encroachment on the basic right to marry derived from article 6 (1) of the Basic Law. Since this basic right was not subject to restriction by law in any other way, even encroachments not affecting the substance of the right might constitute an infringement. The argument that, in the sphere of private international law, German constitutional law could only have limited application did not, in the opinion of the court, do justice to the supreme importance of the Basic Law, in particular of the basic rights. The party concerned could not be left to the uncertain outcome of the application of the particular foreign law referred to by the collision norm. It was essential that the basic rights be applied by German authorities and courts, since even in "collision" cases the exercise of German State authority, which is bound to apply the basic rights, was at issue. This view did not devalue foreign law nor was it incompatible with the necessary positive attitude to international law. The Federal Constitutional Court reached the conclusion that the application of the foreign law in the present case constituted an

excessive and disproportionate encroachment on the complainant's right to marry.

The Federal High Court, in its decision of 19 April 1972 (*FamRZ* 1972, p. 360), also had to rule on the question as to how foreign law, as introduced through international private law, could be measured in individual cases against the basic rights. A Spanish national who had obtained a divorce in Germany wanted to marry a German woman. Since under Spanish law his marriage continued to exist, the Spaniard applied for and was refused exemption from presenting the certificate of capability for marriage. Thereupon he took his case to court and the Federal High Court ruled in his favour. The court argued that the basic right to marry required that the obstacle of bigamy should not be taken into account in this case, since otherwise the Federal Republic of Germany, which had granted the Spaniard the divorce, would have denied him the liberating consequences of this divorce and thus compelled him to remain single. The basic right to marry, protected under German law, can only apply, however, where the partner, according to German law, is unmarried. Thus the Karlsruhe Higher Regional Court, in its decision of 6 December 1972 (*FamRZ* 1973, p. 97), ruled that under the law it was not possible to exempt a Portuguese woman from presenting the certificate of capability for marriage, since in Portugal she had only obtained a separation of persons and goods from her Portuguese husband and was therefore regarded as married under Portuguese and German law.

In its decision of 20 December 1971, the Baden-Württemberg Administrative Court (*DÖV* 1972, p. 322) dismissed the suit of a Greek woman for the extension of her residence permit. In view of the protection accorded marriage and family, the court of first instance had upheld the case of the complainant, who had kept house for her son and daughter-in-law and looked after the children so that the daughter-in-law could go out to work. The appeal court ruled, on the other hand, that the requirement of protection for marriage and family applied only to the so-called nuclear family, consisting of parents and children.

The Federal Constitutional Court took issue in its decision of 25 January 1972 (*FamRZ* 1972, p. 198) with the basic right to protection of marriage and family in tax law. In the court's opinion there were two aspects to protection of the family by the State: the task of preserving marriage and family from injury or damage of any kind and of promoting them by appropriate measures; and the prohibition on the State itself of harming marriage. Married people may not, because they are married, be disadvantaged in comparison with single people. The legislator could nevertheless act on the basis of the married couple's community of living and interests and the resulting financial situation. Married persons would have to accept disadvantages under the law in comparison with single persons if the general tendency of the tax law was towards equal treatment, with married persons having both benefits and disadvantages, but the effects of the laws and regulations as a whole were favourable or at least neutral towards marriage.

According to article 6 (4) of the Basic Law "every mother shall be entitled to the protection and care of the community". This norm implies, according to the decision of the Federal Constitutional Court of 25 January 1972 (*BVerfGE* 32, p. 273), not just a programme, but a binding obligation on the legislator. This, in the court's opinion, is evident from the concrete formulation of this article under which "every mother" is accorded protection, in contrast with the version in the Weimar Constitution which spoke of "motherhood" in general. The court ruled, however, that it was not unconstitutional for a pregnant woman employee to lose the protection against dismissal accorded her by the Maternity Protection Law in cases where, at the time of dismissal, the employer was unaware of the pregnancy and the mother, although knowing she was pregnant, failed through her own fault to notify this within the time-limit laid down in the said law.

12. Protection of property

(*Universal Declaration, art. 17*)

During the period under review continuing building activity, regional planning, the Law on the Promotion of Town Planning of 27 July 1971 (*BGBI* 1971 I, p. 1125) and other factors affecting property gave rise to numerous decisions in this field. There have been no striking new developments concerning the protection of real estate, but there is an interesting decision by the Federal Constitutional Court of 8 July 1971 (*BVerfGE* 31, p. 275; *NJW* 1972, p. 145) on the protection of immaterial property. The court ruled on the shortening of the protective period for copyrights, arguing that "the guarantee contained in the first sentence of article 14 (1) of the Basic Law does not mean that a legal position is forever inviolable; nor does it mean that no substantial alteration in a status protected by law would be admissible". The legislator was authorized "to encroach on established rights and to give them new substance, in other words ... to lay down new powers and duties. The second sentence of article 14 (1) of the Basic Law meant ... that the guarantee of property and property itself should not constitute insuperable barriers to legislative authority if reforms proved necessary. The legislator, in planning reforms, was not faced with the alternative of either leaving intact or expropriating the subjective rights established under present legislation; he could change individual legal positions without infringing the guarantee of property", if "reasons of public interest justify the restriction of such rights". Rights granted by the law on copyright and the powers regulated under this law were valid, by their very nature, only for a limited period of time. Both the intellectual-creative and the reproductive work of artists or performers made allowance for the fact that after some time they would be freely available.

The Munich Administrative Court, in its decision of 29 November 1971 (*BayVBl* 1972, p. 671), discussed the question of constitutional requirements as regards the legal basis for expropriations. The court had to examine the

constitutionality of article 1 of the Bavarian law concerning expropriation in the interest of the public weal. The law dates from 1 August 1933 and the relevant part of article 1 reads as follows: "In the public weal expropriation shall be permitted . . . against appropriate compensation". On this point the court considered that "neither article 14 (3) of the Basic Law . . . nor the principle of the rule of law require that only by special authorization can expropriation occur. It is in fact also admissible if based on a general provision. The term 'public weal' is an imprecise legal term . . . whose application in the individual case leads to an individual judicially verifiable result". The court made reference to the social obligation attendant on property and compared the general authorization in police law, which was usually regarded as admissible, with the aforementioned general authorization for expropriation. If the general authorization was held to be constitutional in police law but unconstitutional in the law on expropriation, this would imply that less value was attached to the right to liberty than to the right to property.

Judicial decisions on questions of expropriation were, of course, concerned mainly with the building laws. From the wealth of familiar arguments attention is drawn to a decision of the Federal High Court of 10 February 1972 (*BayVBl* 1973, p. 246) that a virtual ban on building, arising from the fact that the owner had been refused permission for building by the competent building office and therefore refrained from utilizing a piece of land, could not, as a rule, be imposed on the owner longer than three years without awarding him compensation.

13. Freedom of conscience and religion; freedom of religious practice

(*Universal Declaration, art. 18;*
second Covenant, art. 18)

The farthest reaching affirmation of freedom of conscience is contained in the decision of the Federal Constitutional Court of 11 April 1972 (*BVerfGE* 33, p. 23; *DVBl* 1972, p. 857; *NJW* 1972, p. 1183). The complainant had, with reference to certain Christian beliefs forbidding him to swear even without invoking God, refused to take the oath and was given a disciplinary penalty. When he failed to win his case in court, he filed a constitutional complaint. The Federal Constitutional Court ruled that the complainant was entitled to refuse to take the oath. After general comments on the freedom of conscience and religion, referring back to earlier decisions, the court declared that "Article 4 (1) of the Basic Law was a specific expression of the dignity of man guaranteed in article 1 (1) of that law and afforded protection in particular to individual religious convictions which differed from the doctrines of the (official) churches and religious communities. . . . The special mark of a State which proclaims the dignity of man as the highest constitutional value and guarantees as inalienable the freedom of religion and conscience without restriction by law is that it permits even outsiders and members of sects to develop their personalities unhindered in accordance with their sub-

jective religious convictions, provided these do not conflict with other values laid down in the Constitution and their behaviour does not therefore tangibly impair the community or basic rights". After pointing out that the citizen cannot avoid a conflict of conscience because he is obliged to testify in court, and that under special laws members of certain religious communities can make a solemn affirmation instead of taking the oath, which makes clear that such religious conflicts must be respected and are not detrimental to the administration of justice, the court ruled that "since the basic right to freedom of religion is dependent neither on membership of a religious community nor on recognition by law, all citizens who, by their own free conviction, were unable to take the oath, must be exempted from the obligation". As long as the legislator failed to regulate this obligation in a manner compatible with the Basic Law, the basic right had to be applied directly and, if need be, as a corrective, in respect of the existing Code of Criminal Procedure.

In its decision of 19 October 1971 (*BVerfGE* 32, p. 98; *NJW* 1972, p. 327; *DÖV* 1971, p. 854; *JZ* 1972, p. 83), the Federal Constitutional Court had to deal with a case of failure to provide help on religious grounds. In this case the complainant, in agreement with his wife and on the basis of their shared religious convictions, had refused permission for his wife to be taken to hospital and given a blood transfusion as recommended by the doctor. The wife died. The husband was convicted under section 330c *StGB* of failure to provide help in need. His constitutional complaint was successful, and the court ruled that he should go unpunished since he had been caught in a conflict between the general obligation in law to provide help and a religious command not to accept medical assistance. This conflict had caused him such mental distress that any further punishment would have been excessive and thus constituted an infringement of his human dignity.

In distinguishing between the positive and negative aspects of freedom of religion, the Münster Higher Administrative Court, in its decision of 28 April 1972 (*DÖV* 1973, p. 65), ruled that common school prayers during teaching hours—except in religious instruction periods—for children attending community schools were not admissible if a child, his parents or guardian objected to them. The positive freedom of religion of those children who wanted to pray would not be infringed by the lack of official school prayers.

According to the decision of the Federal Constitutional Court of 31 March 1971 (*BVerfGE* 30, p. 415; *NJW* 1971, p. 931; *DVBl* 1971, p. 551), church membership based on baptism as a child cannot be regarded as coercive and therefore inadmissible. It does not infringe the child's basic right to freedom of conscience and religion, since the child, not being a fully developed responsible individual, cannot yet exercise this right for itself. There are generally no legal consequences of membership until the person has reached religious maturity, and these he can end at any time by ceasing to be a member. Because

of this element of voluntary participation it was impossible, the court ruled, to speak of compulsory membership.

For a conflict of conscience to be such that a person called up can refuse military service under article 4 (3) of the Basic Law, it is not sufficient, according to the decision of the Federal Administrative Court of 14 October 1971 (*BVerwGE* 38, p. 358), for the person concerned to believe that war and its preparation are criminal in general; in addition to this moral conviction he must also demonstrate convincingly that he cannot, without severe mental distress, kill an enemy by force of arms in time of war.

In its decision of 12 October 1971 (*BVerfGE* 32, p. 40; *NJW* 1972, p. 93), the Federal Constitutional Court held that the temporary obligation on the conscientious objector to perform military service while the recognition procedure was pending was compatible with the Basic Law. The essence of the conscientious objector's refusal to kill in time of war remained unaffected, provided, however, that the recognition procedure went through with all possible speed. If the person concerned still refused to obey orders, he could, even though his status as conscientious objector had in the meantime been recognized, be punished for the refusal to obey orders preceding recognition (this does not apply to disciplinary measures, since these are intended to compel the performance of military service. They may not be imposed after recognition as a conscientious objector (cf. *BVerfGE* 28, p. 264)).

The difficulty of establishing whether the reasons of conscience put forward by the objector are to be taken seriously or are merely feigned was discussed by the Wiesbaden Administrative Court in its decision of 17 October 1972 (*NJW* 1973, p. 263). The court was of the opinion that the inevitable difficulty of establishing the truth should not adversely affect those who invoke the basic right (to refuse to perform military service). The burden of a conscience violated by the decision of a court weighs heavier than some conscientious objectors who may wrongly have been exempted from military service. While the latter wrong may be remedied by calling up the conscientious objectors to perform substitute service, the former can never be made good. The court held that the requirements for recognition as a conscientious objector were, objectively, refusal based on consistent arguments and, subjectively, credibility and general behaviour in conformity with such refusal.

14. Freedom of opinion; freedom of information

(*Universal Declaration, art. 19;*
second Covenant, art. 19)

In its so-called *Mephisto* decision (*BVerfGE* 30, p. 173) the Federal Constitutional Court expressed its views on the relationship between freedom of art (article 5 (3) *GG*) and human dignity. (Further details are contained in section 1 above).

Freedom of opinion and the right to petition were the subject-matter of a case decided by the Düsseldorf Higher Regional Court of 19 August

1971 (*NJW* 1972, p. 650). The court considered the question whether freedom of opinion and of expression in the petition procedure possibly justified insults contained in petitions addressed to the regional diet and to a minister. Ruling out any general justification for defamation and gross abuse and denying the unlimited exercise of the right to petition, the court held, however, that freedom of opinion and the right to petition had an effect on the penal provisions regarding insult. The protection of private legal values was of secondary importance when subjects of interest to the community were involved such as the legality and integrity of the administration as dealt with in the petitions at issue. In such cases the limits to freedom of expression should be generous. Even anyone "exaggerating, or generalizing, or using uncivil language" should not have to fear punishment. It was the very function of the petition to provide the citizen with a legal means of "pouring out his heart". In the case under review, the court finally stated, it was also to be appreciated that the accused had chosen to petition rather than solicit public support. The court thus decided to acquit the accused as a matter of law.

General statements on freedom of information and the prohibition of censorship are contained in a decision of the Federal Constitutional Court, dated 25 April 1972 (*BVerfGE* 33, p. 52; *DVBl* 1973, p. 75), and in the dissentient votes of the judges who were outvoted. The court had to examine the provisions of section 5 of the Law concerning the Control of Bans under Criminal Law and other Bans on the Import of Objects into its Area of Applicability. The law prohibits the importation of films into its area of applicability, for the purpose of distribution, "if such films tend to have a propagandistic effect directed against the free democratic basic order or the concept of international understanding". The law therefore requires all imported films to be submitted to the appropriate authority for examination. The court interpreted the prescription "in conformity with the Constitution" to the effect that the prohibition of importation related only to films that "tended" to endanger the protected values. According to the dissentient votes, that interpretation conflicts with the right to freedom of information because of the law's clear tendency to require an import ban even where propagandistic effects are only a "possibility". According to the dissentient votes, the provision relating to the submission requirement should therefore have been declared null and void on the ground of being tantamount in effect to forbidden (preliminary) censorship. The outvoted judges referred to the obvious problems involved in the political protection of the State, stating as follows: "The more perfect the protection, the greater the danger that, unintentionally, the protected object itself (viz., the free democratic basic order with its freedom of information) will be stifled". The court's decision, however, attempted an interpretation, in conformity with the Constitution, which was aimed at upholding the provision. In so far as films subject to submission were objects of art, the court stated, the guarantee of freedom of art, as a rule unlimited, would have to be superseded,

i.e., the importation of a film could be prohibited if its effect on the sensible average viewer caused immediate danger to the existence of the Federal Republic and its basic order. In such an extreme case the State must be able to defend itself against the importation of a film. Contrary to the submitting court which had classed the notification and submission requirement as a measure tantamount in effect to forbidden censorship (making the production or distribution of an intellectual product dependent on preliminary examination and approval by Government authorities), the Federal Constitutional Court deemed the submission requirement to be constitutionally proper on the ground that the applicant was free to show further copies of the film in public. The court did not consider that the consequences practically amounted to censorship.

In its decision of 16 December 1971 (*DÖV* 1972, p. 419; *NJW* 1972, p. 596), the Federal Administrative Court examined the constitutionality of some provisions of the Law concerning the Distribution of Publications Unfit for Juveniles, as amended on 29 April 1961. The court stated, *inter alia*, that the concept of protection of juveniles was subject to change along with changes in the social reality and the views held by society. To ensure protection of the basic right to freedom of opinion and of information, so the court argued, provision should therefore be made by virtue of the Constitution for the cancellation of a ban, since what was necessary to protect young people could not be laid down for all time. Contrary to a decision made in 1966 (*BVerwGE* 23, p. 104), the Federal Administrative Court now held that the principle of "protection of art has priority over youth protection" should not be applied without restriction. In effect, since the law in its section 1 (2) (2) provided that writings "serving" art or science shall not be banned, the court deemed that provision to apply only to "work of a certain artistic quality". The court stated verbatim: "This is determined not only by the aesthetic criteria of a work of art but by its weight in the light of what the pluralistic society considers to be the function of art". Works of art not meeting that standard could not be allowed to override the requirements of youth protection. Using the same reasons as supported the *Mephisto* decision of the Federal Constitutional Court, according to which freedom of art is restricted by the requirement of respect for the dignity of man (*BVerfGE* 30, p. 194), the Federal Administrative Court concluded that it was in keeping with that requirement to protect young people who are still unable to make decisions on their own responsibility from the provocative and aggressive elements in modern art in so far as these are likely to endanger their mental development.

The Federal Constitutional Court (decision of 23 March 1971, *BVerfGE* 30, p. 336), in weighing freedom of the press and protection of the young one against the other, deemed the general ban on mail order trade in publications unfit for juveniles to be constitutional. Protection of the young was one of the objectives prescribed to the legislator by the Constitution. On the other hand, the court declared unconstitutional the

provision treating publications containing photos of nudes as being on principle unsuitable for young people. This provision, the court argued, was an unjustified encroachment on the freedom of the press since it was necessary in each individual case to furnish proof of the specific element of unsuitability for young people.

In its decision of 16 December 1971 (*VerwRSpr* 24, p. 129), the Federal Administrative Court dealt with the freedom of the press as regards expression in the sexual sphere, holding as follows: "It is true that, as a matter of law, a person is free to conduct his intimate life as he wishes; the State must not lay down the law in matters of intimacy. However, it can banish them from the public area and ensure by legal means that they remain in the private area which is not accessible to others."

Freedom of science and active membership of the Communist Party attended by the refusal to defend the free order of the Basic Law were the subject-matter of a case decided by the Administrative Court in Bremen on 8-15 November 1972 (*Zeitschrift für Beamtenrecht* 1973, p. 16). The court held as follows: "The State founded on the Basic Law is not obliged to support scientists who are unwilling to guarantee its free democratic basic order. The clause that freedom of teaching shall not absolve from loyalty to the Constitution (second sentence of article 5 (3) of the Basic Law should prevent attempts to outmanoeuvre democracy on a scientific basis; that provision was designed to affect politically engaged scientists and scholars who embarked upon an 'underhanded policy' relying on freedom of teaching and cloaking their action as scientific criticism."

The Federal Administrative Court, in a decision of 10 December 1971 (*DVBl* 1972, p. 926), concerned itself with questions relating to freedom of broadcasting. The court had to decide whether the plaintiff, a private law corporation, planning to broadcast a television and radio programme, required permission for broadcasting in addition to that for the technical operation of its facilities, and if so, whether the defendant federal *Land* (State) was obliged to issue such a permission. The plaintiff invoked the freedom of broadcasting and of the press as well as the right to free choice of profession. The court decided that the exclusion by law of private persons from television and radio broadcasting was not an infringement on the basic right of freedom of the press. The number of frequencies available for radio broadcasts was limited and likely to remain so. A free interplay of forces similar to that in the market for printed products was therefore not possible. In the field of radio and television, such an interplay of forces would, moreover, lead to financing by advertising firms only, with the result that public opinion would come entirely under the influence of trade and industry. The legislator had therefore been authorized to reserve the right to broadcast to public-law corporations, thus ensuring constitutionally proper financing methods and enabling all forces influencing society to have their say. As regards the right of the plaintiff to free choice of profession, both the right of the citizen to full information and that of the democratic community to forming a balanced

opinion with the aid of mass media were particularly important rights of the community justifying encroachment on the freedom of profession.

Detailed and fundamental comments on the essence of freedom of assembly and of demonstration and on the propriety or otherwise of specific actions in the case of collective expression of opinion are contained in a decision of the Federal High Court, dated 30 May 1972 (*JZ* 1973, p. 123; *BGHZ* 59, p. 30). Participants in a demonstration had with some success attempted to prevent the delivery of various newspapers of a certain publisher. The publisher had instituted proceedings against some of the demonstrators on the ground of additional expenditure incurred as a result of the forced delay in delivery. The court decided that "no right to blockade a particular printing enterprise can be derived from the right to assemble peacefully". True, some of the literature and consistent holdings of the lower courts had suggested that the right to demonstrate as guaranteed by article 5 (freedom of opinion) and article 8 (freedom of assembly) of the Basic Law even justified, under certain conditions, the limited use of force. However, this was incorrect. Freedom of assembly, the court stated, supplemented freedom of opinion in collective respects; under this right the process of expressing collective opinion was protected in the same way as that of receiving and hence forming collective opinion. Both basic rights served to ensure the public discussion of subjects of general interest and over-all political importance, which was indispensable for the proper functioning of free democracy. Both the right to demonstrate and the right to free expression of opinion were designed to promote discussion, so that the purpose of freedom of demonstration was missed if those expressing a collective opinion or will sought to achieve their objectives by exerting direct compulsion to prevent others from expressing their opinion. A demonstration of this kind was not peaceful within the meaning of article 8 of the Basic Law. The Basic Law only protected the struggle of opinions. If in that struggle the "equality of chances" was being permanently curtailed, for instance through an over-concentration of the press, it might be for the legislator or the Constitutional Court to intervene. However, those intending to draw attention to such a danger were not entitled in such a situation to add weight to their warnings by exerting duress upon certain persons or enterprises. Since interfering with, and preventing, the delivery of papers had not simply been a necessary side-effect of the demonstration, it had been unlawful interference in the business operations of the plaintiff for which the demonstrators were liable to pay damages.

15. Freedom of assembly and of association

(*Universal Declaration, arts. 20 and 23; first Covenant, art. 8; second Covenant, arts. 21 and 22*)

Article 9 (2) of the Basic Law prohibits associations, the purposes or activities of which conflict with criminal laws or which are directed against the constitutional order or the concept of inter-

national understanding. In its decision of 23 March 1971 (*BVerwGE* 37, p. 344; *DÖV* 1971, p. 777; *DVBl* 1971, p. 616), the Federal Administrative Court had to rule on the prohibition and dissolution of the League for Knowledge of God (Ludendorff Movement, known for its aggressive anti-Semitic attitude). The League had invoked in particular article 4 of the Basic Law (freedom of faith and of conscience). The court held that, being an ideological association under article 140 of the Basic Law in conjunction with article 137 of the Weimar Constitution, the League had been placed on an equal footing with religious societies, enjoying freedom of creed under article 4 (1) of the Basic Law; however, like such societies, it had to keep its activities within the scope of the legal system applicable to all. Ideological associations were being protected against discriminatory legislation only. The ban on the Ludendorff Movement was therefore justified as a matter of law.

In its decision of 28 September 1972 (*NJW* 1973, p. 35), the Federal High Court concerned itself with freedom of assembly and of association as guaranteed by article 9 of the Basic Law. The plaintiff, a police officer, was a trade union member. As a member of the National Democratic Party of Germany (NPD) he was elected to the diet of a federal *Land* (State). Because of his membership in NPD, whose economic programme is aimed, *inter alia*, at undermining the trade union system, he was excluded from his union. The plaintiff objected, invoking, *inter alia*, his right to freedom of association. The court left it undecided whether and to what extent the plaintiff could invoke basic rights against the trade union as a private association or whether the basic right to freedom of association can only be invoked against the State (question of effects as against third parties). At any rate, none of the plaintiff's basic rights had been violated by his exclusion from the union. The plaintiff's right of freedom was limited by the union's identical right. Within its scope under the freedom of association the union could both ward off attacks from outside and defend itself, as an autonomous association, with the means provided by its statutes, against any disturbances or danger threatening its aims and internal order from among its own members. The union had a right to exclude a member who not only refused to further its aims but even actively counteracted them by his party activities.

Whether a judge may be accused of a disciplinary offence (holding both an office in NPD and the judge's office) on the ground of (quite lawfully) holding an office in a political party which is to a certain extent opposed to the Constitution but has not yet been declared unconstitutional by the Federal Constitutional Court, was the subject-matter of a decision by the Judges Division of the Hanseatic Court of Appeal in Hamburg, dated 17 November 1972 (*Zeitschrift für Beamtenrecht* 1973, p. 22). The decision is of considerable practical importance because the privilege of political parties under article 21 (2) of the Basic Law, on the basis of which the Federal Constitutional Court had ruled that no one could legally aver the uncon-

stitutionality of a political party as long as the Court had not found it to be unconstitutional, had been called into question. The court considered that it would erode the protection afforded political parties if party founders and functionaries not offending against criminal laws and employing generally permitted means designed to promote the objectives of the party, could be prosecuted on the sole ground that they were not in favour of the Constitution; a party was incapable of action without the services of its functionaries. A political party could thus be eliminated without being brought before the Federal Constitutional Court as provided for in the Constitution. The disciplinary court proceeded from the Federal Constitutional Court's holding that even the functionaries of a subsequently prohibited political party may, prior to such prohibition, act within the scope of tolerance guaranteed by the Constitution, and that the Constitution puts up with the resultant risk for the sake of political freedom. As regards a party functionary employed in the public service, the court, moreover, took into account that a political party whose functionaries, if employed in the public service, must expect disciplinary action to be taken against them, would not only be restricted in its choice of functionaries but would practically bear the mark of unconstitutionality although the Federal Constitutional Court had not yet found so. The disciplinary court therefore concluded that a civil servant working for a political party not yet declared unconstitutional could not, on that ground, be accused of a disciplinary offence.

16. Suffrage and the right of national self-determination

(*Universal Declaration, art. 21; first Covenant, art. 1; second Covenant, arts. 1 and 25*)

The revised version of 7 July 1972 of the Federal Electoral Law (*BGBI I*, p. 1101) has been brought into line with article 38 (2) of the Basic Law which was redrafted by virtue of the twenty-seventh Law to amend the Basic Law, dated 31 July 1970 (*BGBI I*, p. 1161), and which provides that anyone having attained the age of 18 shall be entitled to vote. The revised law supersedes the Federal Electoral Law of 7 May 1956 (*BGBI I*, p. 383). In its decision of 6 January 1971 (*NJW* 1971, p. 697), the Hessian State Court of Justice deemed the principle of equality governing electoral law to have been violated at a local election where only one candidate was put up, so that the voters had no choice but to vote for him or abstain. Since the local electoral law in Hesse is based on the system of proportionate representation, the court deemed this situation to be a violation of the principle of equal elections within the meaning of article 73 (2) of the Hessian Constitution. Under the system of proportionate representation, each vote had not only an arithmetic but also a proportionate value; this required at least two candidates to be put up to give the voter a choice.

17. The right to choose and exercise a profession or occupation

(*Universal Declaration, art. 23; first Covenant, art. 6*)

The most important decision on the free choice of profession and on questions relating to the application of basic rights in a State based on efficiency was pronounced by the Federal Constitutional Court when reviewing, in the light of the Constitution, restrictions imposed on admission to State universities and colleges on the ground of shortage of vacancies, decision of 18 July 1972 (*BVerfGE* 33, p. 303; *DÖV* 1972, p. 606; *NJW* 1972, p. 1561). In the latter half of the 1960s a growing number of universities, claiming shortage of study places, began to introduce the so-called *numerus clausus*, though at first only for their science departments. Since 1969, these numerical restrictions have been giving rise to a rapidly growing number of lawsuits. The plaintiffs pointed out that during the post-war period the percentage of study places made available by the universities had been larger than at present, although there had been far less personnel and material. They also argued that article 12 of the Basic Law was not designed merely to prevent measures to channel the choice of profession but that it placed the State under an obligation (at any rate where it had monopolized the training as in the case of the medical profession) to make sufficient study places available to satisfy the demand. The *numerus clausus* should be a temporary measure only, not one that would practically erode the relevant basic right. On the other hand, the Federal and *Land* authorities heard during the proceedings maintained that the individual person had no constitutionally vested claim to the creation of study places, not even in the case of professions for which the State had issued training regulations and for which it practically held a training monopoly. The court's supporting reasons may be summarized as follows: It was true that the *numerus clausus* infringed, as it were, on the basic right freely to choose one's place of training as guaranteed in the first sentence of article 12 (1) of the Basic Law; since, however, the universities were in fact overcrowded, a *numerus clausus* strictly limited on a legal basis came closer to the purport of the Basic Law than the unlimited application of the basic right which would privilege a few at random while placing many at an unfair disadvantage. The close connexion between choice of profession, training for the profession, and exercise of the profession compelled the court to conclude that where a profession such as the medical one required a specialized course of training, restrictions on the access to such training should be judged as strictly as the conditions for admission to the exercise of the profession itself. This is followed by one of the basic concepts of the decision: participation in the services provided by the State is a prerequisite to full application of the basic rights. The Constitutional Court put it as follows: "The more the modern State engages in providing social security and cultural advancement for its citizens, the more there emerges, in addition to the citizens' claim to the basic rights of freedom, the com-

plementary claim that participation in the services provided by the State be guaranteed by basic rights. This development is most clearly apparent in the field of education." The court did not state what specific claims might be derived from such rights to participation. For, at any rate, "they are subject to what is possible, i.e. to what claims the individual person can reasonably make on society". It was first and foremost the responsibility of the legislator to decide this. It should be borne in mind "that personal freedom can be realized only as long as the over-all system maintains its balance and ability to function, and that any boundless subjective thinking in terms of claims to be made on the community is incompatible with the concept of a social State". The court considered the individual's basic freedoms to be limited by social requirements and referred in this connexion to the principle of equality. It followed, the court stated, that denial of admission to university was in fact admissible under constitutional law because participation was only conceivable on the strength of more specific provisions by law or regulation (since basic rights were affected). However, denial of admission was admissible only "if it is ordered where absolute necessity so demands and all publicly financed training facilities are utilized to their full capacity; and secondly, if selection and assignments are determined by appropriate criteria, if every applicant qualified for entry into university is given a chance, and if as much consideration as possible is given to the applicant's choice of university". In view of the incisive significance of admission regulations, it is for the legislator to settle questions of principle, such as the methods of ascertaining capacities, the kind of criteria to be applied to selection, and their order of priority. In the final analysis the court deemed the restrictions on admission appealed against in the constitutional complaint to be partly unconstitutional, not because of the *numerus clausus* itself which it had just declared constitutional, but because of the unrestricted powers the legislator had vested in universities and because of the preference being given, under one of the contested laws, to the inhabitants of a particular *Land*. (As the last-mentioned aspect is of secondary importance in this basic decision, it is not discussed in detail here in this report.)

In its decision of 28 July 1971 (*BVerfGE* 32, p. 1; *DÖV* 1972, p. 49), the Federal Constitutional Court also dealt with the principle of adequacy in the case of regulations governing professions. It held that the principle of adequacy could compel the legislator, when revising regulations governing a certain profession, to issue transitional regulations for those who previously exercised, as an independent occupation, a henceforth inadmissible activity if such a revision caused them an undue burden for which there was no compelling need in the interests of the community. This judgment reverses the *Stufenlehre*, adopted by the Federal Constitutional Court, to its original basis, i.e. the general principle of adequacy for regulations governing the exercise of a profession.

In its decision of 21 March 1972 (*BVerwGE* 40, p. 17; *DÖV* 1972, p. 755), the Federal

Administrative Court considered the statutory provision admitting only women to the midwife's profession to be neither infringing on the basic right to free choice of profession nor violating the principle of equal rights for men and women. This restriction of the right to free choice of profession, so the court stated, was to be examined in the light of the exacting standards set by the Federal Constitutional Court for objective requirements for admission to a profession, the applicant's sex being a barrier comparable to such objective admission requirements. When making provisions for the midwife's profession, the court continued, the legislator had been guided by the general attitude of women. Many women strongly rejected the assistance of a man which they felt to be an unacceptable encroachment on their personal sphere. However, every pregnant woman was under legal obligation to consult a midwife. As long as there was no evidence of a fundamental change in this attitude, i.e. evidence of a clear discrepancy between the relevant provisions and the actual situation, the exclusion of men from the midwife's profession was rightful. This even applied to the work of midwives in hospitals where, owing to the difficult staff and financial situation in maternity hospitals generally, a pregnant woman who rejected a male delivery assistant could not, as a rule, expect a female midwife's assistance.

In its decision of 27 September 1972 (*DVBl* 1972, p. 958), the Lüneburg Higher Administrative Court dealt with the question whether a candidate for the legal profession suspected of pursuing anti-constitutional activities, could, by way of a preliminary injunction, demand his appointment as juridical trainee (*Gerichtsreferendar*) which had been denied to him. The plaintiff based his claim on the assertion that the State held a monopoly in this sphere and that even the profession of attorney-at-law was accessible only after completing the training provided by the State. The State was therefore not authorized to exclude candidates from that training on the sole ground of their political views. The court argued, however, that even the attorney-at-law, though free and not a civil servant, represented an organ of the administration of justice and could therefore be subjected to certain obligations. No one should be able to invoke freedoms, including that of choice of profession, as a licence for endangering, impairing or destroying the constitutional order while enjoying the protection of the Constitution. This was not a case of inadmissible forfeiture of basic rights but one of realizing the inherent limits of those rights.

18. The protection of rights in labour legislation

(*Universal Declaration, arts. 23, 24 and 25; first Covenant, arts. 6 and 7*)

In the field of labour law, and of participation of labour in management in particular, the amended Works Constitution Act of 15 January 1972 (*BGBI* 1972 I, p. 13) with its First Implementing Regulation of 16 January 1972 (*BGBI* 1972 I, p. 49), which came into being after long drawn-out parliamentary debates on social

policy, not only contains many additional provisions, but strengthens the status of the individual worker and the works council (Combined Works Council). New and wider co-management rights involving greater use being made of conciliation bodies deserve to be specially mentioned. Although of a compromise character, the law constitutes a further step towards extensive co-management. Also worthy of note are its provisions to facilitate the activities of works councils, e.g. by affording greater protection against dismissal and discriminatory treatment. The new law also considerably strengthens the rights of youth delegations. To increase the effectiveness of works councils, it provides that the agents of trade unions shall, after notification of the employer, be granted access to establishments, provided that specific reasons (in exceptional cases essential operational requirements, mandatory safety rules or the protection of trade secrets) do not preclude such access (article 2 (2) *Betriebsverfassungsgesetz*).

The most significant decision made during the period under review was that of the Grand Senate of the Federal Labour Court, dated 21 April 1971 (*NJW* 1971, p. 1668), in which the court dealt with the prerequisites to, and consequences of, strikes and lockouts both terminating and suspending employment. In examining the admissibility of measures taken in labour disputes, the court proceeded from the following relation between purpose and means: the purpose of a labour dispute was to conclude a new wage agreement with a view to restoring, as soon as possible, the normal situation of industrial peace. The timing, objective, execution and intensity of a labour dispute therefore had to be governed by the supreme principle of adequacy. "A labour dispute must not be aimed at destroying the other side, it must restore industrial peace." Each side, the court continued, therefore had the right to strike or lock-out respectively. In this connexion, even the lock-out of employees willing to work was, on principle, admissible because, in actual fact, employees belonging to a different or to no trade union were deemed to be on strike as well, and because, as a rule, they too enjoyed the benefits of a new wage agreement. To that extent the employer was entitled "to regard the employees as a uniform whole". The court further held that the correctness of this view followed from the fact that many strikes were of a selective nature, so that the employer would be at a tactical disadvantage if he were unable to lock out "non-participating employees" as well. With regard to the prerequisites to, and execution of, lock-outs the court distinguished between lock-outs suspending and those terminating employment. As a "warning signal", the court stated, only a lock-out suspending employment was allowed. Once the labour dispute had ended, both parties were obliged to resume all rights and duties deriving from their contractual relationship. The employee had to resume his work, the employer was obliged to re-admit the employee to his job. In so doing the employer had to "retract the suspension of employment to the extent his business situation permitted, as every sustained suspension not justified by business or market requirements was to be regarded as an

excess measure conflicting with the concept of adequacy in labour disputes". On the other hand, the terminating type of lock-out, the court continued, was acceptable under certain conditions only, in the event of an official strike, for instance, it could only exceptionally be applied when the dispute was dragging on and the employer wanted to economize on work places. In an unofficial strike the employer could more easily resort to a lock-out with terminating effect, in which case he could assign the jobs to others, shift production, and the like. But even where such a lock-out had severed the legal ties between employees and employer, it should not be "completely disregarded" that the contractual relationship between employee and employer required protection. On this point the court stated as follows: "A labour dispute serves to attain limited objectives; it will, in general, ultimately lead to continuing mutual relations and resumption of work. The question of whether to re-employ workers can therefore not be left to the discretion of the employer alone. Generally speaking, after a lock-out with terminating effect, the employees must be re-employed to the extent that their work places still exist. . . . If re-employment were left to the employer's free discretion, the goal of a labour dispute, which is the restoration of peace, would be missed to some extent." Re-employment, according to the decision, is left to the employer's fair discretion, the margin of his discretion being wider in the case of an unofficial strike. Fair discretion meant, for instance, that the employer makes an objective selection from among the workers seeking re-employment. This decision supersedes the Federal Labour Court's previous holdings (*Bundesarbeitsgerichtsentscheidungen* vol. 1, p. 291; *NJW* 1955, p. 882) which gave the employer considerably more latitude in the matter of lock-outs and re-employment.

In its decision of 17 April 1972 (*Betriebs-Berater* 1973, p. 563), the Labour Court in Kassel held that it was incompatible with the principle of adequacy if the employer burdened employees willing to go to work with the risk of a labour dispute, although the strike was not in their interests.

The dismissal of a telecommunication technician who, invoking the principle of secrecy of mail, post and telecommunication (article 10 *GG*), had refused to install monitoring facilities, was deemed to be contrary to the social interest by the Federal Labour Court in its decision of 15 July 1971 (*MDR* 1971, p. 1044; *NJW* 1971, p. 2325), because at the time of dismissal the general legal position was unclear as to whether the tapping of telephone conversations by the Federal Postal Administration was constitutional by virtue of the seventeenth Law amending the Basic Law, dated 24 June 1968 (the Federal Constitutional Court later on decided that it was constitutional; *NJW* 1971, p. 275).

19. State care for persons in need of assistance

(*Universal Declaration, arts. 22 and 23;*
first Covenant, arts. 9 and 11)

The most important pension reform since that of 1957 is the Law for Further Reform of the

Statutory Pension Scheme of 16 October 1972 (*BGBI* 1972 I, p. 1965) which has introduced the flexible old-age pension and provides for the pension scheme being opened to self-employed persons and housewives, permitting this category of persons retroactive payment of contributions to cover past periods of work; the law further provides for retirement pensions to be computed on the basis of minimum incomes to the benefit of persons with a long insurance life; it has, moreover, introduced shorter qualifying periods for young insured persons; increased death benefits during the quarter of the year in which the death occurred; the facilitated crediting of periods during which no contributions were paid, and the obligation of the insurer to inform the insured about the amount of his or her retirement pension claim at any particular time.

The law of 10 August 1972 (*BGBI* 1972 I, p. 1433) includes in the compulsory statutory health insurance scheme all owners of agricultural establishments embracing agriculture and forestry, viticulture, fruit and vegetable growing as well as horticulture, who had previously only been able to take out private health insurance on a voluntary basis. The law of 21 December 1970 (*BGBI* 1970 I, p. 1770) has introduced medical examinations for the early diagnosis of cancer under the statutory health insurance scheme. Public assistance for training under the First Law on Assistance for Training (*Ausbildungsförderungsgesetz*) of 19 September 1969 (*BGBI* 1969 I, p. 1719) has been extended and increased by the Law on Assistance for Individual Training of 26 August 1971 (*BGBI* 1971 I, p. 1409). The Third Law altering the Ceiling for Attachments of 1 March 1972 (*BGBI* 1972 I, p. 221) has raised that ceiling in line with the general increase in prices.

An interesting though isolated decision was made by the Higher Regional Court in Stuttgart (decision of 7 November 1972; *MDR* 1973, p. 312), when it examined the validity of a number of conditions in a contract which, to the detriment of the defendant, deviated from the relevant statutory provisions. The court held that the question of whether the conditions were justified and acceptable to the defendant had to be judged in the light of the principle of the social State as embodied in articles 20 (1) and 28 (1) of the Basic Law. When applying general clauses, the judge had to take into account decisions of principle referring to constitutional law. The reasons read as follows: "The principle of the social State rules out all kinds of misuse of economic power. In addition to its own interests, either party to a contract is expected to consider the legitimate interests of the other without trying to curtail its rights (incompatibility with the interests of the community)". In this light, the freedom to contract is also subject to a certain amount of restriction.

In general, however, the courts show some reserve in resorting to the principle of the social State in their interpretation. In its decision of 26 May 1972 (*NJW* 1972, p. 1467), the Federal High Court ruled that a rebate, even when granted to pupils and students on social grounds, was inadmissible under the Rebates Law. Business-

men, the court argued, were not entitled to graduate their prices contrary to the law on alleged social reasons. The decision on which interests should have priority was a political one falling within the legislator's competency.

20. The right to education

(*Universal Declaration, art. 26; first Covenant, art. 13; second Covenant, art. 18*)

The Federal Constitutional Court, in its decision of 6 December 1972 (*NJW* 1973, p. 133; *DÖV* 1973, p. 50), concerned itself with constitutional complaints lodged by numerous parents who felt their parental rights to have been encroached upon because the education law of a federal Land (State) provided for children leaving primary school to attend a two-year compulsory "promotion stage" (*Förderstufe*) instead of entering a grammar or intermediate school. The court held that the system of the compulsory promotion stage did not violate any of the complainants' basic rights. The Basic Law, the court continued, did not set standards for the educational value of school systems. It was therefore the prerogative of the State to lay down not only the organizational structure of schools, but also the courses of training and curricula. However, the rights of parents must not be restricted more than necessary. The State was not to "manage" resources of talent. The court deemed it to be unconstitutional, however, that the compulsory education law did not permit children from school districts having adopted the compulsory promotion stage to attend secondary schools elsewhere.

A decision by the Hamburg Administrative Court, dated 25 April 1972 (*DÖV* 1973, p. 54) dealt with the influence of parental rights with regard to sex education at school. The Hamburg Administrative Court held that the introduction of sex education by virtue of a mere directive was inadmissible because, *inter alia*, sex education considerably affected the parents' rights and intentions regarding their children's education. This subject of instruction, so the court concluded, should therefore have been introduced by a law.

21. Protection of industrial right and copyright

(*Universal Declaration, art. 27; first Covenant, art. 15*)

In its decision of 8 July 1971 (set out in more detail in section 12 above) dealing with the shortening of terms of copyright, the Federal Constitutional Court stated that the difference between the legal provisions covering tangible property protected for an indefinite period of time and property in artistic reproductions protected only for a limited period of time, was determined by the nature of the two objects and therefore constitutional. The powers regulated under the law on copyright were intrinsically rights for a limited period of time; it was in the nature of both intellectual-creative and reproductive performances of artists to become freely accessible after some time.

In another decision on matters of copyright, dated 7 July 1971 (*BVerfGE* 31, p. 229; *NJW*

1971, p. 2163; *MDR* 1972, p. 23), the Federal Constitutional Court stated that the use of certain copyrighted works for teaching purposes without the author's previous consent was in accordance with the nature of copyright the substance of which had admissibly been defined by the legislator; such use was also in keeping with its social implication. In the interest of the public weal, the legislator had been free to restrict the personal rights involved. This, however, did not include reproduction without payment of fees. To that extent the legislation was in conflict with the principle of protection of property embodied in the Basic Law.

The law amending the Law on Copyright, dated 10 November 1972 (*BGBI* 1972 I, p. 2081), has improved the author's legal status. In the light of the last-mentioned decision it has introduced the obligation to pay fees for the reproduction and distribution of copyrighted works in collections which by their nature are designed exclusively for use in churches, schools or for other teaching purposes (article 46 of the Law on Copyright). The obligation to pay fees on the resale of an original work of fine art has been increased (article 26 of the Law on Copyright). Public libraries hiring out or lending out copies of works, even if not on a commercial basis, now have to pay fees.

22. International instruments for the protection of human rights

(*Universal Declaration, art. 28*)

On 2 February 1971, the Convention on the Political Rights of Women, dated 31 March 1953, entered into force for the Federal Republic of Germany (*BGBI* 1972 II, p. 17).

With effect from 1 July 1971 (*BGBI* 1972 II, p. 9) the Federal Republic of Germany has, for further successive periods of five years, recognized the competence of the European Commission of Human Rights, under article 25, and that of the European Court of Human Rights, under article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. The declaration of submission also includes the Protocol No. 4 to the said Convention, dated 16 September 1963. The Protocol No. 5 amending articles 22 and 40 of the Convention entered into force for the Federal Republic on 20 December 1971 (*BGBI* 1972 II, p. 105).

Three Conventions of the International Labour Organisation have entered into force for the

Federal Republic: No. 118 of 28 June 1962 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, on 19 March 1972 (*BGBI* 1971 II, p. 950); No. 121 of 8 July 1964 concerning Benefits in the Case of Employment Injury, on 1 March 1973 (*BGBI* 1972 II, p. 840) (parliamentary approval by law of 29 October 1971, *BGBI* 1971 II, p. 1169); and No. 122 of 9 July 1964 concerning Employment Policy, on 17 June 1972 (*BGBI* 1971 II, p. 1022) (parliamentary approval by law of 15 February 1971, *BGBI* 1971 II, p. 57).

The Hague Convention of 5 October 1961, signed on 22 October 1968, concerning the Powers of Authorities and the Law applicable in respect of the Protection of Infants, which the Bundestag approved by law of 30 April 1971 (*BGBI* 1971 II, p. 217), has entered into force for the Federal Republic on 17 September 1971 (*BGBI* 1971 II, p. 1150).

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 16 December 1966, signed by the Federal Republic on 9 October 1968 (*Bundesratsdrucksachen* Nos. 305/73 and 304/73, *Bundestagsdrucksachen* Nos. 7/658 and 7/660), are now before the Bundestag for approval.

The Bundestag approved the Federal Republic's accession to the Protocol of 7 December 1953 Amending the Slavery Convention of 25 September 1926 (law of 8 September 1972 (*BGBI* 1972 II, p. 1069)) and its accession to three Protocols amending the Agreements on White Slave Traffic (law of 8 September 1972 (*BGBI* 1972 II, p. 1074)).

The Agreement of 28 May 1969 between the Federal Republic and Turkey amending the Agreement of 30 April 1964 concerning Social Security entered into force on 1 August 1972 (*BGBI* 1972 II, p. 838, law of 3 January 1972, *BGBI* 1972 II, p. 1).

The Convention on Social Security between the Federal Republic and Canada, dated 30 March 1971, entered into force on 1 May 1972 (*BGBI* 1972 II, p. 299, law of 20 March 1972, *BGBI* 1972 II, p. 217).

The Settlement Treaty of 23 April 1970 between the Federal Republic of Germany and Spain was approved by the Bundestag by law of 7 September 1972 (*BGBI* 1972 II, p. 1041) and entered into force on 26 November 1972 (*BGBI* 1972 II, p. 1557).

GUINEA

Note on polygamy ¹

In the modern world, polygamy has for a very long time been simply ignored.

Today in most parts of our world this archaic custom is considered merely a relic from a past age when inequality of the sexes was the rule. That is why in the twentieth century this custom is often viewed with a combination of mockery and paternalistic indulgence.

The Guinean Revolution has, since the attainment of independence, sounded the knell of this institution, in accordance with the very preamble of the Guinean Constitution, by proclaiming through the high authority of the Supreme Leader of the Revolution the following text:

... Another social problem for which the solution was found during the work of the Eighth Congress is polygamy, a social institution based on considerations or needs which were at the same time historic, economic and social. It was indeed asserted that the denial, in whatever form, of the freedom and personality of women may be overcome by the revolutionary education unstintingly provided for the rising generations and by professional training and the free access of women to all positions and all occupations enabling them to live in dignity by their own work.

That is why the Guinean Revolution has adopted new laws to accelerate social change, no longer leaving it to the will of those who do not consider that they have a historical or political obligation to conform to social practices which allow greater justice and greater dignity for both men and women:

It shall henceforth be prohibited for a married man to marry a second or additional woman.

It is also provided that a polygamous husband shall not be able to justify divorce from his first wife, whatever the reasons he invokes.

In no marriage shall the difference in age between the spouses exceed 20 years, etc.

¹ Text of article by President Ahmed Sékou Touré, submitted by the Government of Guinea.

HUNGARY

NOTE ¹

1. Act No. I of 1972 on Amendments to Act No. XX of 1949 and on the Single Text of the Constitution of the Hungarian People's Republic

The Constitution as amended gives expression to the fundamental changes in the life of Hungary, confirming the results so far attained in the struggle for social progress and facilitating the further advance on the road of socialism.

In virtue of the Constitution the leading class of society is the working class which, jointly with the peasantry united in co-operatives, with the intelligentsia and the other labouring strata of society, exercises power in a democratic manner through direct and indirect representation. The vast majority of the civil rights guaranteed by the Constitution were already laid down in Act No. XX of 1949. However, the present Constitution pays greater attention to the establishment of a system of legal safeguards and to more precise wording.

In chapter VII on the fundamental rights and duties of citizens, the Constitution as amended states first of all that the Hungarian People's Republic respects the human rights (art. 54). The rules governing the fundamental rights and duties of citizens are fixed in legislative acts adopted by the supreme body of the people's representatives.

The Hungarian People's Republic guarantees for its citizens the right to work as well as remuneration in accordance with the quantity and quality of the work done. This is implemented by means of the planned development of the productive forces of the national economy and by a manpower policy based on economic planning (art. 55).

The Hungarian People's Republic ensures the right to rest by means of legally regulated working hours, paid holidays and facilities of organized recreation (art. 56).

Citizens have the right to the protection of life, of their physical integrity and health. The Hungarian People's Republic implements this right by organizing labour safety, public health institutions and medical services as well as the protection of the human environment (art. 57).

Under a comprehensive social insurance scheme and by means of a network of social institutions, the Hungarian People's Republic guarantees for its citizens the right to the material means needed in case of old age, ill health and disability (art. 58).

The Hungarian People's Republic ensures the right to education for its citizens. This is implemented by making the educational facilities available to all, by means of free and compulsory education in general school, secondary and higher grades of education, continued studies for adult workers and by financial aid to those receiving education (art. 59).

The Hungarian People's Republic guarantees freedom to engage in scientific and artistic activities (art. 60).

Citizens are equal before the law and enjoy equal rights. Discrimination of any kind against any citizen on grounds of sex, religion or nationality is a severely punishable offence. The Hungarian People's Republic ensures to all nationalities living in its territory equal rights to use their native tongue, to receive education in their native tongue and to preserve and develop their national culture (art. 61).

Women and men enjoy equal rights. The equality of rights of women is promoted by ensuring to them proper employment and working conditions, by granting paid leave in the event of pregnancy and childbirth, by the increased legal protection of mothers and children, furthermore by means of a system of maternity and child welfare institutions (art. 62).

The Hungarian People's Republic guarantees the liberty of conscience of its citizens and the freedom of religious worship. To secure liberty of conscience, the Hungarian People's Republic separates the Church from the State (art. 63).

In accordance with the interests of the people, of the building up of socialism, the Hungarian People's Republic guarantees freedom of speech, freedom of the press and freedom of assembly. Also, it guarantees the freedom of association (arts. 64 and 65).

The Hungarian People's Republic safeguards the freedom and inviolability of the person, the secrecy of correspondence and the privacy of the homes of its citizens (art. 66).

Anybody who is persecuted for his democratic attitude, for his activities aimed at promoting social progress, the liberation of the peoples, and in the interest of peace, may enjoy the right of asylum in the Hungarian People's Republic (art. 67).

All citizens have the right of participation in the management of public affairs. Citizens may submit to government and social bodies proposals of public interest. These must be considered on their merits.

Aside from chapter VII of the Constitution, the law lays down as a fundamental principle the recognition and protection of the personal

¹ Note furnished by the Government of the Hungarian People's Republic.

property of citizens (art. 11), the guarantee of the right of succession (art. 13), the protection of the institution of marriage and the family (art. 15).

2. Act No. II of 1972 on Public Health

The aim of this law is to formulate and summarize the basic provisions concerning public health in the Hungarian People's Republic and to regulate the rights and duties relating to health protection of the population.

The law states that public health in the Hungarian People's Republic is a concern of the State. All citizens are entitled, free of charge, to medical examination and the necessary medical treatment, as well as to maternity care and ambulance services. Women and children enjoy increased protection of health. The law contains effective provisions to secure the legality of accommodation in mental wards and regulates the questions of supplying health information to the population, and it prohibits any propaganda objectionable from the point of view of health protection.

3. Act No. IV of 1972 on the Courts

This law lays down the jurisdictional principles according to which justice in the Hungarian People's Republic can be administered only by the courts; except in the cases defined by the law, the courts proceed in council (collective jurisdiction); lay judges have the same rights and duties as professional judges; in the courts everyone may use his native tongue; the trial in court is open to the public; the accused has the right to defence and the freedom to choose counsel for the defence; court decisions can be appealed against; the office of judge is filled by means of election; judges are independent and subject to legislative and other legal regulations.

The law defines the fundamental rights and duties of judges, regulates the ways of their election, discharge and recall and the question

of their disciplinary responsibility, as well as the conditions of the participation of lay judges.

4. Act No. V of 1972 on the Public Prosecutor's Office

Under this law, the Chief Public Prosecutor of the Hungarian People's Republic and the Public Prosecutor's Office provide for the prosecution of any act violating or threatening law and order as well as the security and independence of the State, and for the protection of the rights of citizens. Departments of the Public Prosecutor's Office assist in enforcing the legal policies of the Hungarian People's Republic and in exercising constitutional supervision. The Public Prosecutor's Office supervises the legality of investigations, of court proceedings and of law enforcement in penitentiaries; it exercises general control over legality.

The law defines the structure of the Public Prosecutor's organization, the appointment as well as the fundamental rights and duties of public prosecutors.

5. Law-decree No. 26 of 1972 of the Presidential Council of the Hungarian People's Republic on the Modification of the Civil Procedure

A primary aim of the law-decree is to simplify and speed up the proceedings; This purpose is served by the provisions which simplify the distribution of lawsuits between courts of first and second instance, regulate the probative value of the means of evidence necessitated by technological development etc. The law-decree defines the cases in which jurisdiction by a single judge and the cases in which collective jurisdiction is admissible. To unify the proceedings of jurisdiction, the legal regulation reorganizes the labour conciliation boards (which have thus far been bodies separate from the courts having competence in labour-management relations) into courts of labour, and the economic arbitration committees, having competence in certain economic matters, into economic councils attached to the courts of second instance.

IRAN¹

1. Act concerning the Execution of Financial Sentences (11 Tir 1351/2 July 1972)

Article 1. Any person who, in the course of criminal prosecution, is sentenced to payment of a monetary fine or who is sentenced to payment of damages arising out of an offence shall, if he fails to pay or does not possess the amount due, be subject to one day's detention for every 500 rials or fraction thereof, by order of the public prosecutor in the case of a fine and on the application of the civil plaintiff in the case of damages. If the said sentence is accompanied by a sentence of imprisonment, the detention shall commence from the date of the completion of the sentence of imprisonment and shall not exceed the maximum term of imprisonment specified by law for the offence concerned. In no event shall the maximum term of detention in lieu of payment of a fine or damages exceed five years.

Note 1. In any case where an offender and his accomplice or assistant are jointly and severally liable to payment of a fine, each shall be sentenced to payment of a part of the total fine proportionate to his liability, and they shall have joint and several liability for payment of the remainder.

Note 2. In the case of damages arising out of an offence, the court shall sentence the offender and his accomplice or assistant to payment of a part of the damages proportionate to the liability of each.

However, where the amount of the damages is small, the losing parties shall be jointly and severally liable for payment of the total amount of the damages. Similarly, where an offender or any of his accomplices or assistants dies, becomes insane or has a monetary sentence remitted or the execution thereof suspended, his portion shall be deducted from the total amount of the fine and the others shall be jointly and severally liable for payment of the remainder of the fine. Where detention is imposed under this article, each of the convicted or losing parties shall be subject only to a term of detention proportionate to his own share of the fine or damages.

Note 3. Where, after serving one half of the term of detention, the sentenced person is unable to pay the fine or damages and is recognized as insolvent by a ruling of the court which imposed the monetary sentence, he shall be released from prison, but the right of a private plaintiff shall be reserved and, if the sentenced person obtains funds, the private plaintiff shall be entitled to

vindicate his claim. The court's ruling on acceptance or rejection of a plea of insolvency shall be final.

Note 4. Awards of damages based on criminal sentences imposed by courts of law shall be subject to the above provisions.

Article 2. The Ministry of Justice may exempt from all or part of a term of detention in lieu of payment of a fine a person sentenced to payment of a fine who has no record of recidivism and who has no funds, upon application by the public prosecutor responsible for execution of the judgement and having regard to the conduct and moral character of the sentenced person and to conditions to be specified in regulations [see below, section 2].

The relevant regulations shall be drafted by the Ministry of Justice and shall enter into force upon their approval by the Justice Committees of the two Houses.

Article 3. In any case other than those referred to in articles 1 and 2, where the detention of a person in lieu of payment of a debt is approved on the basis of a binding judgement or document, the debtor shall be detained for one day for every 500 rials. In no event shall the term of detention exceed two years, and the debtor shall be considered to be indigent and free from all liabilities incurred prior to his detention. However, should the debtor obtain funds, his creditors shall have the right to vindicate their claims.

Note. With regard to this article and the preceding article, where a losing party or debtor who has been detained on the application of a private plaintiff or creditor for non-payment of expenses is released, reimprisonment shall be permissible only once.

Article 4. Where, in the case of financial debts and liabilities which are the subject of binding documents and all civil and criminal financial penalties, any person deliberately, for the purpose of escaping payment of the debt or penalty, transfers assets to his heirs so that the remainder of his assets are insufficient to discharge his liabilities, the amount of the debt shall be claimed from the assets so transferred if the latter are in the possession of the recipient, and otherwise from the assets of the recipient. If the recipient is not in possession of sufficient funds, the legal provisions governing the execution of judgements and documents shall be applied in respect of the sentenced person or debtor. The same provisions shall apply in the case of the transfer of assets by the sentenced person or debtor to persons other than his legal heirs, if they or their legal

¹ Texts furnished by Dr. Jalal Abdoh, government-appointed correspondent of the *Yearbook on Human Rights*.

guardians have knowledge of the intent of the debtor or sentenced person.

In all the above cases, where the court, having due regard to the evidence and circumstances of the case, finds that the transfer was effected for the purpose of escaping payment of the debt or award, it shall issue an order for payment of the debt or award from the sum transferred or from the assets of the recipient, as the case may be, and the action of the transmitter shall be deemed to constitute fraud.

Article 5. The provisions of this Act shall also be applied in the case of all debts and criminal and civil penalties which are currently in execution.

Article 6. Article 1 of the additional articles of the Code of Criminal Procedure, approved in 1337, and all legal articles and provisions relating to the execution of binding judgements and documents, in so far as they are incompatible with this Act, are hereby abrogated.

...

2. Regulations governing the implementation of article 2 of the Act concerning the Execution of Financial Sentences (7 Azar 1351/28 November 1972)

Article 1. The Ministry of Justice may, upon application by the public prosecutor responsible for execution of the sentence, exempt a person sentenced to payment of a fine from all or part of a term of detention in lieu of payment of the fine, provided that the following conditions are met:

(a) The sentenced person has no record of recidivism;

(b) The sentenced person has no available funds;

(c) The financial sentence does not relate to the offence of acceptance of bribes or embezzlement or offences which, under other legislation, are assimilated to embezzlement, offences covered by articles 152 to 157 of the Criminal Code, the commission of any kind of smuggling of property which is a part of State or county revenues, an offence against currency exchange regulations or a violation of the Act governing penalties for collusion in government transactions;

(d) No security or written undertaking was given or instalment payment arrangement made for repayment of the fine;

(e) Where the penalty of a fine was combined with the penalty of imprisonment, the term of imprisonment has elapsed.

Article 2. In addition to observing the above provisions, the public prosecutor responsible for execution of the sentence shall also state the following points in his letter of application:

1. The condition of the morals, conduct and way of life of the sentenced person;

2. The family status of the sentenced person and the mode of his family's livelihood, to the extent possible;

3. An expression of opinion concerning the extent to which exemption may improve the moral and psychological state of the sentenced person and the degree to which he merits exemption.

Article 3. Exemption from detention in lieu of payment of a fine shall in no way be an impediment to the application of procedures for collection of the fine if the sentenced person subsequently acquires sufficient funds, provided that the time-limit for execution of the sentence has not expired.

Article 4. Exemption from detention in lieu of payment of a fine shall in no way affect the situation with regard to private civil damages.

...

3. Act governing Procedures for the Transfer of Land to Farmers subject to the Land Reform Laws and Regulations (21 Azar 1351/12 December 1972)

Sole article. Farmers to whom land and water rights have been or are to be transferred under the land reform laws and regulations may, with the permission of the Ministry of Co-operatives and Rural Affairs, transfer their rights in such lands exclusively to the co-ordinating farmer of the locality where such lands are situated or to the appropriate rural co-operative or agricultural joint-stock company.

Note 1. The transfer of land subject to note 2 to article 19 of the Act amending the Land Reform Act (approved on 19 Dey 1340) and of villages, farms and land subject to the note to article 7 of the Act governing the division and sale of leased land to tenant farmers and the Sole Article on the transfer of agricultural land to the Mangur tribe (approved on 30 Azar 1350), the Act governing the purchase of agricultural land to meet agricultural and mining needs and the Act governing water and the renationalization of water shall be allowed with the permission of the Ministry of Co-operatives and Rural Affairs.

Note 2. Any kind of document which is or was in the past drawn up and which is incompatible with the provisions of this Act shall be deemed to be null and void.

...

4. Act governing the Division of Land and Standing Property of Gardens subject to the Land Reform Laws and Regulations among Interested Owners and Farmers (19 Azar 1351/10 December 1972)

Sole article. Owners and farmers of gardens and coppices subject to articles 27 and 28 of the Land Reform Regulations approved by the special Joint Committee of the two Houses, in cases where the farmer and the owner are joint owners of the standing property of the garden or where the standing property is solely owned by the farmer or farmers and provided that the Land Reform Regulations have not yet been implemented in respect of such gardens, may, until the end of Shahrivar 1352, divide up the surface area of the land and standing property of such gardens in accordance with their respective rights therein or sell or purchase each other's rights, in a manner agreed upon by the two parties, directly by the preparation of an official document and by transmitting an account of the circumstances, together with a copy of the said document, to the local County Office for Co-operatives and Rural Affairs against a written receipt. If, within the period specified above, the owner or owners or farmer or farmers concerned do not reach an agreement on the division of the garden or the purchase and sale of their respective rights therein, the Ministry of Co-operatives and Rural Affairs shall determine the rights of the owner or owners and shall transfer them to the farmer or farmers concerned, in each area of the country in accordance with the rules laid down in regulations to be approved by the Co-operatives and Rural Affairs Committees of the two Houses. The

farmer or farmers concerned shall be bound to pay the price of the legal rights of the owner or owners. If the farmer or farmers fail to pay the amounts outstanding within three months from the due date, the owner or owners may receive in cash the nominal amount due in payment for the property from the Agricultural Co-operative Bank of Iran, upon payment of a collection commission (computed in accordance with the Bank's general rates for its transactions), by submitting to the Bank the endorsed promissory notes.

Note 1. The Agricultural Co-operative Bank of Iran shall act on behalf of the owner or owners with regard to the collection of the amount owed by the debtor farmer or farmers, charging a maximum of 12 per cent as compensation for late payment from the due date until the date of collection, in accordance with the relevant legal provisions.

The nominal value of the payments shall be regarded as part of the capital, and the compensation for late payment as part of the income, of the Bank.

Note 2. The State shall annually make provision for the necessary credit for the implementation of the above article, the amount to be determined by the Ministry of Co-operatives and Rural Affairs.

...

5. Regulations governing the working hours, rest periods, leave and wages or salaries of fishermen, sailors and other persons employed aboard seagoing vessels (5 Ordibehesht 1351/26 April 1972)

The High Council for Labour, at its meeting of 5 Ordibehesht 1351, approved the following Regulations governing the working hours, rest periods, leave and wages or salaries of fishermen, sailors and other maritime workers, consisting of 21 articles and one note:

Article 1. All fishermen and sailors and other persons employed aboard vessels flying the Iranian flag shall be subject to the provisions of these Regulations.

Chapter 1

FISHERMEN

Article 2. For the purposes of these Regulations, the term "fisherman" means any person engaged in the catching of fish or other marine creatures, whether he is employed aboard a fishing vessel or on shore.

Note For the purposes of these Regulations, the term "fishing vessel" means any vessel or

craft used in salt waters for the purpose of catching fish or other marine creatures.

Article 3. The working hours for fishermen shall be 48 hours per week, with 24 hours of overtime per week if necessary. In the case of fishermen employed aboard a fishing vessel for a period of less than one week, the working hours shall be eight hours per day, with four hours of overtime per day where necessary. Rest periods and mealtimes shall not be reckoned as working hours.

Article 4. The weekly leave and official holidays of fishermen shall be established in accordance with articles 14 and 15 of the Labour Code.

Article 5. Fishermen employed aboard fishing vessels shall be entitled to two days of paid leave for every 30 days of work. Other fishermen shall be treated in accordance with the provisions of article 15 of the Labour Code; however, their annual leave, based on the number of working

months, may be computed on a discontinuous basis.

Article 6. The wages or salaries of fishermen shall be fixed in accordance with the provisions of chapter V of the Labour Code.

Chapter II

SAILORS AND OTHER PERSONS EMPLOYED ABOARD SEAGOING VESSELS

Article 7. The working hours of sailors and other persons employed aboard seagoing vessels shall be 48 hours per week, with 24 hours of overtime per week where necessary. Rest periods and mealtimes shall not be counted as working hours.

Article 8. Sailors and other persons employed aboard seagoing vessels shall have at least one month of leave for each year of work. The annual leave per working month may be computed on a discontinuous basis. Leave shall be enjoyed in the sailor's or worker's part of recruitment, save where a different arrangement is agreed upon between the two parties.

Article 9. Sailors and other persons employed aboard seagoing vessels shall be treated in accordance with articles 14 and 15 of the Labour Code with regard to weekly leave and official holidays. Official holidays which sailors and other persons employed aboard seagoing vessels are unable to observe by reason of the nature of their work shall be added to their regular leave entitlement.

Article 10. The provisions of chapter V of the Labour Code, with the exception of note 2 to article 21, shall apply with regard to the wages or salaries of sailors and other persons employed aboard seagoing vessels.

Article 11. When a vessel is in a foreign port, the wages or salaries of sailors and other persons employed aboard such vessel shall, at their request or with their consent, be paid in foreign currency, due regard being had to the official rate of exchange.

Article 12. Where a sailor or other person employed aboard a seagoing vessel has been recruited for a specific voyage and the duration of the voyage exceeds the term specified in the contract, the sailor or employee shall be entitled to receive his salary or wage for the additional period. Where, for any reason, the duration of the voyage is shorter than the term specified in the contract, the sailor or employee shall be paid his salary or wage for the period specified in the contract.

Article 13. The employers of sailors and other seafaring persons shall have the following obligations, which shall not affect the scale of pay for sailors and other seafaring employees:

1. Comfortable and hygienic living quarters and rest facilities shall be provided for employees;

2. Employees shall be provided with healthy and suitable food in adequate quantities;

3. When a vessel is in a foreign port and, for any reason, the state of the vessel makes

it impossible to provide living quarters on board, meals and lodging shall be procured free of charge for the sailors and other persons employed aboard the vessel; this obligation shall apply in Iranian ports also, except in the port of recruitment;

4. When a vessel is in a foreign port, the cost of transmitting funds to members of the families of sailors or other persons employed aboard the vessel shall be paid by the employer;

5. Sailors and other persons employed aboard seagoing vessels shall be provided with medical care on board and, where necessary, in foreign ports.

Article 14. Where the port of disembarkation of a sailor or other person employed aboard a seagoing vessel upon the expiry or cancellation of his contract is not specified in the contract, the port of disembarkation shall be the port of recruitment. Otherwise, the employer shall be obliged to provide the means and cost of transport to the port of recruitment, and the sailor or other employee concerned shall in any event be entitled to receive his wage or salary, in accordance with international legal norms, until his arrival at the port of disembarkation.

Chapter III

GENERAL PROVISIONS

Article 15. The hourly remuneration for overtime work shall be 35 per cent above the normal rate of remuneration. The assignment of overtime work to fishermen, sailors and other persons employed aboard seagoing vessels who are under 16 years of age is prohibited.

Article 16. The conditions of work for women and children specified in chapter IV of the Labour Code shall apply in the case of women and children who are subject to the provisions of these Regulations.

Article 17. The labour contracts of sailors, fishermen and other persons employed aboard seagoing vessels shall be drawn up in writing.

Article 18. For the purposes of these Regulations, the master of a vessel shall be deemed to be the employer's representative within the meaning of article 3 of the Labour Code.

Article 19. In cases where, in the opinion of the Ministry of Labour and Social Affairs, the latter part of article 9 and articles 12, 13 and 14 of these Regulations are applicable to the situation of fishermen employed aboard fishing vessels, those provisions shall also apply to that category of workers.

Article 20. In cases not covered by specific provisions in these Regulations, the provisions of the Labour Code shall apply, and, in cases not specifically covered by the Labour Code, the applicable rules shall be those set forth in the written agreement between employer and employee or, failing that, internationally recognized norms.

Article 21. The implementation of these Regulations shall in no way prejudice the rights already acquired by persons subject to these Regulations.

6. Regulations governing insurance premium rates, payment procedures and the scale and terms of insurance benefits (13 Tir 1351/4 July 1972)

Article 1. Establishments subject to the Act protecting workers against the effects of old age, disability and death shall, when paying the salaries of workers covered by the said Act, deduct 7 per cent of the salary of each worker as the worker's insurance premium and, after adding 14 per cent thereto as the employer's insurance premium, pay the total into the appropriate fund.

Note 1. For the purposes of these Regulations, the term "salary" means any remuneration which is paid to workers on a regular basis as a consideration for work done.

A list of the types of remuneration to which this note refers shall be drawn up for each fund, having regard to the pertinent employment regulations, on the basis of a proposal by the Ministry of Labour and Social Affairs and with the assistance of the High Council for Social Insurance.

Note 2. The maximum salary to be taken as a basis for the computation of insurance premiums and pensions under these Regulations shall be 40,000 rials per month.

Article 2. The procedure for the collection of insurance premiums and the scale of penalties for late payment shall be in accordance with the provisions set forth in that regard in the Social Insurance Act.

Article 3. The conditions of eligibility for the retirement pension shall be as follows:

(a) Insurance premiums must have been paid for at least 10 full years;

(b) The beneficiary must have reached the age of 60 in the case of men and 55 in the case of women.

Article 4. The retirement pension shall consist of one fortieth of a worker's average salary over the last three years of payment of the insurance premium, multiplied by the number of years of payment of the insurance premium. Having regard to the maximum specified in note 2 to article 1, the pension shall not exceed four fifths of the aforementioned average salary.

Article 5. Workers may, if they prefer, apply for retirement after 25 years of payment of insurance premiums or upon reaching the age of 60 in the case of men and 55 in the case of women.

Note. Workers covered by the provisions of this article shall, in the event of disability before the ages mentioned, become eligible forthwith for the retirement pension.

Article 6. A worker who is enlisted for military service may, if he wishes his period of military service to be counted as part of his years of payment of the insurance premium, pay his own portion of the premium and the employer's contribution on the basis of the amount of his salary at the time of his enlistment in a maximum of 120 monthly instalments, after

the termination of his military service and his return to work in the establishment where he was previously employed.

Article 7. Any worker who for any reason becomes disabled shall receive a monthly disability pension equivalent to one fortieth of his average salary over the last three years of payment of the insurance premium, multiplied by the number of years of payment of the insurance premium. Having regard to the maximum specified in note 2 to article 1, the pension shall not exceed four fifths of the aforementioned average salary. Where a worker has paid insurance premiums for a period of less than 15 years, such period shall be deemed to be 15 years.

Note 1. Where a worker has paid insurance premiums for a period of less than three years, the basis of computation shall be his average salary over the period for which he has paid insurance premiums, and the number of years of payment of insurance premiums shall be deemed to be 15 years.

Note 2. For the purposes of these Regulations, the term "disability" means total and permanent incapacity of a worker to perform work and earn an income, which state shall be determined in accordance with the rules set forth in the Social Insurance Act and confirmed by the fund concerned. In the event of a difference of opinion, the matter shall be referred to a committee composed of three experts chosen, respectively, by the Ministry of Labour and Social Affairs, the High Council for Social Insurance and the fund concerned. The committee's decision, which shall be taken by majority vote, shall be final.

Article 8. In the event of the death of a retired or disabled worker, his surviving dependants shall receive four fifths of his pension:

Article 9. In the event of a worker's death before he becomes eligible for the retirement pension, his surviving dependants shall receive four fifths of the retirement pension to which he would have been entitled.

In such cases, where a worker has paid insurance premiums for a period of less than 15 years, such period shall be deemed to be 15 years.

Article 10. The eligibility of survivors to receive pension benefits under articles 8 and 9 above shall be as follows:

A worker's wife, until such time as she remarries, and a worker's husband, if he is disabled and receives no kind of pension, shall be entitled to 50 per cent of the pension. If a worker has more than one wife, the wife's portion shall be divided equally among his wives.

A worker's children up to 20 years of age, and in the event of continuation of studies in official establishments of higher education up to 25 years of age (provided, in the case of daughters, that they are unmarried), and the children in

like circumstances of an invalid or disabled worker shall each be entitled to 25 per cent or, if neither parent is still alive, to 50 per cent of the pension.

A worker's parents, provided that they are dependent on him and the father is aged 60 years or over and the mother 50 years or over or they are ill or disabled, shall be entitled to 20 per cent or, if there is not other eligible survivor, to 50 per cent of the pension.

Note. The total survivors' benefits shall not exceed 100 per cent of the pension. If this amount is exceeded, the share of each survivor shall be reduced proportionately, in accordance with the percentages specified in this article.

Article 11. In the event of the death or loss of eligibility of any one of the survivors, his portion shall be added to the benefits of the remaining survivors, in accordance with the percentages specified in article 10.

Article 12. If an insured person covered by the Act protecting workers against the effects of age, disability and death leaves the service of the establishment where he is employed and takes up employment in another establishment which is covered by the aforementioned Act and which has a separate fund, all his insurance premiums and the counterpart contributions of his employer, plus 6 per cent interest compounded annually, and all the liabilities of the fund of the first establishment shall be transferred to the fund of the second establishment.

Article 13. Any person insured under the Act protecting workers against the effects of old age,

disability and death who ceases to be eligible for coverage under the aforementioned Act shall receive, at the age of 60 in the case of men and at the age of 55 in the case of women, his paid-in insurance premiums plus 6 per cent interest compounded annually, if he has paid insurance premiums for five years or less, and his paid-in insurance premiums and one half of the employer's counterpart contribution plus 6 per cent interest compounded annually, if he has paid insurance premiums for more than five and less than 10 years. In the event of disability or death before attainment of the specified age, the aforementioned amounts shall be paid forthwith to the worker or his survivors, as the case may be.

Article 14. The scale of pensions under these Regulations shall be referred by the Minister of Labour and Social Affairs to the High Council for Social Insurance for review once every three years in the light of changes in the cost-of-living index. If, within the three-year period, the cost-of-living index has increased by 5 per cent or more, the High Council shall take steps, in accordance with the relevant regulations, to increase the scale of pensions proportionately.

Article 15. If the dissolution of an establishment covered by the Act protecting workers against the effects of old age, disability and death renders the continued operation of an insurance fund impossible, all the assets and liabilities of that fund shall be transferred to another fund for the protection of workers, by a decision of the High Council for Social Insurance.

...

7. Act concerning the Provision of Education for the Children of Workers (15 Aban 1351/6 November 1972)

Article 1. Children of workers covered by the Social Insurance Act who, through the relevant tests, are found to be qualified and intelligent during their study at the primary or educational guidance cycles shall enjoy appropriate educational facilities in accordance with the provisions of this Act and the regulations governing its implementation.

Article 2. Children of workers covered by the Social Insurance Act who are admitted to the intermediate theoretical education cycle or to the technical and vocational cycle or who are successful in the examinations for admission to universities and institutes of higher education shall receive the necessary education expenses and assistance from the Fund provided for in article 4 of this Act. Payment shall be effected in accordance with the regulations governing the implementation of this Act.

Note 1. Children of workers covered by the Social Insurance Act shall, in the event of the death, disability or retirement of such workers, continue to enjoy the facilities provided for in this Act.

Note 2. Children of workers covered by the Social Insurance Act who, at the time of the

approval of this Act, are engaged in studies at universities or institutes of higher education shall benefit from the provisions of this article from the date of the establishment of the Fund.

Article 3. The rules governing eligibility for the provision of education assistance and expenses to children of workers, the method of determining eligibility, the mode of implementation of articles 1 and 2, the conditions and procedures for enjoyment of the facilities and assistance provided for by this Act and the scale of education assistance shall be determined by regulations to be submitted, on the proposal of the Minister of Labour and Social Affairs and the Minister of Education, to the Council of Ministers for approval.

Article 4. For the purpose of the implementation of the provisions of this Act, a fund, to be known as the "Fund for the Provision of Education to Workers' Children", shall be established under the Ministry of Labour and Social Affairs. The aforementioned Fund shall have legal personality and financial and administrative independence. The Fund shall be administered in accordance with the provisions of its

Statute and the relevant regulations set forth hereinafter concerning its Board of Trustees.

Article 5. Employers covered by the Social Insurance Act shall, at the end of each month, pay the equivalent of 2 per cent of each worker's wage into the Fund for the Provision of Education to Workers' Children through the Social Insurance Organization.

The Social Insurance Organization shall, as from the date of approval of the Statute of the Fund, collect the said amount from employers and pay it into the Fund.

The expenses entailed by the implementation of this Act shall be defrayed out of the 2 per cent paid in by employers and through State aid. The procedure for collection of the said 2 per cent shall be in accordance with the provisions set forth in the Social Insurance Act for the collection of insurance premiums.

Article 6. The Board of Trustees of the Fund shall be composed of the Minister of Labour and Social Affairs or his Under-Secretary, the Under-Secretary for Education, the Under-Secretary for Science and Higher Education, the Under-Secretary for Finance, a representative of the Iranian Chamber of Commerce, Industry and Mines and a workers' representative, to be selected by the Labour Confederation. Until the Labour Confederation has been established, the Minister of Labour and Social Affairs shall select and recommend the workers' representative.

The Chairman of the Board of Trustees of the Fund shall be the Minister of Labour and Social Affairs and, in his absence, the Under-Secretary for Labour and Social Affairs.

Article 7. The Fund for the Provision of Education to Workers' Children shall have an

Executive Director and an Accountant, who shall be selected by the Minister of Labour and Social Affairs and approved by the Board of Trustees of the Fund. The organizational rules of the Fund shall be submitted, on the proposal of the Minister of Labour and Social Affairs, to the Board of Trustees of the Fund for approval.

Note. The percentage of the Fund's income to be expended annually on personnel and administrative costs shall be determined on the basis of a proposal by the Minister of Labour and Social Affairs and approval by the Council of Ministers. In no event shall it exceed 4 per cent of the Fund's income.

Article 8. The Statute of the Fund shall enter into force on the basis of a proposal by the Minister of Labour and Social Affairs and endorsement by the Council of Ministers and after its approval by the Labour and Social Affairs Committees of the two Houses. The privileges and functions of the Board of Trustees, the Executive Director and the Accountant shall be specified in the said Statute.

Article 9. By the end of Mordad of each year, the Fund for the Provision of Education to Workers' Children shall prepare a report of its income and a balance-sheet giving details of the implementation of the provisions of this Act during the preceding year for submission to the Board of Trustees of the Fund and publication after its approval.

Article 10. Any illegal expenditure or withdrawal from the assets of the Fund shall be deemed to be embezzlement of public funds.

...

8. Note on Act concerning the Amending Agreement between the Empire of Iran and UNESCO on the Establishment of the International Institute for Adult Literacy Methods (5 Khordad 1351/26 May 1972)

This act extends the original agreement of 16 December 1968.

IRAQ

NOTE¹

1. On 24 April 1972, the Revolutionary Command Council passed Decree No. 251, in which the cultural rights of the Syriac speaking Iraqis have been recognized, be they Assyrian, Chaldean or Syriac. The Decree provides for regarding Syriac as the teaching language in all primary schools where the majority of students speak Syriac, with the proviso that Arabic continues to be taught as a compulsory language. The same provision applies to intermediate and secondary schools. At the university level (the College of Arts of the University of Baghdad), Syriac has been introduced as one of the ancient languages. The Iraqi Radio and Television Authority has been instructed to introduce programmes in Syriac, and the Ministry of Information has been asked to produce a monthly publication in Syriac. The Decree, moreover, provides for the setting-up of an association for Syriac writers, ensuring their representation in the literary unions and associations of the country, and providing material and moral assistance to Syriac authors and translators with a view to publishing their works. In addition, the Decree instructs that all measures should be taken to enable the Syriac speaking citizens to establish cultural and artistic clubs, and to establish artistic and theatrical companies in order to revive and develop indigenous folklore.

2. On 10 July 1972, Law No. 82/1972 was promulgated to establish the Syriac Academy of Letters, as an independent body with a legal personality of its own, with the task of being a consultative body in the study and teaching of Syriac, the revival of the cultural and literary heritage of Syriac, and the study of the inter-relationship between Syriac and Arabic. The Academy was empowered to publish old Syriac texts and documents, invite writings and translations on topics chosen by it, assist in the writing and teaching of texts for all levels of education, establish a Syriac library, publish a periodical and provide financial assistance to researchers, writers and translators of Syriac.

3. Regulations No. 22 (1972, relating to the Directorate-General of (*Waqayi' al-Iraqiya*, No. 2134, 9 May 1972) Kurdish Education deal with the structure and organization of the organs entrusted with the task of supervising education in Kurdish-teaching schools, developing and encouraging student activities, linguistic studies in Kurdish, and the setting-up of archives for Kurdish studies. Moreover, the Regulations systematize Kurdish educational facilities in co-operation with the Ministry of Education; the supervision of televised educational programmes in Kurdish, the edition, translation, copyright and publication of textbooks; and the organization of studies concerning the development of the teaching programmes and the textbooks, the problems encountered in the application of those programmes or in the utilization of those textbooks, and the positive proposals for overcoming such problems. The Regulations also deal with the organization of various bodies to supervise nutrition in those schools, the regulation of educational supervision in all stages of primary, secondary and academic studies in both public and private institutions and the guiding of teaching staff towards the scientific, moral and patriotic aspects of education in consonance with the educational objectives of the State; the supervision of teachers' training through lectures, seminars and model work-shops; and the carrying out of analytical studies, the compilation of statistics, the publication of reports on the progress of education in schools teaching in Kurdish, and the presentation of suggestions for its enhancement and development. As of now, studies in all schools teaching in Kurdish, up to the end of the secondary level of education, are conducted in Kurdish; with Arabic being taught as a compulsory language.

4. On 24 May 1972, the Regulations relating to the Safety of Labourers and their Protection during Work were promulgated (*Waqayi' al-Iraqiya*, No. 2141, 24 May 1972). These Regulations were legislated pursuant to article 106 of the Law of Labour No. 151 (1970).

¹ Note furnished by the Government of Iraq.

IRELAND¹

Action taken in 1972 with regard to conventions and recommendations of the International Labour Organisation

CONVENTIONS RATIFIED

Protection against Accidents (Dockers) Convention (Revised) (No. 32), 1932
Safety Provisions (Building) Convention (No. 62), 1937
Fee-Charging Employment Agencies (Revised) Convention (No. 96), 1949

RECOMMENDATIONS ACCEPTED

Seafarers' Welfare Recommendation (No. 138), 1970
Employment of Seafarers (Technical Developments) Recommendation (No. 139), 1970
Crew Accommodation (Air Conditioning) Recommendation (No. 140), 1970
Crew Accommodation (Noise Control) Recommendation (No. 141), 1970.

¹ Information furnished by the Government of Ireland.

ISRAEL

NOTE¹

I. Legislation

1. LEGAL AID

Under the existing Criminal Procedure Law, 5725-1965, the court must appoint defence counsel for any person who has no counsel of his own if he is charged with an offence punishable by death or imprisonment for life or for a term of ten years or more, or if he is under sixteen years of age and is standing trial otherwise than before a juvenile court, or if he is dumb, blind or deaf. In addition defence counsel may be appointed on application if the accused is destitute or suspected of being mentally ill. In such cases the cost of the defence, including counsel's fees and expenses, are borne by the State. Although not provided for by statute, the Ministry of Justice maintains under administrative arrangements three legal aid offices which give legal assistance *ex gratia* according to directives laid down by the Attorney-General. A committee under the chairmanship of a Supreme Court Justice, appointed by the Minister some time ago, recommended the enactment of a framework Law for this purpose. As a result the Knesset (Parliament) has now passed the Legal Assistance Law, 5732-1972, the main but not the sole purpose of which is to extend legal assistance to civil matters. The Minister is empowered to set up legal assistance offices in various parts of the country under the direction of a qualified lawyer and staffed by properly qualified officers for the benefit of persons of limited means. Since the Law is only a skeleton Law, the particular requirements for entitlement to be assisted or be given free legal aid, as well as the matters for which legal aid will be provided and like matters, have been left to be determined by regulations. At the moment no such regulations have been issued, but the question is under active consideration in the Ministry of Justice. In the meantime, the "informal" offices mentioned above continue to function, with the assistance of senior university law students.

2. ARMY OMBUDSMAN

A special part has been newly added to the Military Justice Law, 5715-1955, instituting an ombudsman to serve military personnel, parallel to the civil ombudsman introduced in 1971. The right to make a complaint is given to every soldier or person who had cause to do so whilst

serving as a soldier, as well as to the children over the age of 16 of a soldier, his parents or spouse, and if there are no children, parents or spouse, any person asked to do so by him. Complaint lies directly to the ombudsman; if the complainant is in prison or under detention, he may make the submission in a sealed envelope to the prison commandant who must pass it on without opening it. Complaints may be made of any other soldier or civilian employee of the Army, even though at the date of the complaint they no longer have that status, in respect of any direct injury or deprivation of a benefit, or conduct affecting service conditions or discipline which is unlawful or contrary to Army orders or to good administration or extremely rigid or is manifestly unjust. No complaint may be made, *inter alia*, of the decision of a confirming authority, a decision of the Chief of the General Staff, nor of any judicial act of, or a proceeding pending before, a military court or court martial or investigating office. Where the ombudsman finds the complaint justified he must deliver a reasoned report to the complainant or the person of whom complaint was made, and to his officer and such staff officer as the Chief of the General Staff authorities in that behalf. The ombudsman may indicate the need for remedying any defect that emerges from his investigations. Not later than one month after receiving the report the Staff Officer must inform the ombudsman of the steps that have been taken in the case. Where the complaint is not found to be justified, a similar report must be sent to the persons involved except to the Chief of the General Staff. If it appears from the investigation that an offence may have been committed, the ombudsman must notify the Military Advocate General. Provision is made for non-disclosure in the ombudsman's report of any matter or information which may endanger the security of the State. The findings of the ombudsman do not accord any right or remedy in disciplinary hearings or courts martial nor do they prejudice the exercise of any right or the availability of any remedy to which a person may be entitled.

3. INFANTS

Although it may be inferred from the Youth (Care and Supervision) Law, 5720-1960, that no evidence is to be taken from a minor, if the court is of the opinion that he is unable to understand the matter in dispute or that his doing so may endanger his well-being—the Supreme Court has on a number of occasions expressed the view that express statutory provision is necessary, giving the court a general discretion in this regard. An amendment to the above Law has

¹ Note prepared by Mr. P. Elman, government-appointed correspondent of the *Yearbook on Human Rights*.

accordingly been introduced which empowers a court to refrain from summoning a minor as a witness in proceedings under the Law or stop him giving evidence in court, if it is of the opinion that it may harm him. Instead, the court may admit evidence taken down and recorded by a youth interrogation officer under the Law of Evidence Revision (Protection of Children) Law, 5715-1955, or a memorandum or report which such officer prepared during or after interrogation.

In a different area, the rights and interests of young persons have been further strengthened by adding to the Youth Labour Law, 5713-1953, a new chapter dealing with compulsory study periods for working youths between the ages of 15 and 18 in order to render them better fitted for their chosen trade. The provisions are intended to be applied gradually with an outside limit of five years. In the preparation of the curricula and the arrangement of the periods of study, the Ministers of Labour and Education will cooperate. The scheme is to be given a substantial degree of flexibility as to the number of weekly hours of attendance and the geographical and occupational distribution of the courses that will be available. The training envisaged will be free, apart from the cost of personal equipment and materials necessary for the course. Correlatively, employers are under statutory duty to release persons for this purpose and may not make any deductions of salary in respect of absence from work whilst attending classes.

4. PRIVACY

The proliferation in recent years of the number of businesses and individuals engaged in the collection of personal information and the undertaking of private investigations on a commercial basis has created the danger that such activity may very easily develop in an undesirable direction to the prejudice of the rights of the individual in a variety of ways and sometimes contrary to the public good. The Private Investigators and Guard Service Law, 5732-1972, is intended to impose some control on such activity by means of a licensing system and professional disciplinary regulations. The licensing system is aimed at ensuring that only properly qualified and responsible people will engage in private investigations; applicants must in particular pass an examination in the law of the state relating to their work and abide by a code of professional ethics to be prescribed by the Minister of Justice. Apart from having to act faithfully and uprightly towards their clients, private investigators must, at the request of the Attorney General, disclose any knowledge they acquire of an infraction of the law; they can also be compelled to desist if their activities are likely to impede normal police investigations. They are also under obligation to inform the Attorney-General of any matter required for the enforcement of the Law itself or the regulations made thereunder as well as for the proper supervision of methods and means employed by them in obtaining and collecting information. Only registered investigators may be employed by a firm (except for trainees, who,

however, must work under the direct supervision and guidance of the manager of the firm concerned). The owner must take all reasonable steps to ensure that his employees conduct themselves properly. In the case of an incorporated body, all members and directors must be licensed investigators and no one else may participate in the profits; all members are liable for any disciplinary offence committed by one of them, unless done without knowledge or all reasonable steps were taken to prevent the offence, and all are vicariously liable in tort for the acts and omissions of any one of them. A disciplinary committee under the chairmanship of a judge, with powers of summoning witnesses and compelling the giving of evidence, is set up to ensure observance of the Law. In addition, the Attorney-General is empowered to appoint an inspector with the authority of a senior police officer to investigate any matter touching upon the conduct of private investigators. A disciplinary trial does not affect the right to proceed in criminal law for any act or omission involved.

The definition of "private investigator" expressly excludes scientific research workers and persons engaged in public opinion polls.

5. LABOUR RELATIONS

New provisions have been incorporated into the Settlement of Labour Disputes Law, 5717-1957, aimed at restricting the right to strike in certain vital occupations, such as central and local government services, the health services conducted by a public body, the compulsory elementary and the secondary and university education services and air transport services. No strike or lock-out will be protected in any of these services where a registered collective agreement between the employer and an employees' organization exists with reference generally to the terms of employment, or where there is no such agreement or, having existed, has expired, and the strike is not duly approved by the competent employees' organization or, in the case of a strike or lock-out, no notice thereof has been given pursuant to the Law. A strike includes any organized total or partial cessation of work by a group of employees, including a go-slow strike or any other interference with orderly work procedure and an organized refusal to work lawful overtime if a duty so to do is contained in the collective agreement. An unprotected strike or lock-out does not generally come within the definition of a strike or lock-out which is excluded from the provisions of the law of torts relating to the unlawful causing of breach of contract nor does it prevent proceedings being taken under a number of labour laws, but neither the employers' nor the employees' organization concerned will bear any liability in respect of any unprotected strike or lock-out which it has not declared or approved. Any employer in breach of a collective agreement may, on the application of an employee in respect of whom such breach has occurred or the organization of which he is a member, have awarded against him increased damages for the breach, even where no pecuniary loss is suffered thereby. If the parties to a labour dispute as aforesaid do not agree upon a way

of settling their differences within six weeks, it must be submitted to arbitration to be concluded within a further month. For the foregoing purposes the State is treated as any other employer.

6. UNEMPLOYMENT INSURANCE

Unemployment insurance has now been made part of the National Insurance Scheme in a new chapter to the National Insurance Law (Consolidated Version), 5728-1968. The persons covered are all wage-employed temporary or permanent residents between the ages of 18 and 65 (for women 60) for whom the employer is required to pay national insurance contributions. A person qualifies for unemployment benefits if unemployment insurance contributions have been paid in respect of him for 180 days (150 days in the case of day labourers) in the previous year or for 270 (225) days in the previous year and a half. A person is deemed to be unemployed if he is registered in a Labour Exchange as being without work and ready and able to work at his trade or any other suitable occupation but the Labour Exchange has not offered him work. Other suitable occupation is defined as any work of the kind in which the person was largely engaged during the three previous years or such other occupation which is consistent with his training, educational standards and state of health, the proposed wages being not less than the amount he would receive by way of unemployment benefit and the work not requiring a change of residence. A workman who leaves his employment voluntarily without justification is not entitled to any payment for the first month; the same applies to any one who refuses to take a job offered him by the Labour Exchange. Unemployment pay is calculated on a daily basis as a percentage of the national average wage. A special children allowance is made for the first two children. Special provisions apply where the spouse is also an employee and is or is not unemployed. The maximum period for which unemployment pay will be given is roughly 175 days in any one year for a person over 45 or with three dependent children, and in every other case 138 days; the first 5 days of any period of 120 continuous days is treated as a waiting period and no pay is made therefor. A minor between the ages of 15 and 18 who contributes to the upkeep of his parents or brothers and sisters, for whom the Labour Exchange cannot find any work is entitled to a special unemployment grant.

7. FAMILY MAINTENANCE

A problem which has created difficulties is the liability of a woman who has secured judgement for the maintenance of herself and her children against her husband by whom she has been abandoned and cannot obtain effective execution of the judgement. To alleviate the distress that such a state of affairs may create, the Maintenance (Assurance of Payment) Law, 5731-1972, provides that any person who has secured judgement from a competent court in respect of maintenance is entitled to claim from the National Insurance Institute monthly payments of the

amount awarded up to a prescribed maximum, instead of instituting and prosecuting execution proceedings. Upon making such payments, the Institute is subrogated to the rights of the claimant. If the Institute collects more than it has paid to the claimant, the latter is entitled to the difference. The right to payment from the Institute endures for the period prescribed in the judgement and so long as the defendant remains liable to make payment thereunder. Subsequent variations of the court order are to be reflected in the payments made by the Institute. The right to payment does not arise if the claimant has already taken execution proceedings, and it ceases when such proceedings are taken subsequently; this provision does not, however, bar the claimant from taking steps to obtain payment of the difference between the amount awarded under the court order and the amount which the claimant has received from the Institute, and in the converse the claimant must account for any money or money's worth received from the defendant otherwise than by way of the Institute.

8. CONSUMER PROTECTION

The Commodities and Services (Control) Law, 5718-1957, was largely directed to prevent excess profits on commodities and services. In view of the expansion of credit transactions in recent years it has been found necessary to regulate prices, and particularly the rates of interest charged on instalment payments as well as the terms of the contract entered into between supplier and customer. A new article has been added to the law dealing with fraud of the public. The responsible minister may now by order—generally, or specifically with respect to certain areas, types of transactions, commodities, services—require the display in such manner as may be prescribed, or otherwise inform a customer, of the cash and credit prices, indicating the cost of delivery, packing, insurance and any other service provided which are included in these prices; the precise rate of interest charged; the amount and nature of any other addition to the cash price; the dates and instalments of payments under credit transactions; the services provided for keeping the commodity in good repair, including replacements of parts and the charges therefor; and the period of guarantee. Provision is made for signed accounts containing the foregoing particulars, in addition to any other information required under the Law. Where necessary, the minister may also require suppliers to enter with customers into written contracts in approved standard form containing the above particulars. The sanctions for infringement include closing down permanently or for a period the establishment of the supplier.

9. ENVIRONMENTAL LAW

As a result of increasing industrialization, and in common with most other countries, Israel is becoming increasingly concerned with environmental problems. The pollution and possible deterioration of national water resources has become a matter of prime concern. Accordingly, the various existing statutory provisions in this

field have now been brought together, updated in the light of present-day understanding of the problems, and enacted in a separate article to the Water Law, 5719-1959. Along with the broadening amendment of the Public Health Ordinance in 1970, the new provisions may well form a framework for dealing with the entire question of environmental protection. After defining "water pollution" and "pollution source" in the broadest possible manner, water pollution is expressly prohibited and power given to the Minister of Agriculture, after consultation with the Water Authority, to render the prohibition effective by means of regulations. The disposal of waste products is also regulated. The maintenance of water quality receives special attention. The power to impose sanctions—orders to repair any damage done or abate the same, stop orders, and undertaking what is necessary without reference to the owners concerned in emergency situations—reposes in the Water Commissioner, but aggrieved parties may appeal to a special tribunal. An important new departure is the right of appeal given to any person who feels himself prejudiced by a refusal of the authorities to exercise any of their powers under the new provisions.

II. Judicial decisions

1. FAIR HEARING

Yehudai v. State of Israel (1972) 26 *Piskei-Din* (I) 267

This was an appeal against a sentence of three years' imprisonment for being in unlawful possession of dangerous drugs. At first instance, the accused applied for disclosure of the place from which the police claimed to have observed him but the police successfully pleaded privilege. Although on appeal this aspect of the case was not dealt with directly by the appellant, the Court of Criminal Appeal found it necessary to refer to it at some length.

Under section 45 of the Evidence Ordinance (New Version) 1971, a person is not bound to give, and a court will not admit, evidence which a minister has certified as likely to impair an important public interest unless the court, on application in that behalf, finds that disclosure is necessary for the purpose of doing justice in the particular circumstances, and this outweighs the public interest in non-disclosure. Ordinarily, where the name of a person who supplied information to the police is withheld, the need to keep open sources of police information is balanced against the requirement of avoiding false evidence. In the present case what was involved was primarily the place from which the police had observed the accused. Nevertheless, the Court held that disclosure of such place was intricately bound up with the privilege against disclosure of the identity of an informant since it might lead to the identification of the owner or occupier and place them in danger, as a result of which they might not assist the police in the future in the enforcement of the law. The rules relating to privilege must, the court

observed, be broadly flexible and applied not only to disclosure of the personal identity of informants but equally to the method, manner and circumstances in which the police acquired evidence. *Etzioni J.* observed that whilst the rule of law requires that no area of activity may be left to the authorities in which they are exempt from the ordinary rules of evidence, in order to carry out properly a public service and not to harm an important public interest, an exception must be made. The precise line between the public and private interest may be difficult to draw. In the instant case, non-disclosure could seriously affect the elementary right of the accused to cross-examine and challenge the credibility of the police witnesses or their ability actually to see the accused from the place at which they said that they had observed him. In cases such as this, the Court must proceed very cautiously when it comes to decide whether to allow the plea of privilege.

2. PENALTIES

Tzashlah v. State of Israel (1972) 26 *P.D.* (I) 350

An injunction was granted against the appellant in a civil action for private nuisance, requiring him to close down his bakery. Even after having been given a number of extensions—the last in November 1968—he had not complied with the order. On application of the authorities in February 1969, the court had, under the Contempt of Court Ordinance, sentenced him to a fine of £1 300 or 30 days' imprisonment for his past breach of the order and a fine of £1 300 a day for any future breach. The appellant neglected to pay the second fine and continued to keep his bakery going. In February 1970 the Attorney-General applied for the imposition of a term of up to one year in lieu of the fine in accordance with section 22 of the Penal Law Revision (Modes of Punishment) Law 1954. On appeal the main plea was that the Order of 1969 was *ultra vires* since it purported to impose a fine for acts or omissions that had not yet occurred. The Supreme Court rejected this plea on the grounds that the matter had not arisen in the course of ordinary criminal proceedings but under section 6(1) of the Contempt of Court Ordinance. Although the latter was not entirely civil in nature, it was not to be treated as a criminal enactment dealing with criminal offences already committed. Its penal aim was intended to ensure compliance with orders of court, "to enforce by fine or imprisonment obedience to any order issued by [a court] directing any act to be done or prohibiting the doing of any act". Nothing in the section, the Court held, forbade expressly, or by implication, the imposition of a fine directed to the future as long as it was aimed at enforcement of an order. Contempt proceedings are of a special kind, and cannot be classified either as criminal or as civil. The powers of the courts are very wide and unrestrained by civil or criminal law rules, and it is not *ultra vires* for a court to act in such a manner as it had in the present case.

3. FREEDOM OF RELIGION AND CONSCIENCE

In *Rogozinski v. State of Israel* (1972) 26 P.D. (I) 129, two couples claimed a declaration that the civil marriages they had contracted in the English form of a common law marriage were valid notwithstanding statutory provision that the marriage and divorce of Jews in Israel should be performed in accordance with Jewish religious law. They stated that they possessed no religious faith, but admitted to have been born to Jewish mothers and had not adopted any other religion and therefore, according to Jewish law and the law of the State, were deemed to be Jews. They relied upon article 83 of the Palestine Order in Council, ensuring all persons in Israel "full liberty of conscience . . . subject only to the maintenance of public order and morals" and the guarantee in the Declaration of the Establishment of the State of Israel 1948 of freedom of religion and conscience. A five-man bench of the Supreme Court dismissed an appeal against a District Court decision remitting the matter to a rabbinical court.

In the course of his judgement, *Berinson J.* said:

Freedom of religion includes, as we know, the freedom also not to have any religion. . . . I do not think that the appellants can argue that this freedom is not in practice assured them. The fact is that they proclaim publicly that they belong to no religion and no one tells them to desist or compels them to observe the prescript of any religion. On the other hand freedom of conscience is a much wider concept than freedom of religion. It inheres very largely in the personal conscience of each individual and the subjective element is predominant. Accordingly, had these provisions regarding freedom of conscience been part of a supreme law to which the laws of the State are subject, it might be possible to urge that to require a person who denies religion to resort to the jurisdiction of a religious court and go through a ceremony of a traditional-religious character, which conflicts with his ideas and conscience, constitutes a violation of his freedom of conscience.

But article 83 . . . itself subjects the individual's freedom of conscience to the need to maintain public order and morals, and the main thing is that no single provision of the Order in Council can obstruct the legislative path of the Knesset or stand in the way of its enactments which have priority to all Mandatory legislation. As regards the Declaration of Independence, it is settled law that it does not constitute a constitution to which the laws of the State must yield, or that it affects the existence or abrogates the law of the State. Not once has it been said that the Declaration is indeed the expression of the vision of the people and its credo, but it has no force of law. Its legal effect lies in the fact that all statutory provisions are to be interpreted in its light and as far as may be possible in consonance with and not in contradiction to its leading principles. Yet where express statutory provisions of the

Knesset exist, which leave no room for doubt, they are to be followed, although inconsistent with one of the principles in the Declaration. . .

The subjective criterion, to which the appellants attach prominence, might bring confusion into the area of marriage law in which the public as a whole has a special concern. The high importance of the matter calls for the observance of objective rules and principles by which one may know and determine what are the rights and obligations of one spouse vis-à-vis the other and what their rights and obligations are vis-à-vis the public as a married or unmarried couple. The right of self-determination in questions of religion and of nationality must be deferred to, but as *Cohn J.* has said in *Staderman v. Attorney-General* (1970) 24 P.D. (I) 766, 770, "this right is abrogated and yields in face of express provision of the law".

And *Etzioni J.* said:

Clearly the matter of marriage registration is not a trivial thing nor confined merely to formal requirements. Its importance lies in obviating many mischances likely to occur as a result of the celebration of private marriages without investigation or inquiry into the capacity of the parties, the witnesses, and so on . . . The public aspect of the avoidance of private marriages should generally take precedence unless it is clear that the persons involved have no means of addressing themselves to institutions established by law for the celebration of marriages by reason of some impediment arising from legal prohibition or factual hindrance . . . "If it emerges that no such impediment or hindrance exists, with the result that the entire purpose of the applicant is only to obtain judicial sanction to a private marriage, so that it may serve as legal proof of it having been contracted, then one must properly conclude that at this point he has no such interest in obtaining the desired declaratory relief for which regard should be had. *A fortiori*, the public at large has no interest since in these circumstances the public interest dictates that the parties arrange their marriage, no obstacle being present, in accordance with the scheme of things prescribed by the law of the State for that purpose" (per *Agranat P.* in *Shagav v. Safed Rabbinical Court* (1967) 21 P.D. (II) 505, 532-33).

4. FREEDOM OF EXPRESSION

Kenan v. Film and Theatre Censorship Board (1972) 26 P.D. (II) 811

The Board decided not to grant a licence for the performance of a play called "Friends talk about Jesus" on the grounds that it offended against religious feeling, particularly that of Christians as well as of all those who respected the religious sentiments of others, and violated social-moral values and good taste. The appellant contested the refusal and brought evidence of two university professors that the play was allegorical and a criticism of the commerce in traditional moral values and symbols, very

reminiscent of medieval miracle plays which, however, were not deemed to assault the feelings of the Christian audiences to which they had been addressed. The High Court of Justice dismissed the petition. In the course of his judgement (in which the other judges concurred) *Landau J.* said:

There is general agreement that one of the purposes of the theatre is to level criticism at negative social phenomena, and satire is the recognized means for that. But under the law of the State of Israel, a playwright is not relieved of the obligation not to offend in crude fashion the religious feelings of others. This obligation stems directly from the duty of mutual toleration as between free citizens of different faiths, without which no plural democratic society such as ours can possibly exist. So important is this obligation that even the basic principle of freedom of expression must give way to it. In this manner the interdictions of the criminal law are binding upon us. Under section 149 (a) of the Criminal Code Ordinance 1936 "Any person who (a) publishes any print, writing, picture or effigy calculated or tending to outrage the religious feelings or beliefs of other persons... is guilty of misdemeanour and is liable to imprisonment for one year".

... For the purpose of this section it is not the subjective motivation of the publisher which is decisive but the impression which the published material is likely to create in the mind of a person having religious faith ...

[As was said in an earlier case] "the appellant, like every other citizen, may conduct his battle of ideas as he wishes provided that in doing so he employs legitimate weapons; his purpose does not sanctify all measures, and prohibited shameful matter does not cease to be such, even if the motive for its publication is most proper". ... A writer or playwright may lash out to his heart's content with the whips of criticism and satire against the priests who have sinned, as Molière did in "Tartuffe" or in our own day Hochhuth in "The Representative". But the representation of God Himself on the stage in a manner which outrages the feelings of believers goes beyond the limits permitted by our law.

The Public Performances (Censorship) Ordinance, pursuant to which the Board acts with regard to the censorship of plays, does not provide it with any criteria for exercising its discretion. Whatever one may think of the need for literacy censorship—and this Court which must apply the Ordinance, such as it is, is not required to decide this fundamental question—no one certainly will dispute the fact that the Board must use the dangerous weapon of censorship with the greatest caution and the utmost restraint. But it is no less certain that when the Board is convinced that a play manifestly contravenes the express penal provisions of the law, as in the present case, it must not lend its hand to the contravention and it may in advance stop the presentation of the play.

ITALY

NOTE¹

I. Legislation

In the course of the year under consideration two laws having a particular relevance to human rights were enacted: one relating to criminal procedure, and the other recognizing conscientious objectors.

Act. No. 773 of 15 December 1972 (*Gazzetta Ufficiale*, No. 326, 18 December 1972) is entitled "Amendments to the Code of Criminal Procedure for the purpose of expediting and simplifying proceedings". In reality, this Act also embodies guiding principles and provides greater protection for the defendant's right of defence. In particular, article 277 of the Code of Criminal Procedure has been amended to provide that a person in custody pending trial may be granted provisional release "even where a mandatory arrest warrant has been issued". In addition, article 304 of the Code has been redrafted to correspond more closely with the trends of constitutional jurisprudence in recent years. The former text of the article, entitled "Appointment of defence counsel", provided only that the magistrate, at the first stage of the proceedings at which the defendant is present, requests him to choose counsel or, if he fails to do so, appoints counsel for him in the name of the court. The new provisions tend to guarantee the trial position and the rights of defence both of private parties and of the defendant. In fact, they require the examining magistrate, from the very beginning of the preliminary examination of the case, to send to all persons who could possibly be involved as private parties a judicial communication specifying the provisions of law which have been violated and the date of the alleged offence, and inviting them to exercise their right to appoint counsel. It is further provided that in the event evidence of guilt is developed in the course of questioning a person not charged with any offence, who has not named a defence counsel, the magistrate warns him—and officially records this fact—that from that point onward every word uttered by him can be used against him and invites him to name a defence counsel of his own choice. The questioning is then postponed to a later session, at which time a court-appointed counsel is named in cases where the party concerned has not appointed his own counsel. Statements previously made by that person in the absence of counsel cannot be used for any purpose. The amended text of article 304 also

provides that the judicial communication must be transmitted in a sealed envelope by registered mail with return receipt requested, the purpose being to guarantee the secrecy of the communication.

Act. No. 722 of 15 December 1972 (*Gazzetta Ufficiale*, No. 326, 18 December 1972) grants recognition in Italy, for the first time, to conscientious objectors. Article 1 provides that "persons subject to the military draft who declare that they are opposed, in any circumstances, to the personal use of arms by reason of inexorable motives of conscience may be allowed to fulfil their military service obligations in the ways prescribed by the present Act. The reasons adduced for their conscientious objection must be related to a general conception of life based on deep religious, philosophical or moral beliefs professed by the subject". In addition to some provisions on the procedure for the formulation and acceptance of the request on the part of the persons concerned, article 5 prescribes that "the persons allowed to benefit from the present Act must serve in a non-combat branch of the military service or a substitute civil service for a term exceeding by eight months the duration of the military service for which they would have been liable". Article 11, in conclusion, provides that those who are granted the benefits of the Act are placed on an equal footing—in respect of all civil, criminal, administrative, disciplinary and economic matters—as those citizens who discharge their normal military service.

Pursuant to the realization of the plan for regional decentralization, a number of legislative measures have transferred ordinary jurisdiction over some important State administrative functions to the Regions. Thus, in matters particularly relevant to human rights, the following functions are among those that have been so transferred: scholastic aid (Presidential Decree No. 3 of 14 January 1972 (regular supplement to the *Gazzetta Ufficiale*, No. 15, 19 January 1972)); medical and hospital assistance (Presidential Decree No. 4 of 14 January 1972 (*ibid.*)); and public welfare (Presidential Decree No. 9 of 15 January 1972 (regular supplement to the *Gazzetta Ufficiale*, No. 30, 2 February 1972)).

Two separate items of legislation have provided for improved pension benefits for workers, whether employees or self-employed persons, as regards minimum pension rights, the amounts of contributory pensions and pension rights for various categories of workers (Legislative Decree No. 267 of 30 June 1972 (*Gazzetta Ufficiale*, No. 168, 1 July 1972); Presidential Decree No. 325 of 12 May 1972 (*Gazzetta Ufficiale*, No. 196, 28 July 1972)).

¹ Note prepared by Mr. Luigi Citarella, government-appointed correspondent of the *Yearbook on Human Rights*.

II. Judicial decisions

1. The principle of equal rights

Two important decisions of the Constitutional Court have further strengthened the principle of equal rights under Italian law. By virtue of its decision No. 46 of 15 March 1972, the Court declared unconstitutional article 27 of the Act of 26 July 1965, which, *inter alia*, introduced an amendment to the regulations of the pension funds of the welfare institutions coming under the jurisdiction of the Ministry of the Treasury, whereby male orphans of full age were excluded from the benefits provided for in those regulations in favour of female orphans. The Court, with reference to article 3 of the Constitution,² construed the provision in question as embodying treatment that was not uniform for all citizens whose circumstances were the same but rather differentiated between them according to the sex of the beneficiary. The same Court, also with reference to article 3 of the Constitution, likewise declared article 12, paragraph 3, of Act No. 46 of 15 February 1958 to be unconstitutional (decision No. 133 of 12 July 1972). In this case, the Court noted that, under the Act in question, male orphans of full age having an annual income of more than 240,000 lire are not considered indigent and, consequently, are not entitled to the normal reversible pension, whereas, under the corresponding provisions relating to war pensions, a person requesting an indirect pension is considered to be below the subsistence level when his total income is not subject to surtax. It is evident, the Court maintains, that the valuation in economic terms of the subsistence level of a person without sufficient means of support must be the same in the two cases, namely, normal pension and war pension. Article 12, paragraph 3, of the Act is therefore unconstitutional by reason of the fact that under its provisions male orphans of full age having a total income that is not subject to surtax are not regarded as indigent, whereas those having an annual income of not more than 240,000 lire are so regarded.

The Court of Cassation, in its decision No. 1382 of 6 May 1972 (*Ottaviani v. INPS*, in *Giustizia Civile*, 1972, p. 1201), has likewise reconfirmed the general criterion for the interpretation of article 3 of the Constitution. The Court of Cassation notes that whenever a system of rules and regulations is modified, the new system will inevitably be treated differently by the courts than was the old system. In order that the constitutional precept may be respected, it is necessary to ensure that relationships which are similar in kind are accorded uniform treatment on an objective basis.

² Constitution, article 3: "All citizens are of equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions or personal and social status ...".

2. Judicial and administrative guarantees in respect of trial

With regard to the right granted to the citizen by article 111, paragraph 2, of the Italian Constitution,³ whereby an appeal may be lodged for a review of the validity of any judicial decision, no law or regulation that, in substance, restricts this right, or excludes it in specific cases, even for the protection of other requirements, can be considered to be in conformity with the aforementioned constitutional provision. This principle, reaffirmed by the Constitutional Court in its decision No. 29 of 17 February 1972, induced the Court to declare unconstitutional those provisions of article 23 of the Code of Criminal Procedure which preclude the possibility of the criminal magistrate adjudicating the civil action even when, the criminal proceedings having been brought to an end with acquittal, the action is pursued by the litigant in the civil proceedings, for the protection of his civil interests, before the Court of Cassation, with the possibility of the matter being subsequently referred to another judge.

Numerous provisions of Royal Decree No. 267 of 16 March 1942, which regulates bankruptcy, the composition of creditors, receivership and compulsory administrative settlement, were examined by the Constitutional Court in connexion with its decision No. 110 of 20 June 1972 for the purpose of determining the compatibility of those provisions with the constitutional principle of the right to counsel and judicial assistance in civil proceedings. The Court has declared the following articles to be unconstitutional: (a) article 147, paragraph 1, to the extent that it does not make it mandatory for the court to order the appearance in council chambers of the general partners whose liability will be affected by a decision declaring the bankruptcy of a general partnership, so that the said partners can exercise their right to appoint defence counsel; (b) article 162, first paragraph, to the extent that it does not make it mandatory for the court, before rendering a decision on an application for permission to proceed to a composition with creditors, to order the appearance in council chambers of the debtor so that he can exercise his right to appoint defence counsel; (c) article 195, second paragraph, to the extent that it does not make it mandatory for the court to arrange for the appearance in council chambers of the debtor so that he can exercise his right to be represented by counsel in the course of the preliminary proceedings to ascertain the state of insolvency of a firm subject to compulsory administrative settlement without a declaration of bankruptcy.

³ Constitution, article 111, paragraph 2: "Appeals to the Court of Cassation on the ground of violation of the law shall always be allowed against sentences and against measures concerning personal liberty issuing from the ordinary or special jurisdictional organs".

3. Fair trial in criminal proceedings

Several decisions of the Constitutional Court, reaffirming the inalienable right to counsel not only of the defendant but of all the interested parties, are of particular interest.

In its decision No. 122 of 6 July 1972, the Constitutional Court declared article 149, first paragraph, of the Code of Criminal Procedure to be unconstitutional to the extent that it does not provide for a court-appointed defence counsel to be assigned to a defendant who has not engaged his own counsel and, consequently, does not provide for the defence counsel to be notified of the date for filing motions for the correction of material errors. The provision in question has been declared contrary to both article 24 and article 3 of the Constitution. Under article 24 of the Constitution, the appointment of defence counsel is made mandatory. In relation to article 3 of the Constitution, on the other hand, the unconstitutionality of the provision derives from the privileged position afforded to the public prosecutor (*pubblico ministero*) in relation to the other parties. This is apparent from the fact that in any criminal proceedings, and thus also in proceedings for the correction of material errors, the magistrate, under the provisions of article 76 of the Code of Criminal Procedure, may not, under pain of the proceedings being declared null and void, render a decision without the public prosecutor having been heard.

In its decision No. 168 of 21 November 1972, the Constitutional Court declared article 645 of the Code of Criminal Procedure to be unconstitutional to the extent that, in cases where the interested party is not notified of any writ or measure of which he must by law be notified, that article grants discretionary powers to the magistrate in charge of surveillance and does not make it mandatory for him to have a new investigation undertaken before a declaration of absence is issued nor for him to arrange for the filing of the said writ or measure with the chancellery and for written notice of such filing to be given to the personal or court-appointed defence counsel of the person concerned.

In its decision No. 63 of 13 April 1972, which is of particular importance, the Constitutional Court reaffirmed the principle that all motions at the preliminary examination stage of criminal proceedings which affect the rights of the defendant must be executed in the presence of his defence counsel. The Court declared unconstitutional article 304 *bis* of the Code of Criminal Procedure to the extent that it does not provide for the right of defence counsel to be present at the judicial inspection of a person, place or thing, and it declared article 309 *ter* of the same Code to be unconstitutional to the extent that: (1) it does not provide that defence counsel may be present at the judicial inspection even when there is no requirement that previous notice be given; (2) it does not provide for the right of defence counsel to be present during a personal search; and (3) it does not provide that defence counsel may be present during such search even where there is no requirement that previous notice be given.

Articles 357 and 364 of the Code of Criminal Procedure allow depositions to be made and other measures to be taken at the preliminary examination stage for the purposes of future reference and their use in subsequent criminal proceedings. However, the Constitutional Court, in its decision No. 64 of 19 April 1972, declared article 304 *bis* of the same Code to be unconstitutional to the extent that it denies the right of the defendant's defence counsel to be present at the taking of depositions and at a confrontation between witness and defendant where such measures are taken for purposes of future reference.

In its decision No. 77 of 4 May 1972, the Constitutional Court declared article 169, fifth paragraph, of the Code of Criminal Procedure to be unconstitutional with reference to the principle that any notice of a judicial act is to be considered valid, not when the formalities prescribed for the various kinds of notice have been complied with, but rather when the intended recipient has become cognizant or was at least in a position to become cognizant of such notice. Under the article in question, notice was considered to have been effected by deposit in the city hall on the date on which the notice was sent to the intended recipient rather than on the date of receipt.

4. Freedom of opinion; freedom of information

With regard to freedom of information, some of the provisions of Act No. 370 of 22 February 1934 on weekly and Sunday rest have been examined by the Constitutional Court in relation to the provisions of articles 21 and 41 of the Constitution.⁴ In particular, articles 13 and 14 of the statute under consideration are specifically concerned with a 24-hour weekly rest period for the staff of newspaper publishing companies and of other agencies engaged in the dissemination of news to the public by any means and for newspaper typographical staff. They provide that this rest period must run from Sunday morning to 4 a.m. on Monday. Special exemptions from the rest-period regulations are made for sports editors, the staff of the Stefani Agency (now no longer in existence) and radio broadcasting companies. In the view of the Court these provisions prevent both news and opinion from being freely disseminated and circulated through the periodical press or by other equivalent means, with the exception of radio and television broadcasting, between the hours of 1 p.m. on Sunday and 12 noon on Monday. The Court notes that article 36 of the Constitution, while stating the principle of a weekly rest, does not make any reference to Sunday or any other specific day and thus leaves room for flexibility in adapting the weekly rest to the varying nature

⁴ Constitution, article 21, first paragraph: "All persons have the right freely to express their own opinions with the spoken or written word and any other means of dissemination". Article 41, first and second paragraphs: "Private enterprise shall be free". It may not be exercised in such a way as to be prejudicial to security, freedom or human dignity.

of particular activities. The Court therefore concludes that the provisions in question are in conflict with article 21 of the Constitution, which solemnly lays down, as one of the principles that characterize the present democratic order, the need to guarantee the right of "all persons" freely to express their own opinions "by any means of dissemination". The Court has accordingly declared various provisions of the Act of 1934 (article 13, article 14, first paragraph, articles 22 to 26 and article 28) to be unconstitutional because, on the one hand, they establish a rigorous system of time-limits on the dissemination of the periodical press, and, on the other hand, they have the effect of inhibiting the use of a wide variety of other means of communicating with the public (such, for example, as orally delivered or filmed bulletins) within a period of time more or less coinciding with that during which the publication of newspapers is suspended. As a result, freedom of expression is curtailed. Also curtailed—from the point of view of the reader or listener—is the interest of the public, also indirectly protected by article 21 of the Constitution, in obtaining information, which, in a free democratic society, implies a plurality of information sources and free access to them and the absence of unwarranted legal obstacles, even temporary, to the circulation of news and ideas.

5. *The protection of rights in labour legislation*

The principle of equal pay for equal work, embodied in article 37 of the Constitution,⁵ has been examined by the Court of Cassation (*Aiazzi v. Soc. Sbraci*, 26 June 1972, No. 2163, in *Giustizia Civile*, 1972, I, p. 1994). The Court observed that the concept of "equal work" must not be understood in the sense of "equal output". It stated, in its decision, that output cannot be taken as a reference point for purposes of the equal treatment of male and female workers. The purpose of the constitutional provision is to prevent the particular situation of a woman in the labour force—her greater exposure to factors conducive to absenteeism and her more limited range of options—from being the sole justification, as determined by purely abstract and presumptive criteria, for her being paid less than a male worker.

In its decision No. 39 of 1 March 1972, article 3, first paragraph, of Legislative Decree of the Provisional Chief of State, No. 207 of 4 April 1947, on the legal and economic rights of non-permanent members of the civil service, was declared by the Constitutional Court to be unconstitutional to the extent that, in cases of absence from work for reasons of health, it makes continuance of the employment relationship for three months conditional upon the completion of one year of service. This means

⁵ Constitution, article 37, first paragraph: "Working women shall have rights as men and shall be entitled to equal pay for equal work. Their conditions of employment must enable them to perform their essential functions in the home and must provide special and adequate protection for mothers and children".

that a non-permanent member of the civil service must have been in the service for one year in order to have the right to be absent for proven health reasons without the employment relationship being affected; by the same token, he is denied this right if he has not completed the prescribed minimum period of service. Such restrictions do not apply to members of the permanent staff. On the basis of these considerations, the Court concluded that a difference in entitlement to rights is justified only if it is based on logical and objective criteria and that, in the case in point, the situations and requirements are completely identical. The difference in status—member of the permanent or the non-permanent staff—is entirely irrelevant in establishing the recognition of the right to be absent for reasons of health, since this right is prescribed by law for the protection of the same good, namely, individual health. Therefore, the provision under consideration was found to be in conflict in some respects with the principle of equality enunciated in article 3 of the Constitution.

In its decision No. 85 of 4 May 1972, the Constitutional Court declared Act No. 339 of 2 April 1958 on the regulation of domestic employment to be unconstitutional to the extent that it denies the employee the right to a length-of-service indemnity in cases where employment is terminated by summary dismissal. The Court had previously ruled, in its decision No. 3 of 1966, that the length-of-service indemnity claimed upon the termination of employment is compensatory in nature and that the right to the indemnity, regardless of the motive or cause for the termination of employment, may not be denied or subjected to restrictions inasmuch as it is protected by the guarantees embodied in article 36 of the Constitution.

6. *Protection of industrial rights and copyright*

"A person who is a citizen of another country that is a member of the (Berne) Union and who is the author of a work executed or published in the country of origin may indeed obtain in Italy, in respect of a work of his that is recognized by the legislation of his own country, protection that is wider than that accorded by Italian legislation to Italian citizens", and in the same way it is legitimate for an Italian citizen who is the author of a work executed or published in another country of the Union to obtain there protection that may be wider than that accorded by the legislation of that country to its own citizens or the protection afforded by the Berne Convention of 1886, which was revised at Brussels in 1948 and was ratified and brought into force in Italy by Act No. 247 of 16 February 1953. The foregoing principle was formulated by the Constitutional Court in its decision No. 48 of 15 March 1972, in which the Court stated that it does not follow from this that an Italian citizen, even in respect of a work executed or published in another country of the Union, can be accorded in Italy protection wider than that accorded by Italian law to similar works executed or published in Italy by Italian citizens.

III. International instruments and agreements

In the course of 1972, Italy deposited its instrument of accession to the Protocol relating to the Status of Refugees, adopted in New York on 31 January 1967, and deposited an instrument of acceptance relating to the amendments to the

International Convention for the Prevention of Pollution of the Sea by Oil, signed in London on 12 May 1954 and adopted, also in London, on 11 April 1962. The Convention concerning the exchange of information on the acquisition of nationality, adopted in Paris on 10 September 1964, also came into force with regard to Italy.

JAMAICA

NOTE ¹

During the years 1971 and 1972, there have been no constitutional amendments concerning human rights but there have been legislation and administrative orders relating to human rights as defined by the Universal Declaration of Human Rights.

I. Legislation

1. The Law Reform (Mandatory Sentences) Act, 1972, Act No. 9 of 1972, was passed to amend laws which had hitherto prescribed mandatory sentences for certain offences. The laws amended were:

- (a) The Dangerous Drugs Law, chapter 90;
- (b) The Larceny Law, chapter 212;
- (c) The Offences Against the Person Law, chapter 268.

The Dangerous Drugs Law had hitherto prescribed a mandatory sentence of 19 months for a first offender found guilty of being in possession of ganja, and 5 years' imprisonment for cultivating, selling or otherwise dealing in ganja. The 1972 amendments empower the Court to impose a fine or a sentence of imprisonment for which a maximum is prescribed.

The sentence of flogging has been deleted as a punishment on conviction for certain offences against the person as well as for certain offences defined by the Larceny Law, chapter 212.

2. The Registration of Electors (Prescribed Age) Special Act 1972, Act No. II of 1972, prescribes the age of 18 years for eligibility to

vote in national and local elections. The age of 21 years was formerly prescribed for these purposes.

3. Orders were made under the Minimum Wage Law, chapter 252, prescribing minimum wages in the printing, catering and dry goods trades. The references are as follows: The Minimum Wage (Printing Trade) Order 1971 PRR, dated 4 October 1971; The Minimum Wage (Catering Trade) (Amendment) Order 1972 PRR, dated 4 September 1972; The Minimum Wage (Dry Goods) Trade Order 1971 PRR, dated 1 March 1971.

II. Judicial decisions

Cases: 1971—Clarence Duke McGann v. The United States of America

The applicant was detained in the General Penitentiary in Jamaica awaiting surrender to the Government of the United States of America as a fugitive criminal convicted of crimes within the jurisdiction of the United States Government. The full Court of Jamaica made an order refusing a habeas corpus application made on behalf of McGann. The Court of Appeal refused to disturb the order. McGann was therefore returned to the United States.

1972—*L. C. McKenzie Construction Limited v. The Minister of Housing and the Commissioner of Lands*

The plaintiff sought the grant of an interim injunction against the two defendants to restrain them from taking steps to compulsorily acquire lands owned by the plaintiff. The injunction was refused on the ground that the Minister of Housing acted as an agent of the Crown and the action should have been brought against the Crown. An appeal is pending.

¹ Note furnished by the Government of Jamaica.

JAPAN

NOTE¹

I. Legislation

The following laws relating to human rights were enacted in 1972.

1. LAW FOR THE ESTABLISHMENT OF THE CO-ORDINATION COMMISSION ON ENVIRONMENTAL POLLUTION DISPUTES ETC. (LAW No. 52, ENACTED ON 2 JUNE 1972)

This law is designed to establish the Co-ordination Commission on Environmental Pollution Disputes etc. by combining the Central Examination Council on Environmental Pollution with the Land Co-ordination Commission, and to authorize the new Commission not only to perform the functions of both organs but also to render decisions on pollution disputes, so that the structure for settlement of these disputes may be strengthened.

Under the revised law concerning the Settlement of Environmental Pollution Disputes, this Commission is responsible not only for mediation for reconciliation, conciliation and arbitration, but for rendering decisions on pollution disputes for the benefit of the parties involved, and the same law provides for kinds of decision, decision panel, application for rendering decision, one or more representatives of the party, hearing and examination of evidence, connexion between this procedure and law suit, effect of decision on liability for damage, exceptional rules concerning provisional attachment and provisional disposition (injunction), reservation of the naming of the party causing damage, decision on matters other than those on which decision is applied for, information of decision to heads of administrative organs or local public entities and expression of opinion to such organs concerning necessary action, and rendering decision on the cause of damage upon request of the court, and so forth.

2. LAW FOR PARTIAL AMENDMENT TO THE AIR POLLUTION CONTROL LAW AND THE WATER POLLUTION CONTROL LAW (LAW No. 84, ENACTED ON 22 JUNE 1972)

In view of the importance of protecting the victims suffering from environmental pollution, this law contains the provisions for the liability of an enterprise for damage without negligence on its part in cases where human health has been damaged due to the emission of certain harmful substances in the air or areas of water.

3. NATURAL ENVIRONMENT CONSERVATION LAW (LAW No. 85, ENACTED ON 22 JUNE 1972)

In view of the fact that natural environment is essential to man's health and cultural life, this law provides for basic concepts and policies regarding the conservation of natural environment and other basic matters such as the establishment of the Natural Environment Conservation Council, and the designation and conservation of areas whose natural environment must be conserved, whether primeval or not, and it is also designed to promote the proper conservation of natural environment, synthetically, in combination with the Natural Park Law and all other laws aiming at the conservation of natural environment.

4. LAW FOR PARTIAL AMENDMENT TO THE LAW CONCERNING THE WELFARE OF THE AGED (LAW No. 96, ENACTED ON 23 JUNE 1972)

This law is designed to promote the welfare of the aged by having the expenses for medical care, which they must bear when they receive it under the health insurance system, paid out of public funds, thus making it easier for them to receive necessary medical treatment.

5. LAW FOR PARTIAL AMENDMENT TO THE NATIONAL PENSION LAW (LAW No. 97, ENACTED ON 23 JUNE 1972)

This law is intended to raise the amount of welfare pension, children's maintenance allowance and special children's maintenance allowance by a large margin and, by strengthening the national pension system, to promote the welfare of the aged and others.

6. LAW FOR PARTIAL AMENDMENT TO THE LAW CONCERNING THE WELFARE OF THE PHYSICALLY HANDICAPPED (LAW No. 112, ENACTED ON 1 JULY 1972)

In order to strengthen the measures for the physically handicapped, this law is designed to include those who have defects in kidney functions within the category of the physically handicapped and to establish treatment centres for the physically handicapped as institutions to accommodate those handicapped persons who need constant care and to give them medical treatment and support.

7. WOMEN WORKERS' WELFARE LAW (LAW No. 113, ENACTED ON 1 JULY 1972)

This law is designed to clarify the principles concerning the welfare of women workers and to promote their welfare and status by such

¹ Note prepared by Mr. Naozo Hagiwara, government-appointed correspondent of the *Yearbook on Human Rights*.

means as the improvement of vocational guidance programmes, the encouragement of vocational training, adjustment of their employment with their infant rearing, house-work or family life and the establishment of welfare institutions for women workers.

II. Judicial decisions

Among other decisions rendered in 1972, the following court decision is noteworthy from the standpoint of protecting human rights:

DECISION RENDERED BY THE THIRD PETTY BENCH OF THE SUPREME COURT ON 27 JUNE 1972 (IN THIS CASE, THE DEFENDANT WAS HELD LIABLE FOR DAMAGE RESULTING FROM HIS UNLAWFUL ACT BY WHICH THE SUNLIGHT AND VENTILATION OF THE PLAINTIFF'S PRIVATE HOUSE WAS BLOCKED)

1. In this case, the court rendered the decision, in effect, that the defendant (appellee in the second instance and appellant in the third instance) added another floor to his one-storied house not only in violation of the Construction Standard Law but also in disregard of the Tokyo Governor's order for suspension of construction and for removal of the illegal building; as a result, the house of the plaintiff living next door on the north side was shut out of sunlight and ventilation and the defendant had thus exercised his rights beyond the reasonable limits commonly accepted, infringing upon the rights of another and, therefore, he was liable for his unlawful act.

2. The main points of the court's judgement are as follows:

(1) The sunlight and ventilation of a private house are benefits indispensable to a comfortable and healthy living and, even if such benefits are brought to the beneficiary through the air space above another person's land, he is not unentitled to legal protection, so if a person blocks the sunshine or ventilation of another's house by an act which amounts to an abuse of his right, the victim should be justified in claiming compensation for damage resulting from such an unlawful act.

(2) The blocking of sunlight and ventilation is of a negative nature, as compared with such positive acts of blocking as the inflow of noise, smoke, odour and the like, but when a person blocks the sunlight or ventilation which his neighbour has been enjoying, as the result of abusing his right to use the land, it does not differ much from the making of noise etc. in that it blocks the neighbour's living, and there is no reason to draw a distinction between these two types of acts so far as the protection of victims is concerned.

(3) In cases where the construction of a house on the south blocks the sunlight and ventilation of a house on the north, it does not, by itself, constitute an unlawful act, but the exercise of one's right is to be admitted within the limits universally accepted. So, if it is considered that the act of a doer goes beyond the socially

justifiable limits and that the damage caused by such an act is beyond the extent which it is generally considered the victim should tolerate, his act is what is commonly called an abuse of right, which makes him liable for his unlawful act.

III. Main developments

1. SYSTEM OF CIVIL LIBERTIES COMMISSIONERS

The number of Civil Liberties Commissioners, (volunteer workers appointed by the Minister of Justice to engage in the activities for protecting the rights of citizens) was 9,711 as of 31 December 1972 (including 1,078 female Commissioners), representing an increase of 270 as compared with their number on the corresponding date in the previous year.

In the course of their activities, the Commissioners handled 6,958 cases involving violations of human rights, and the number of the cases in which they gave advice and counsel to the general public in response to their consultation regarding the problems of their rights amounted to 121,349 in 1972. The Commissioners also devoted their efforts to the encouragement and promotion of universal respect for human rights in their communities.

2. SYSTEM OF LEGAL AID

For the benefit of those citizens who cannot file a civil suit because they do not have sufficient financial means when there is a strong probability for them to win the case, the Legal Aid Association (a juridical foundation supervised by the Ministry of Justice) performs the legal aid work, and the results have been remarkable, year after year. In fact, the Association made decisions to provide legal aid in 2,935 cases in 1972 (3,104 cases in the previous year). These are classified as follows: 1,886 cases (or 64.3 per cent) involving monetary claims, out of which 698 (23.8 per cent) were for damages in traffic accidents; 534 cases (18.2 per cent) involving family affairs; 188 cases (6.4 per cent) involving disputes over immovables; remainder, 327 cases (11.1 per cent).

In this connexion, the Government gave a subsidy of 85 million yen (equal to a little more than 320,000 US dollars) to the Association for the 1972 fiscal year. (The total amount of government subsidies since the establishment of this system in 1958 reached 691 million yen.)

3. HUMAN RIGHTS WEEK

During the week from 4 to 10 (Human Rights Day) December 1972, various activities and campaigns were carried out throughout the country.

4. GENERAL TRENDS IN HUMAN RIGHTS PROBLEMS

In Japan, the people's sensibility to human rights problems has been developed in their minds

to a considerable extent, but the patterns and modes of infringements upon their rights are becoming more and more complicated, due to the growing up of the national economy and to the society's becoming diversified.

The total number of cases investigated by the Civil Liberties Bureau of the Ministry of Justice

and by the Civil Liberties Commissioners in 1972 for suspected violations of human rights reached 10,913, and the number of cases in which advice and counsel were given to individual citizens by the authorities and the Commissioners in response to their consultation regarding the problems of their rights totalled 258,429 in the same year.

KENYA

NOTE ¹

There have been no major developments pertaining to human rights as defined in the Universal Declaration of Human Rights in Kenya during the past year, but the following observations may be of interest:

(a) By virtue of the Immigration (Amendment) Act, 1972 (No. 6 of 1972), any person in Kenya who, under the Immigration Act, is classified as a refugee may now engage in any occupation, trade, business or profession without a work permit. This amendment confers upon refugees the same rights as regards job opportunities as those enjoyed by Kenya citizens.

(b) By a special issue of the *Kenya Gazette* dated 7 April, 1972, the President of the Republic of Kenya appointed a Commission of Inquiry to review the existing law and practice in relation to adoption of children and, *inter alia*, to make recommendations as to possible improvements in the law.

¹ Note furnished by the Government of the Republic of Kenya.

KHMER REPUBLIC

Constitution adopted by the Khmer people by the referendum of 30 April 1972¹

(Extracts)

Preamble

We the Khmer people,

Belonging to one of the greatest and most ancient civilizations in the world, that of the Mon Khmers,

Having learned from the frequently distressing vicissitudes of our history from the post-Angkor period until the event of 18 March 1970,

Have resolved to:

Promote the rebirth and renewed flowering of our national culture:

Solemnly proclaim our unswerving devotion to the fundamental principles set forth in the Universal Declaration of Human Rights;

Promote both political and social democracy in which all exploitation of man by man, oppression and intolerance shall be banned in favour of the happiness and prosperity of all Khmers;

Defend our republican régime against any attempt to restore the monarchy and against any introduction of personal power;

Preserve the territorial integrity, independence and unity of the nation.

We the Khmer people, ever faithful to our ideals of peace, reaffirm:

Our aspirations to lasting peace in the world,

And our will to co-operate actively with all nations without any distinction based on race, religion or political régime, to achieve progress and peace.

In witness whereof, we proclaim the present Constitution, the contents of which are as follows:

...

CHAPTER II

Rights and duties of citizens

Article 5. The exercise of the freedoms of the individual shall not infringe upon the rights of others. Such exercise shall be carried out under the conditions defined by law.

Article 6. The State shall guarantee the inviolability of the human person.

It shall protect the honour, dignity and privacy of citizens.

No trial, arrest nor detention shall be permitted unless authorized by law.

Any compulsion or brutality or any treatment which may augment the penalty to be applied to persons sentenced to deprivation of liberties shall be forbidden. Persons committing or helping to commit such acts shall be punished by law.

A confession obtained by means of physical or moral violence shall not be accepted as proof of guilt.

The accused person shall be given the benefit of the doubt.

Every accused person shall be presumed to be innocent until finally sentenced.

The State shall guarantee all citizens the right to defend themselves in the courts.

Capital punishment shall be abolished save when the nation is declared to be in danger. Summary executions shall in no case be permitted.

Article 7. Every citizen shall be free to express his thoughts orally, in writing or by other means of dissemination. However, this right must not be abused nor the peace endangered.

The exercise of freedom of the press shall not jeopardize personal honour, national security or morality.

The régime applied to the press shall be regulated by law.

Article 8. Every citizen shall enjoy the right to freedom of association and assembly. There shall be no restriction of this right unless it is established that the freedoms guaranteed by this Constitution are impaired.

Article 9. The State shall guarantee the right of all citizens to exercise freely their political rights, including the right to express complaints or opposition in public, provided that those rights are exercised without violence and in a legal manner.

Article 10. All citizens, male and female, who have attained the age of 18 years shall be electors.

All restrictive provisions shall be provided for in the electoral law.

Article 11. The dwelling shall be inviolable save in those cases specifically provided for by law.

Article 12. Freedom, privacy of correspondence and all other forms of communication shall be inviolable save where the law temporarily provides otherwise for reasons of the overriding interest of the country.

¹ Text furnished by the Government of the Khmer Republic.

Article 13. The banishing of a citizen and forfeiture of Khmer nationality for political reasons shall be forbidden.

Article 14. The State shall recognize and guarantee private ownership. It shall encourage the access of citizens to property ownership.

Any infringement of ownership shall be prohibited save in the public interest, in cases provided for by law. In those circumstances, the owner shall be entitled to the previous payment of a just and equitable indemnity.

Article 15. The State shall see to the improvement of the status of the least privileged socio-occupational categories in order to ensure them a level of living compatible with human dignity.

All citizens who are acknowledged to be unfit for work and without means of subsistence shall be entitled to social welfare.

Article 16. The State shall protect the freedom of handicrafts, agriculture, commerce and industry.

It shall be duty-bound to regulate that freedom in order to co-ordinate the national economy for social purposes and prevent any monopoly and any attempt at setting up a monopoly in commerce and industry.

Article 17. The State shall strive to create employment for all citizens.

All citizens shall have free access to all posts. There shall be no preference except that based on merit or competence.

All citizens shall be entitled to social insurance and to the social benefits provided for by law.

Trade union freedoms shall be regulated by law.

Article 18. The State shall seek to combat usury in all its forms.

Article 19. The State shall guarantee the right of all citizens to an education. Basic education shall be compulsory and free.

The State shall encourage literature, science, art and technology.

Article 20. The State shall recognize the right of citizens to protection of the family.

Article 21. It shall be the duty of all citizens to observe the law, defend their nation and assist the State.

They shall perform their compulsory military service under conditions provided for by law.

Article 22. Exercise of the rights and freedoms guaranteed by this Constitution in articles 7, 8, 11 and 12 may be suspended if there is a state of emergency or state of siege or if the nation is declared to be in danger or at war.

Physical brutality and acts likely to prejudice arbitrarily the material or moral rights of others shall be forbidden. Persons committing such abuses shall be punished in accordance with the law.

Suspension of the rights and freedoms referred to above shall in all cases be limited to a period not exceeding six months; it may be renewed in the same conditions.

At the end of the period of suspension, anyone who has suffered injury unjustly may bring his case before the competent jurisdiction in order to obtain reparation for the injury suffered.

...

LAOS¹

Act. No. 57.32 of 19 October 1957 establishing the duties of Laotians²

TITLE I

General duties of Laotians

Article 1. In accordance with the democratic principles proclaimed in the last paragraph of the preamble to the Constitution of the Kingdom, it shall be the duty of all Laotians:

1. To serve their country;
2. To respect the conscience of others;
3. To accept mutual obligations;
4. To observe their duties towards the family and to acquire an education;
5. To show a diligent application to work and to dedicate themselves to the protection and preservation of State property;
6. To be honest and to respect the law and the public authorities.

TITLE II

Duties towards the country

Article 2. It shall be the duty of all Laotians to serve their country in accordance with the provisions of the Act of 23 March 1950 establishing compulsory military service, the application of which is governed by the Royal Ordinance of 31 May 1954.

Article 3. Any citizen who fails to fulfil this duty shall be liable to the penalties prescribed in article 4 of the above-mentioned Royal Ordinance of 31 May 1954.

TITLE III

Article 4. All Laotians shall enjoy freedom of conscience, and shall respect the ideas and beliefs of others.

Article 5. Any violation of the provisions of article 4 above shall be punishable in accordance with the provisions of article 28 of the Act of 1 October 1957 relating to democratic rights.

TITLE IV

Mutual obligations

Article 6. All Laotians shall help one another in accordance with Laotian laws and customs.

Article 7. All persons shall give immediate assistance in the event of an accident or disaster

endangering lives or personal property. Any person refusing to give assistance on his own initiative or upon request shall, unless he was prevented from doing so by circumstances beyond his control, be liable to the penalties prescribed in article 125 of the Penal Code.

Article 8. Any person who, having knowledge of the presence of offenders on his premises, fails to report them to the authorities, or who conceals crimes or offences committed on the premises where he resides, shall be liable to the penalties prescribed in articles 109 and 110 of the Penal Code.

Article 9. In general, any person who refuses to fulfil the obligations laid down in the laws and regulations, especially work of public or collective interest, such as the maintenance of irrigation canals or flood-control dikes, or the upkeep of roads between villages, shall be liable to the penalties prescribed for that purpose under the said laws and regulations.

TITLE V

Duties towards the family

Article 10. Parents shall support their children, care for their health and provide for their education in accordance with the provisions of the Act of 9 April 1950 (as amended and supplemented by the Act of 16 January 1952) relating to compulsory education, the application of which is governed by the Royal Ordinance of 26 April 1951.

Every Laotian citizen shall learn to read and write the Laotian language.

Article 11. Any person who fails to perform the afore-mentioned duties, shall be liable to the penalties prescribed in article 4 of the Act of 9 April 1951.

Article 12. Children shall honour and respect their parents and provide support for them in accordance with customs and tradition.

TITLE VI

Application to work and preservation of State property

Article 13. It shall be the duty of all persons to show diligent application in their work.

Article 14. It shall be the duty of any official or other person vested with the power or the authority to make use of State property in carrying out his function to preserve and maintain such property in good condition as if it were his own property.

¹ Text furnished by the Government of Laos.

² Text not published before in the *Yearbook on Human Rights*.

Article 15. Any person who, through negligence, destroys, damages or permits the damage of State property shall be liable to the penalties prescribed in article 219 of the Penal Code concerning destruction or damage of the property of others.

In addition, he shall be required to pay compensation to the State representing the value of the property destroyed or the amount of the damage caused.

TITLE VII

Honesty and respect for the law and the public authorities

Article 16. Every Laotian citizen owes allegiance to his country, the constitutional monarchy and the royal family.

Article 17. It shall be the duty of every Laotian citizen to uphold the democratic institutions of the country.

Article 18. Any person who incites the population to rebellion with a view to overthrowing

the democratic system of government and establishing a system incompatible with the Constitution shall be liable to the penalties prescribed in article 79 of the Penal Code.

Article 19. Everyone shall respect the person of the King, the royal family, the laws and regulations, religion and the social order.

Article 20. All citizens shall honour and respect the bonzes, the public authorities and the representatives of the people who have been appointed in accordance with the law.

Article 21. Any act of disrespect shall be punishable in accordance with the provisions of articles 91 and 235 of the Penal Code.

Article 22. All citizens shall comply with an order duly issued by the public authorities or an order in the public interest issued by the tassengs (district leaders) and phobans (village leaders) in the exercise of their functions.

Article 23. Any refusal to carry out an order shall be prosecuted and punished in accordance with the provisions of article 121 of the Penal Code.

...

LIBERIA

Amendment to the Constitution

By Presidential Proclamation of 29 April 1972,¹ section 11 of article I of the Constitution was declared amended. The amendment, which had been adopted at a special election held on 4 April 1972, was as follows:

All election shall be by ballot, and every citizen (male and female) of eighteen years of age possessing real estate shall have the right of suffrage. Possessing real estate shall be construed to include possessing a hut on which he or she pays the hut tax.

¹ Text of Proclamation furnished by the Government of Liberia. For extracts from the Constitution of Liberia, see *Yearbook on Human Rights for 1946*, pp. 183 and 184.

LUXEMBOURG

NOTE ¹

I. International conventions and agreements concerning human rights

1. Act of 11 April 1972 approving Convention No. 121 concerning benefits in the case of employment injury, adopted at Geneva on 8 July 1964, at the forty-eighth session of the General Conference of the International Labour Organisation (*Mémorial A 1972*, No. 26, pp. 843 *et seq.*).

2. Act of 11 April 1972 approving the Agreement between the Grand Duchy of Luxembourg and the Portuguese Republic concerning the employment of Portuguese workers in Luxembourg, signed at Lisbon on 20 May 1970 (*ibid.*, pp. 856 *et seq.*).

3. Act of 11 April 1972 approving the Agreement between the Grand Duchy of Luxembourg and the Socialist Federal Republic of Yugoslavia regulating the employment in Luxembourg of Yugoslav workers, signed at Belgrade on 28 May 1970 (*ibid.*, p. 863).

4. Act of 2 June 1972 approving the Convention on offences and certain other acts committed on board aircraft, opened for signature at Tokyo on 14 September 1963 (*ibid.*, No. 36, pp. 1063 *et seq.*).

5. Act of 19 June 1972 approving the Agreement between the Grand Duchy of Luxembourg and Belgium concerning overseas social security systems, signed at Brussels on 27 October 1971 (*ibid.*, No. 38, pp. 1085 *et seq.*).

6. Act of 3 July 1972 approving the Single Convention on Narcotic Drugs, done at New York on 30 March 1961 (*ibid.*, No. 50, pp. 1256 *et seq.*).

7. Act of 1 August 1972 approving the European Agreement on continued payment of scholarships to students studying abroad, done at Paris on 12 December 1969 (*ibid.*, No. 54, pp. 1333 *et seq.*).

This Agreement is intended to encourage exchanges of students between European countries and to contribute to the cultural and academic enrichment of European students.

II. National laws and regulations relating to human rights

1. Revision of article 52 of the Constitution. Act of 27 January 1972 (*Mémorial A 1972*, No. 5, p. 134).

This constitutional revision lowered the voting age from 21 to 18 years and the qualifying age for election from 25 to 21 years.

2. Act of 23 March 1972 amending articles 1, 98 and 154 of the Act of 31 July 1924 concerning amendment of the Elections Act (*ibid.*, No. 21, pp. 787-788).

By this Act, the voting age and the qualifying age for election, as laid down in the above-mentioned Act of 27 January 1972 revising article 52 of the Constitution, were inserted in the Elections Act of 31 July 1924, which relates to both legislative and communal elections.

3. (a) Act of 28 March 1972 concerning (1) admission and residence of aliens; (2) medical control of aliens; (3) employment of aliens, and regulations dated 28 March 1972 for the implementation of this Act (*ibid.*, No. 24, pp. 818 *et seq.*).

(b) Grand Ducal Regulation of 12 May 1972 specifying the measures applicable to the employment of foreign workers in the territory of the Grand Duchy of Luxembourg (*ibid.*, No. 31, p. 945).

(c) Grand Ducal Regulation of 12 May 1972 concerning medical control of aliens (*ibid.*, pp. 948 *et seq.*).

4. Act of 2 June 1972 amending article 100 of the Penal Code concerning conditional release (*ibid.*, No. 37, pp. 1075-1076).

This Act releases and broadens the rules concerning conditional release for convicted persons serving one or more sentences privative of liberty. It provides, *inter alia*, for measures of assistance and supervision with a view to facilitating and monitoring the rehabilitation of prisoners granted conditional release.

5. Act of 24 July 1972 concerning social action for the benefits of immigrants (*ibid.*, No. 46, pp. 1215 *et seq.*).

This Act establishes an immigration service whose duties include (a) encouraging and supporting all social initiatives and activities which are in keeping with the objectives of international social conventions and national laws, etc. (article 2); (b) attending to the housing and lodging of immigrants (article 3). The assistance of the service is provided free of charge.

6. Act of 12 December 1972 concerning the rights and duties of spouses (*ibid.*, No. 77, pp. 1909 *et seq.*).

The new legislation, amending some provisions of the Civil Code and the Code of Civil Procedure, lays down the principle of equality of husband and wife; it ends the disability of married women as regulated by the former provisions repealed or amended by the Act of 12 December 1972

¹ Note prepared by Mr. Ferdinand Wirtgen, government-appointed correspondent of the *Yearbook on Human Rights*.

MADAGASCAR¹

1. Ordinance No. 72-013 of 4 August 1972 complementing article 129 of the Code of Criminal Procedure

Article 1. An eighth paragraph shall be added at the end of article 129 of the Code of Criminal Procedure, reading as follows:

In an emergency, if they hold a rogatory commission issued specifically for this purpose by the examining magistrate or if they are acting at the request of the official representative of the *ministère public* in the case of a flagrant crime or serious correctional offence, officials of the judicial police may carry out whatever duties are prescribed by these officers anywhere in the territory of the Republic. They shall be accompanied by the judicial officer stationed in the district concerned. The official representative of the *ministère public* shall be advised with all due speed of this extension of their powers.

2. Ordinance No. 72-014 of 4 August 1972 amending articles 169, 172 and 255 of the Penal Code and abrogating article 173 thereof

Article 1. The first paragraph of article 169 of the Penal Code shall be replaced by the following provisions:

Any civil servant, any temporary employee serving in a post normally occupied by a civil servant, any administrative or judicial officer, any public or government official, any civil servant employed by or acting as agent for a local community, and any employee or agent of a public institution who suppresses, embezzles or purloins public or private funds, or the equivalent, or documents, certificates, deeds, instruments, papers or other movable property deposited with him by reason of his office or in connexion with it, shall be punished by a period of hard labour if the value of the objects he has suppressed, embezzled or purloined is 1 million francs or more.

Article 2. The following provisions shall be added to article 172 of the Penal Code:

The posting [of copies of judgements] provided for in article 50 of this Code shall be

mandatory. In addition, the judge may order the publication of part or all of the final judgement in one or more newspapers at the cost of the convicted person. The maximum cost for each insertion shall be specified.

Article 3. Article 173 of the Penal Code is hereby abrogated.

Article 4. Article 255 of the Penal Code shall be replaced by the following provisions:

Except where article 169 of this Code is applicable, the person guilty of purloining, removing or destroying the evidence mentioned in the preceding article shall be liable to a penalty of from one to ten years' imprisonment.

Article 5. This ordinance shall apply to cases *pendente lite* and cases on which final judgement has not yet been passed at the time of the ordinance's publication.

Article 6. This ordinance shall be published in the *Journal officiel de la République malgache*. It shall be enforced as a law of the State.

3. Ordinance No. 72-028 of 18 September 1972 complementing article 3 of the Ordinance of 1 September 1972 laying down regulations for referendums

Article 1. The following text shall be inserted after the second paragraph of article 3 of ordinance No. 72-022 of 1 September 1972:

An appeal against the decision of the administrative commission or a section of it may be made to the presiding judge of the court of first instance who shall render a final judgement within six days.

¹ Texts furnished by the Government of the Malagasy Republic.

Article 2. This ordinance shall be published in the *Journal officiel de la République malgache*.

It shall be enforced as a law of the State.

4. Ordinance No. 72-049 of 26 December 1972 amending the old Constitution of 29 April 1959²

Article 1. Until the new Constitution has been adopted by the people and the new institutions have been established, the powers and prerogatives conferred upon the President of the Republic by the old Constitution of 29 April 1959 and the laws in force shall be exercised by the Head of the Government.

Article 2. Any provisions of the law of 29 April 1959 which conflict with this decision are hereby abrogated.

Article 3. This ordinance shall be published in the *Journal officiel de la République malgache*.

It shall be enforced as a law of the State.

² Extracts from the Constitution of 29 April 1959 appear in the *Yearbook on Human Rights for 1959*, pp. 193-194.

MEXICO

NOTE ON LEGISLATION ¹

I. Workers' conditions

1. Amendment to article 123, part A, section XII, of the Political Constitution of the United Mexican States (*Diario Oficial*, vol. CCCX, No. 36, 14 February 1972). The amendment, which is composed of a single article, reads as follows:

XII. Any undertaking involved in agriculture, industry, mining or any other type of work shall be obliged, as laid down in the regulatory legislation, to provide its workers with comfortable and hygienic living accommodation. This obligation shall be met by means of contributions made by undertakings to a national housing fund in order to set aside deposits for their workers and to establish a financing arrangement under which workers may be granted low-interest loans in amounts adequate to enable them to purchase such accommodation.

It is considered that it would be of social value to enact a law establishing an agency, composed of representatives of the Federal Government, workers and employers, to administer the assets of the national housing fund. This law shall determine the manner and procedures whereby workers may purchase the above-mentioned accommodation.

The businesses referred to in the first paragraph of this section which are located outside population centres shall be required to provide schools, clinics and other facilities essential for the community.

2. Decree extending the social security system to the *ejidatarios* (communal farmers) of the State of Yucatán (*ibid.*, vol. CCCX, No. 46, 25 February 1972).

3. Decree amending and supplementing the Federal Labour Act (*ibid.*, vol. CCCXI, No. 46, 24 April 1972).

4. Act relating to the National Workers' Housing Fund Institute (*ibid.*).

II. The right to vote

1. Amendments and additions to article 52; article 54, sections I, II and III; article 55, section II; and article 58 of the Political Constitution of the United Mexican States (*ibid.*, vol. CCCX, No. 36, 14 February 1972). The amendments, which appear in a single article, read as follows:

Single article. Article 52; article 54, sections I II and III; article 55, section II; and article 58 of the Political Constitution of the United Mexican States shall be amended and supplemented to read as follows:

Article 52. There shall be one directly elected deputy for every 250,000 inhabitants, or for a group of inhabitants numbering more than 125,000, according to the general census of the Federal District and of each State and Territory. However, in no case shall one State be represented by less than two deputies, and any Territory whose population is smaller than that laid down in the present article shall be represented by one directly elected deputy.

Article 54. In addition to the deputies elected by direct suffrage, in accordance with the provisions of article 52, there shall be party deputies. Both categories shall be subject to the provisions of the Electoral Act, and the latter category shall be subject to the following rules:

I. Each national political party which obtains one and a half per cent of the total vote on a country-wide basis in an election of deputies shall be entitled to five deputies from among its candidates; for each additional one half per cent of the vote which it obtains, it shall be entitled to one more deputy, subject to a maximum of 25;

II. If a party obtains a majority in 25 or more electoral districts, it shall not be entitled to party deputies. However, if it is successful in fewer districts, it shall, provided that it fulfils the requirements set out in the preceding section, be entitled to up to 25 deputies, the total number of deputies elected by a majority and those accredited on a percentage basis being aggregated.

III. Party deputies shall be accredited in strict order according to the decreasing number of votes which they have obtained relative to the other candidates of the same party throughout the country;

...

Article 55. Deputies must fulfil the following requirements:

...

II. Have reached the age of 21 on the date of the election;

...

Article 58. Senators must fulfil the same requirements as those for deputies, with the exception of the age requirement: senators must have reached the age of 30 on the date of the election.

¹ Note furnished by the Government of Mexico.

Transitional provisions. These amendments and additions shall enter into force five days after their publication in the *Diario Oficial* of the Federation.

III. Health and safety of citizens

1. Decree declaring certain specified substances and products to be similar to narcotics (*Diario Oficial*, vol. CCCX, No. 11, 14 January 1972).

2. Federal Fire-arms and Explosives Act (*ibid.*, vol. CCCX, No. 8, 11 January 1972).

3. Regulations pursuant to the Federal Fire-arms and Explosives Act (*ibid.*, vol. CCCXII, No. 4, 6 May 1972).

IV. Agriculture

1. Decree amending the Federal Agrarian Reform Act (*ibid.*).

2. Federal Water Act (*Diario Oficial*, vol. CCCX, No. 8, 11 January 1972).

V. International co-operation

1. Decree approving the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (*ibid.*, vol. CCCX, No. 10, 13 January 1972).

2. Decree approving the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (*ibid.*, vol. CCCX, No. 14, 18 January 1972).

VI. Crime prevention

1. Decree supplementing the Penal Code for the Federal District and Territories as regards Common Jurisdiction and for the whole Republic as regards Federal Jurisdiction (*ibid.*, vol. CCCX, No. 8, 11 January 1972). This Decree, which is composed of a single article, reads as follows:

Single article. The Penal Code for the Federal District and Territories as regards Common Jurisdiction and for the whole Republic as regards Federal Jurisdiction shall be supplemented by the addition of article 389 *bis*, which shall read as follows:

Article 389 bis. Anyone who, personally or through another person, causes a public or private nuisance by breaking up and transferring or promising to transfer ownership, possession or any other rights over urban or rural land, whether belonging to him or to others, and whether or not built upon, without obtaining prior permission from the competent administrative authorities or without having satisfied the requirements laid down when such permission was granted, shall be guilty of fraud. This offence shall be punishable even in cases of total or partial failure to make payment.

For the purposes of this provision, "breaking up" shall mean dividing land into lots.

This offence shall be punishable by the penalties provided for in article 386 of this Code, except for the fine referred to in the third section of that article, which shall be of an amount not exceeding 50,000 pesos.

Transitional provision

Single article. This Decree shall enter into force three days after its publication in the *Diario Oficial* of the Federation.

VII. Community development and improvement

1. Decree establishing the Committee to Promote Socio-economic Development in the State of Oaxaca (*Diario Oficial*, vol. CCCX, No. 17, 20 March 1972).

2. Decree establishing a trust fund for the purpose of acquiring vessels and property necessary for fisheries research and training (*ibid.*, vol. CCCX, No. 33, 10 February 1972).

3. Decree establishing the Co-ordinating Committee for the Integrated Development of the Isthmus of Tehuantepec (*ibid.*, vol. CCCX, No. 17, 20 March 1972).

MOROCCO

Constitution¹

Preamble

The Kingdom of Morocco, a sovereign Islamic State whose official language is Arabic, forms part of the Greater Maghreb.

As an African State, it includes among its objectives the attainment of African unity.

Aware of the need to ensure conformity of its actions with the aims of the international organizations of which it is an active and dynamic member, the Kingdom of Morocco adheres to the principles, rights and obligations deriving from the charters of those organizations.

Similarly, the Kingdom of Morocco reaffirms its determination to work for the maintenance of peace and security in the world.

PART I

General provisions

The basic principles

Article 1. Morocco is a constitutional, democratic and social monarchy.

Article 2. Sovereignty is vested in the nation, which shall exercise it either directly by way of referendum or indirectly through constitutional institutions.

Article 3. The political parties, trade unions, communal councils and professional organizations shall contribute to the organization and representation of the citizens.

There shall be no single-party system.

Article 4. The law is the supreme expression of the will of the nation. It shall be binding on all. The law shall not have retroactive effect.

Article 5. All Moroccans are equal before the law.

Article 6. Islam is the religion of the State, which shall guarantee freedom of worship to all.

Article 7. The emblem of the Kingdom is a red flag with a green five-pointed star in its centre.

The motto of the Kingdom is: "God, Country, King".

Article 8. Men and women shall enjoy equal political rights.

All citizens of either sex who are of full age and in possession of their civil and political rights shall be entitled to vote.

Article 9. The Constitution guarantees to all citizens:

Freedom of movement and residence throughout the Kingdom;

Freedom of opinion, freedom of expression in all its forms and freedom of assembly;

Freedom of association and freedom to join any trade union or political organization of their choice.

No restriction may be placed on the exercise of these freedoms save by law.

Article 10. No one shall be liable to arrest, detention or punishment, save in the cases and in the manner prescribed by law.

The domicile shall be inviolable. Searches and inspections shall be permitted only under the conditions and in the manner prescribed by law.

Article 11. Correspondence shall be secret.

Article 12. All citizens shall have access to the public service and to public employment under the same conditions.

Article 13. All citizens shall have an equal right to education and to work.

Article 14. The right to strike remains guaranteed.

The conditions and manner in which this right may be exercised shall be prescribed by an organic law.

Article 15. The right to own property remains guaranteed.

The scope and exercise of this right may be limited by law if the promotion of the nation's planned economic and social development so requires.

Expropriation shall be permitted only in the cases and in the manner prescribed by law.

Article 16. All citizens shall contribute to the defence of the country.

Article 17. All citizens shall be liable to taxation, according to their ability to contribute, to meet public expenditure, which can be authorized and allocated only by law in the manner prescribed in this Constitution.

Article 18. All citizens shall bear collectively expenditure resulting from national disasters.

¹ Text of the Constitution promulgated by *Dahir* No. 1-72-061 of 10 March 1972 and published in the *Bulletin officiel*, No. 3098, 15 March 1972.

PART II

The royalty

Article 19. The King, Amir Al Mouminine, supreme representative of the nation, symbol of its unity and guarantor of the perpetuity and continuity of the State, shall ensure respect for Islam and the Constitution. He shall be the protector of the rights and freedoms of the citizens, communities and organizations.

He shall guarantee the independence of the nation and the territorial integrity of the Kingdom within its true frontiers.

Article 20. The throne of Morocco and its constitutional rights shall be hereditary and shall be transferred from father to son in a direct line to the male descendants of His Majesty King Hassan II in the order of their birth, unless the King during his lifetime appoints from among his sons a successor other than his eldest son. Where there is no direct male descendant, the throne shall devolve under the same conditions to the nearest collateral male line.

Article 21. The King shall be a minor until his eighteenth birthday. During the King's minority, the Regency Council shall exercise the constitutional powers and rights of the throne with the exception of those relating to amendment of the Constitution. The Regency Council shall function as a consultative body to the King until his twenty-second birthday.

The head of the Regency Council shall be the nearest male relative of the King in the collateral male line who is at least 21 years of age. The Council shall further comprise the First President of the Supreme Court, the President of the Chamber of Representatives and of the seven persons appointed by the King *intuitu personae*.

The rules of procedure of the Regency Council shall be established by an organic law.

Article 22. The King shall be entitled to a civil list.

Article 23. The King's person shall be inviolable and sacred.

Article 24. The King shall appoint the Prime Minister and other ministers. He shall terminate their functions either on his own initiative or following their resignation.

Article 25. The King shall preside over the Council of Ministers.

Article 26. The King shall promulgate legislation.

Article 27. The King shall have the right to dissolve the Chamber of Representatives by *dahir* under the conditions laid down in Part V, articles 70 and 73.

Article 28. The King shall have the right to address messages to the Chamber of Representatives and to the nation. No debate shall be permitted concerning the content of such messages.

Article 29. The King shall exercise by *dahir* the powers expressly conferred upon him by the Constitution.

Dahirs other than those referred to in article 21, second paragraph, and articles 24, 35, 68, 70, 78, 85, 95 and 100, shall be countersigned by the Prime Minister.

Article 30. The King shall be Commander-in-Chief of the Royal Armed Forces.

He shall have the right to appoint personnel to civil and military posts and may delegate this right to other persons.

Article 31. The King shall accredit ambassadors to foreign Powers and international organizations. Ambassadors or the representatives of international organizations shall be accredited to him.

He shall sign and ratify treaties. However, treaties involving State finances may not be ratified without the prior approval of the Chamber of Representatives.

Treaties which might affect the provisions of the Constitution shall be approved in accordance with the procedures laid down for amendment of the Constitution.

Article 32. The King shall preside over the Superior Council for National Development and Planning.

Article 33. The King shall preside over the Superior Judicial Council and the Superior Educational Council. He shall appoint judges under the conditions laid down in article 78.

Article 34. The right of pardon shall be exercised by the King.

Article 35. When the integrity of the national territory is threatened or when events occur which might jeopardize the functioning of the constitutional institutions, the King may, after having consulted the President of the Chamber of Representatives and addressed a message to the nation, declare a state of emergency by *dahir*. In consequence thereof, he shall be empowered, notwithstanding any provision to the contrary, to take such measures as may be necessary for the defence of the territorial integrity of the State, the return to normal functioning of the constitutional institutions and the conduct of affairs of State.

A state of emergency shall be terminated in the same way as it is declared.

PART III

The Chamber of Representatives*The organization of the Chamber of Representatives*

Article 36. The members of the Chamber of Representatives shall derive their mandate from the nation. Their right to vote shall be personal and may not be delegated.

Article 37. All members of the Chamber of Representatives shall be immune from prosecution, investigation, arrest, detention or trial in connexion with opinions expressed or votes cast by them in the exercise of their functions, except when the opinions expressed call in question

monarchical rule or the Islamic religion or detract from the respect due to the King.

No member of the Chamber of Representatives may be prosecuted or arrested while the Chamber is in session for serious or less serious offences other than those referred to in the previous paragraph without the authorization of the Chamber of Representatives, except when taken *in flagrante delicto*.

No member of the Chamber of Representatives may be arrested while the Chamber is not in session without the authorization of the officers of the Chamber, except when taken *in flagrante delicto* or in the case of authorized prosecution or final conviction.

The detention or prosecution of a member of the Chamber of Representatives shall be suspended if the Chamber so requests, except when he has been taken *in flagrante delicto*, or in the case of authorized prosecution or final conviction.

Article 38. The Chamber of Representatives shall hold two sessions each year. The King shall preside at the opening of the first session, which shall commence in the second Friday in October. The second session shall commence on the second Friday in April.

When the Chamber of Representatives has sat for at least two months in each session, the session may be closed by decree.

Article 39. The Chamber of Representatives may be convened in special session either at the request of an absolute majority of its members or by decree.

Special sessions of the Chamber of Representatives shall be held to consider a fixed agenda. Upon completion of the agenda, the session shall be closed by decree.

Article 40. Ministers shall have access to the Chamber of Representatives and to its committees; they may be assisted by commissioners appointed by themselves.

Article 41. Meetings of the Chamber of Representatives shall be public. Verbatim records of its debates shall be published in the *Bulletin officiel*. The Chamber may meet in closed session at the request of the Prime Minister or of one third of its members.

Article 42. The Chamber of Representatives shall establish and vote on its rules of procedure. However, the rules of procedure shall not be applied until they have been declared by the Constitutional Chamber of the Supreme Court to be in conformity with the provisions of this Constitution.

Article 43. The members of the Chamber of Representatives shall be elected for a term of four years. They shall bear the title of representative. Two thirds of the members of the Chamber of Representatives shall be elected by universal direct suffrage; one third of its members shall consist of persons elected by an electoral college comprising the communal councillors and persons elected by electoral colleges composed of the elected representatives of professional organizations and representatives of wage-earners.

The number of representatives and that of the representatives to be elected by each of the

electoral colleges, the method of election, the conditions of eligibility and the rules governing incompatibility shall be laid down in an organic law.

The President and officers of the Chamber of Representatives shall be elected each year at the beginning of the October session. The officers shall be elected on the basis of proportional representation.

The powers of the Chamber of Representatives

Article 44. Legislation shall be enacted by the Chamber of Representatives. The Chamber may authorize the Government, for a limited period and for specific objectives, to take by decree measures which are normally within the sphere of statute law. The decrees shall enter into force upon their publication but must be submitted for ratification by the Chamber of Representatives upon expiry of the term set in the enabling legislation. The enabling legislation shall lapse if the Chamber of Representatives is dissolved.

Article 45. In addition to the matters expressly allocated to it by other articles of the Constitution, the sphere of statute law shall include the following:

The individual and collective rights enumerated in Part I of this Constitution;

The determination of offences and of the applicable penalties, penal procedure, civil procedure and the creation of new courts;

The rules applying to judges;

The general rules applying to the public service;

The basic guarantees given to civil and military officials;

Electoral procedure in respect of local community assemblies and councils;

Rules governing civil and commercial obligations;

The founding of public establishments;

The nationalization of enterprises and transfers of enterprises from the public to the private sector.

The Chamber of Representatives shall be empowered to enact outline legislation concerning the basic objectives of the State's economic, social and cultural activities.

Article 46. Matters other than those which are within the sphere of statute law shall be deemed to fall within the sphere of regulatory power.

Article 47. A text adopted in legislative form may be amended by decree, subject to the approval of the Constitutional Chamber of the Supreme Court, when it relates to a matter within the sphere of regulatory power.

Article 48. Martial law may be declared by *dahir* for a period of 30 days. The period of 30 days may not be extended other than by law.

Article 49. The Chamber of Representatives shall vote on the finance act under the conditions prescribed by an organic law.

Investment expenditure resulting from the implementation of the National Plan shall be the subject of a single vote, on the occasion of

approval of the plan by the Chamber of Representatives. Such expenditure shall be renewed automatically throughout the duration of the plan. Only the Government shall be empowered to submit draft legislation to amend a programme adopted in this way.

If the budget has not been approved by 31 December, the Government shall make available, by decree, the funds necessary for the operation of the public services and for the discharge of their duties, in the light of the budgetary proposals submitted for approval.

In such a case, taxes shall continue to be collected pursuant to the relevant legislative and regulatory provisions in force, with the exception, however, of taxes whose elimination is proposed in the finance bill. Where the said bill proposes a reduction in the rate of a tax, such tax shall be collected at the proposed new rate.

Article 50. Proposals and amendments introduced by members of the Chamber of Representatives shall not be considered when their adoption would, by comparison with the finance act, lead either to a reduction in public funds or to the creation of a new, or an increase in an existing, public levy.

The exercise of legislative power

Article 51. The initiative for introducing legislation shall lie jointly with the Prime Minister and the members of the Chamber of Representatives.

Draft legislation shall be submitted to the officers of the Chamber of Representatives.

Article 52. The Government may declare inadmissible any proposal or amendment which is outside the sphere of statute law.

In the event of a dispute, the Constitutional Chamber of the Supreme Court shall rule on the matter within eight days at the request of the Chamber or of the Government.

Article 53. Draft legislation and legislative proposals shall be referred for consideration to committees, which shall continue their work between sessions.

Article 54. Between sessions the Government may, with the agreement of the committees concerned, adopt legislative decrees which must be submitted for ratification during the next regular session of the Chamber of Representatives.

Article 55. The agenda of the Chamber of Representatives shall be drawn up by its officers. It shall include, as a priority, and in the order established by the Government, debates on draft legislation submitted by, and legislative proposals accepted by, the Government.

One meeting a week shall be reserved, as a matter of priority, for questions from members of the Chamber of Representatives and replies from the Government.

Article 56. Members of the Chamber of Representatives and the Government shall have the right to introduce amendments. Following the opening of the debate, the Government may oppose consideration of any amendment which

has not previously been submitted to the relevant committee.

If the Government so requests, the Chamber of Representatives shall proceed to a single vote on the whole or part of the text under discussion, retaining only the amendments proposed or accepted by the Government.

Article 57. Organic laws shall be adopted or amended under the following conditions: the draft legislation or legislative proposal shall not be discussed or voted upon in the Chamber of Representatives until 10 days have elapsed following its submission.

Organic laws may not be promulgated until they have been submitted to the Constitutional Chamber of the Supreme Court for approval.

PART IV

The Government

Article 58. The Government shall be composed of the Prime Minister and the Ministers.

Article 59. The Government shall be responsible to the King and to the Chamber of Representatives.

Following the appointment of the members of the Government by the King, the Prime Minister shall appear before the Chamber of Representatives and present the programme which he intends to execute. The programme shall make clear the guidelines for the action the Government intends to take in the various sectors of national activity and, in particular, in fields relating to economic, social, cultural and foreign policy.

Article 60. The Government shall be responsible for the implementation of legislation. The civil service shall be at its disposal.

Article 61. The Prime Minister shall have the right to introduce draft legislation. He may not submit any draft legislation to the officers of the Chamber of Representatives before it has been discussed by the Council of Ministers.

Article 62. The Prime Minister shall exercise the regulatory power.

Regulatory measures instituted by the Prime Minister shall be countersigned by the Ministers responsible for their execution.

Article 63. The Prime Minister may delegate certain of his powers to the Ministers.

Article 64. The Prime Minister shall assume responsibility for the co-ordination of ministerial activities.

Article 65. The following matters shall be discussed by the Council of Ministers before any decision may be taken:

Questions concerning the general policy of the State;

The declaration of martial law;

The declaration of war;

Requests by the Government for a vote of confidence from the Chamber of Representatives;

Draft legislation, prior to its submission to the officers of the Chamber of Representatives;

Regulatory decrees;

The decrees referred to in articles 38, 39, 44 and 54 of this Constitution;

The draft national plan;

Proposals for the amendment of the Constitution.

PART V

The relations between the various authorities

The relations between the King and the Chamber of Representatives

Article 66. The King may request a further reading by the Chamber of Representatives of any draft legislation or legislative proposal.

Article 67. The request for a further reading shall be made in a message. Such request may not be refused.

Article 68. Following a further reading, the King may, by *dahir*, submit to a referendum any draft legislation or legislative proposal unless the text thereof, after having been given a further reading, has been adopted or rejected by a majority of two thirds of the members of the Chamber of Representatives.

Article 69. The results of the referendum shall be binding on all.

Article 70. The King may, after having consulted the President of the Constitutional Chamber and addressed a message to the nation, dissolve the Chamber of Representatives by *dahir*.

Article 71. The election of the new Chamber of Representatives shall take place not later than three months after dissolution.

During the intervening period, and in order to prevent a hiatus, the King shall exercise the powers attributed to the Chamber of Representatives in addition to those conferred upon him by this Constitution.

Article 72. In the event of the Chamber of Representatives being dissolved, the succeeding Chamber may not be dissolved until one year following the date of its election.

Article 73. Notice shall be given to the Chamber of Representatives prior to the declaration of war.

Relations between the Chamber of Representatives and the Government

Article 74. The Prime Minister may ask the Chamber of Representatives for a vote of confidence in the Government regarding a general policy statement or the approval of draft legislation.

Confidence may not be withdrawn or the draft legislation rejected other than by an absolute majority of the members of the Chamber of Representatives.

Voting cannot take place until three full days after submission of the request.

A vote of no confidence shall entail the collective resignation of the Government.

Article 75. The Chamber of Representatives may challenge the Government's discharge of its political responsibilities through a vote on a motion of censure. Such a motion shall be admissible only if it is signed by at least one quarter of the members of the Chamber.

The Chamber of Representatives can approve a motion of censure only by an absolute majority of its members. Voting cannot take place until three full days after the motion has been introduced.

A vote of censure shall entail the collective resignation of the Government.

Following censure of the Government by the Chamber of Representatives, no further motion of censure may be introduced for a period of one year.

PART VI

The judicial system

Article 76. The judicial authority shall be independent of the legislative and executive powers.

Article 77. Judgements shall be rendered and executed in the name of the King

Article 78. Judges shall be appointed by *dahir* on the recommendations of the Superior Judicial Council.

Article 79. Judges may not be removed from office.

Article 80. The King shall preside over the Superior Judicial Council. The Council shall further comprise:

The Minister of Justice, vice-president;

The First President of the Supreme Court;

The Royal Attorney-General to the Supreme Court;

The President of the First Chamber of the Supreme Court;

Two representatives elected from amongst themselves by the judges of the courts of appeal;

Two representatives elected from amongst themselves by the judges of the regional tribunals;

Two representatives elected from amongst themselves by the judges of the Sadad.

Article 81. The Superior Judicial Council shall ensure fulfilment of the guarantees given to judges with regard to their promotion and disciplinary matters.

PART VII

The High Court

Article 82. The members of the Government shall be criminally liable for serious and less serious offences committed in the exercise of their functions.

Article 83. They may be charged by the Chamber of Representatives and committed for trial before the High Court.

Article 84. The Chamber of Representatives shall reach a decision by secret ballot and by

a majority of two thirds of its members, with the exception of those members who are called upon to participate in the prosecution, investigation or judgement.

Article 85. The High Court shall be composed of members elected from within the Chamber of Representatives. Its President shall be appointed by *dahir*.

Article 86. The number of members of the High Court, the method of their election and the procedure to be followed shall be established by an organic law.

PART VIII

The local communities

Article 87. The local communities of the Kingdom shall include the prefectures, the provinces and the communes. Any other form of local community shall be established by law.

Article 88. They shall elect assemblies responsible for the democratic management of their affairs under the conditions prescribed by law.

Article 89. In the prefectures and provinces, the governors shall execute the decisions of the prefectural and provincial assemblies. They shall also co-ordinate the activities of administrative bodies and ensure the application of the law.

PART IX

The Superior Council for National Development and Planning

Article 90. There shall be established a Superior Council for National Development and Planning.

Article 91. The King shall preside over the Superior Council for National Development and Planning. The composition of the Council shall be established by an organic law.

Article 92. The Superior Council for National Development and Planning shall study draft development plans.

Article 93. Draft development plans shall be submitted to the Chamber of Representatives for approval.

PART X

The Constitutional Chamber of the Supreme Court

Article 94. There shall be established a Constitutional Chamber within the Supreme Court.

The First President of the Supreme Court shall preside over this Chamber.

Article 95. The Chamber shall further comprise:

Three members appointed by *dahir* for a period of four years;

Three members appointed, after consultation with the various parliamentary groups, by the President of the Chamber of Representatives at the commencement of each legislative term.

Article 96. The rules governing the organization and functioning of the Constitutional Chamber and the functions incompatible with those of a member of this Chamber shall be set out in an organic law.

Article 97. The Constitutional Chamber shall exercise the functions conferred upon it by the articles of the Constitution or by provisions of organic laws. In addition, it shall rule on the conduct of elections of members of the Chamber of Representatives and of referenda.

PART XI

Amendment of the Constitution

Article 98. The initiative for amending the Constitution shall lie with the King and with the Chamber of Representatives.

The King may submit any draft amendment introduced by himself directly to a referendum.

Article 99. Proposals for amendment introduced by members of the Chamber of Representatives may be adopted only by a two-thirds majority of the members of the Chamber.

Article 100. Draft amendments and proposals for amendment shall be submitted to referendum by *dahir*.

An amendment to the Constitution shall become final upon its adoption by way of referendum.

Article 101. No constitutional amendment shall be permitted concerning the monarchic form of the State or the provisions relating to the Moslem religion

PART XII

Special provisions

Article 102. Pending the installation of the Chamber of Representatives as provided for in this Constitution, the legislative measures necessary for the establishment of the constitutional institutions, the functioning of public organs and the conduct of affairs of State shall be taken by His Majesty the King.

Article 103. The Constitution promulgated by *dahir* No. 1-70-177 of 27 jomada I 1390 (31 July 1970) is hereby abrogated.

NETHERLANDS

NOTE ¹

I. Legislation

1. FREEDOM OF EDUCATION

An amendment to section 208 of the Constitution was promulgated on 16 March 1972. The section deals with the freedom of education and other educational matters. The amendment makes it possible for the authorities to lay down requirements as regards the ability and morality of teachers at any type of educational or training institution. Before the amendment was adopted, such powers had been restricted under the Constitution to publicly maintained and subsidized educational institutions and to unsubsidized general primary and secondary schools. These powers now extend to all types of unsubsidized education or instruction, driving schools being a case in point.¹

As the Supreme Court took the view that driving schools came under the freedom of education clause in the Constitution, it was not possible to test the ability of those running driving schools before the amendment was adopted. After the amendment had been adopted, the Netherlands Government submitted to the Second Chamber of the States General (the Netherlands Parliament) on 6 November 1972 a bill governing the qualifications of those giving driving lessons.

The act under which compulsory part-time education is extended to 16-year-olds became effective on 1 August 1972.²

2. RIGHT TO VOTE

In 1972, the Constitution was amended as regards the age at which the right to vote may be exercised. The minimum age laid down in the Constitution was reduced to 18 years. The amendments to the Franchise Act necessitated by this reduction were also adopted in 1972.

3. RIGHT TO ASSISTANCE IN THE EVENT OF UNEMPLOYMENT, ILLNESS, ETC.

The Act governing Structural Amendments to the National Assistance Act discussed under subsection (1) below was passed by Parliament; it forms part of the legislation concerning government financial assistance for persons unable to support themselves.

The Act governing Benefits for the 1940-1945 Victims of Persecution discussed under subsection (2) below also entered into force, replacing the regulations under which financial assistance was given to such victims.

(1) The amendment makes it possible for the Central Government to lay down binding rules for fixing the amount of assistance to be granted.

Before the amendment became effective it was only possible for general norms to be applied with respect to assistance for those belonging to a specific category, such as unemployed persons and the partially disabled. The object of the binding rules laid down in the amendment is to ensure that persons in the same circumstances and with similar opportunities will be given the same financial assistance.

The municipal authorities, to which any application for assistance should be submitted, will, however, continue to be under the obligation to adjust the assistance to the specific requirements of the person receiving it and—where necessary—his family.

(2) The Act governing Benefits for the 1940-1945 Victims of Persecution replaces the Central Government Regulations concerning Assistance for the 1940-1945 Victims of Persecution, which was based on the National Assistance Act. Such victims are persons who, because of their race, religion or beliefs, were persecuted by the powers occupying the Netherlands or the former Netherlands East Indies during the 1940-1945 war.

Persecution is understood to mean being deprived of one's liberty and being obliged to go into hiding or to submit to sterilization to avoid being deprived of one's liberty.

Payment is made if the person persecuted is unable to earn a living as a result of the persecution.

The amounts paid are dependent on the income formerly earned, present income etc.

Medical treatment or nursing for diseases or physical defects resulting from persecution are also paid for; additional expenditure incurred for necessary aids directly connected with the diseases or physical defects is also reimbursed.

In addition, partial payment may be made of costs incurred in connexion with such diseases or physical defects with the object of improving the patient's general condition.

If the person persecuted died as a result of the persecution, his widow may be granted benefits.

There are now a number of collective labour agreements containing regulations concerning the legal status of workers and the provision of

¹ Note furnished by the Government of the Netherlands.

² For the developments leading up to this act, see *Yearbook on Human Rights for 1971*, p. 173.

alternative employment in the event of their being laid off because fewer jobs are available.

The Council for Employment (Raad voor de Arbeidsmarkt) was requested in 1972 to make recommendations on whether, in the event of workers being laid off collectively, special regulations would be required; attention was drawn to the possibility of imposing on enterprises the obligation to report to the authorities cases of workers being laid off collectively.

4. EQUAL PAY FOR MEN AND WOMEN

The Convention No. 100 of the International Labour Organisation concerning Equal Remuneration for Men and Women Workers for Work of Equal Value entered into force on 16 June 1972. In February 1972 the Socio-Economic Council was requested to submit recommendations on the desirability and possibility of laying down the principle of equal remuneration in the Netherlands legislation. The matter was also submitted to the Committee on the Status of Women and Girls as Workers.

5. THE RIGHT TO FAIR REMUNERATION

Under the Minimum Wage and Minimum Holiday Allowance Act all workers between the ages of 23 and 65 who work for periods longer than one third of the ordinary working hours are entitled to the minimum wage. Collective dispensations from this rule have not been granted since April 1972. Individual dispensations may be granted with respect to handicapped workers. By the act of 26 January 1972,³ the Minimum Wage and Minimum Holiday Allowance Act was amended with effect from 1 January 1972; under the amendment the minimum wage will be adjusted twice a year to general wage trends, namely on 1 January and on 1 July. As at 1 January 1972 the minimum wage was 187.80 guilders a week. The amount was raised to 198.60 guilders on 1 July 1972. In February 1972 the Socio-Economic Council was requested to submit recommendations on an interim (structural) increase in the minimum wage and on the matter of underpayment and possible sanctions to combat it.

6. RIGHT TO REST AND LEISURE

In 1972 ordinary working hours for blue-collar workers were reduced from 42½ to 41½ hours a week in a small number of collective labour agreements. Few changes were introduced in 1972 as regards white-collar workers. Ordinary working hours for this category remained at 40-41½ hours a week.

In most collective labour agreements holidays were extended by one day a year, so that the minimum number of days off is now generally 19 days a year. Annual holidays for young

workers are on an average three days longer than those for adults.

7. RIGHT TO FORM TRADE UNIONS AND RIGHT TO STRIKE

The trade unions have suggested that the bill concerning the right to strike, now before the Second Chamber of the States General, should be withdrawn and replaced by other regulations. It was suggested that statutory regulations should be adopted making it possible for workers to be absolved from the obligation to do the work agreed upon while taking part in strikes called or backed by the trade unions.

By way of compensation, employers would be granted the right temporarily to waive their obligation to give employment and wages to all workers employed by them.

Rules of conduct with respect to strikes would have to be laid down in a "strike code" to be drawn up by the Socio-Economic Council. Disputes resulting from strikes would have to be judged by a special tribunal (*arbeidskamer*) composed of several persons.

As the interested parties no longer back the bill, the Government is considering discontinuing parliamentary debates on it. To that end it has initiated consultations with the parliamentary committee concerned with the bill and with trade and industry.

8. GENERAL CONVENTION ON SOCIAL SECURITY BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE KINGDOM OF MOROCCO

The Convention was signed on 14 February 1972 and entered into force on 1 January 1973. It covers all aspects of social security: health insurance, disability insurance, old-age insurance, widows' and orphans' insurance, occupational accidents insurance, unemployment insurance and family allowances.

The provisions of the Convention are very similar to those of earlier social security conventions concluded by the Netherlands, but it differs from them in one important respect. The way in which medical care is regulated in Morocco (there is no general insurance scheme corresponding to that in the Netherlands) made it necessary, at all events as regards such members of the families of workers insured in the Netherlands as reside in Morocco, for the application of special provisions corresponding with those applicable to members of families in the earlier conventions to be suspended until the conclusion of a special administrative agreement.

Like other bilateral social security conventions the Convention guarantees that the same treatment will be given to nationals of the two countries before their respective national legislations.

Workers and their successors in title will receive social security benefits irrespective of their place of work or residence, with the exception of unemployment benefits.

³ *Staatsblad* (Bulletin of Acts, Orders and Decrees), No. 43.

II. Judicial decisions

FREEDOM OF EXPRESSION

On 18 January 1972 the Supreme Court pronounced judgement for the third time on the generally binding nature of provincial legislation designed to preserve scenic beauty.⁴

The first of the three cases dealt with was that of a neon sign placed on a factory chimney displaying the slogan "*Nederland ontwapent*" ("The Netherlands disarms"). The legislation prohibiting such publicity in a general sense was declared to be not binding by the Supreme Court.⁵

In its judgement of 14 January 1969 provincial legislation of a similar nature was considered to be not binding. The sign in question read "*Manège Rehoboth*" ("Rehoboth Riding-School") and displayed a saddle and a horse's head.⁶

The Supreme Court's judgement of 18 January 1972 was concerned with the legislation of the province of Zeeland to protect scenic beauty. Section 1 of the ordinance in question contained a ban on using real property etc. for putting up or displaying notices, announcements or pictures of any kind whatever. Section 2 of the ordinance provided that the ban did not apply to notices, announcements, pictures etc. designed to publish thoughts or feelings as referred to in section 7 of the Constitution. The notice read: "*Café-Restaurant 'De Huijkar'—Rombouts koffie—na 100 meter linksaf*" ("Café and Restaurant 'The Covered Wagon'—Rombouts coffee—turn left 100 metres ahead"). The point to be settled was whether the notice would be covered by the phrase "to publish thoughts and feelings" in section 7 of the Constitution. Section 2 of the ordinance would then be applicable to it and the notice would be allowed to stay. The purport of the Supreme Court's argument was that the ban applied to the notice and that displaying it was therefore an offence. This made it clear for the first time that not all notices are automatically protected by section 7 of the Constitution. It is difficult to say at this stage whether this is the beginning of a new trend and, if so, what criteria will be developed.

III. Other decisions and developments

1. FREEDOM OF EXPRESSION

By decree of 21 July 1972 the Prime Minister laid down rules concerning the freedom of expression of civil servants when they are speaking unofficially, i.e. not in their capacity as civil servants. The rules do not apply to military personnel. Since the rules are designed to apply to a large group of people working in all sorts of different situations, they do not contain any

strict legal norms. They only contain a number of desiderata deserving serious consideration in specific situations. The rules are based on the assumption that it is only the smooth functioning of the civil service that justifies issuing regulations on the freedom of expression. Among the criteria regarded as important to civil servants in this respect are the nature of the ties between the civil servant in question and the policy-making authorities, the nature of the subjects on which an opinion is given and the manner in which and the composition of the group within which the civil servant expresses views different from the official ones in an unofficial capacity. The rules are important in that they are likely to bring more uniformity into the regulations on the freedom of expression of civil servants.

In June 1972 the Government decided to introduce two measures affecting the press so as to maintain and promote the diversity and independence of daily newspapers and other publications for the dissemination of news, viz.:

- (i) granting a sum of 30 million guilders to daily newspapers and other publications for the dissemination of news to be distributed during the years 1972 and 1973;
- (ii) Establishing a press fund; the fund will be administered by an independent body that will be responsible for granting credits and credit facilities for the restructuring and reorganization projects undertaken by daily newspapers and other publications for the dissemination of news.

2. EQUAL LEGAL STATUS FOR BLUE-COLLAR AND WHITE-COLLAR WORKERS

Progress was made in the Netherlands in the field of integrating the conditions of employment of blue-collar and white-collar workers. Examples are the merging of "work classes" and "salary groups", changing hourly wages into weekly and monthly wages etc. This applies in particular to the iron and steel industry, the paper-making and dairy industries, motor-vehicle businesses and to motor-bus and motor-coach companies, as well as to a number of other major enterprises.

3. OTHER SPHERES OF LABOUR LAW

In 1972 the implementation of the Employment Agencies Act passed from the stringent rationalization stage to that of the consolidation of the resulting situation. The elimination of abuses in this field removed the social unrest resulting from abuses. This was due largely to the stringent conditions attached to the granting of licences for employment agencies. Generally speaking, government policy in this field has met With a favourable response on the part of trade and industry.

Industry itself has also taken action in that a number of collective labour agreements now include provisions designed to regulate the duties performed for enterprises by workers who are not in their employment (maximum duration of this

⁴ *Nederlandse Jurisprudentie* (Netherlands Case Law), No. 193, 1972.

⁵ *Ibid.*, No. 270, 1967.

⁶ *Ibid.*, No. 191, 1969.

type of work; approval given by the Business Enterprises Council). Furthermore, the Association of Employment Agencies has concluded a collective labour agreement with the trade unions concerned on behalf of its employees.

Policy will continue to be designed to consolidate the situation of comparative calm in the

labour market that has resulted from the stringent reforms. Actual requirements for temporary workers on the part of trade and industry will continue to be met. But unrestricted growth and/or other developments running counter to the aims and objectives of the Employment Agencies Act will be checked.

NEW ZEALAND

NOTE¹

I. Legislation

1. ACCIDENT COMPENSATION ACT 1972

The act, which is not yet in force, supplants the common law action based on fault with an entitlement to compensation and rehabilitation assistance, regardless of fault, in respect of personal injury by accident in New Zealand. At present the application of the act is limited to earners and those who sustain injury in connexion with the use of a motor vehicle. However, before the act comes into force, it is to be extended so that comprehensive coverage is given to all sectors of the community who sustain personal injury by accident. A feature of the scheme will be the payment of periodic earnings-related compensation where the injury produces an incapacity for work. The scheme is to be administered by a three-member Accident Compensation Commission.

2. AVIATION CRIMES ACT 1972

This act gives effect to the Hague, Montreal and Tokyo conventions on hijacking and sabotage. Special powers of search are given to carriers and the Police. Evidence gained in the exercise of these powers may be used in the prosecution of crimes under the act, other crimes of a fairly serious nature and certain more minor offences.

3. CLEAN AIR ACT 1972

The act requires the occupier of premises to adopt the best practicable means to collect and contain any air pollutant, to minimise emissions thereof and render any air pollutant emitted harmless and inoffensive. Regulations are to prescribe standards of concentration for stated industries and processes. An occupier commits an offence if dense smoke is emitted from any fuel-burning equipment or industrial or trade premises after 31 March 1975. Local authorities, the Director-General of Health and the Clean Air Council, established under the act, have roles in enforcing the legislation.

4. ELECTORAL AMENDMENT ACT (No. 2) 1972

The amendment permits the Chief Electoral Officer to sanction a returning officer's rejection of a nomination of a candidate for election if he is satisfied that the name of the candidate is not the name under which the candidate's birth was

registered, or is not the name conferred upon him by an adoption order, or is not the name by which he was commonly known six months preceeding nomination day, or is not the name adopted by deed poll at least six months before nomination. The purpose of this amendment is to reduce the number of candidates running under names such as "Mickey Mouse".

5. EQUAL PAY ACT 1972

This act is to ensure that discrimination on the basis of sex is removed in setting rates of remuneration for employment in the private sector of the economy. Equal pay is already in operation in the public sector.

6. FACTORIES AMENDMENT ACT 1972

The amendment further regulates the hours of work of children under 16, and women over that age. Minimum requirements for rest intervals and holidays are set.

7. INDECENT PUBLICATIONS AMENDMENT ACT 1972

The amendment authorizes *ex parte* applications for interim restriction orders on books and sound recordings pending a formal decision by the Tribunal. The Tribunal is also empowered to issue orders restricting the publication of serial publications where three issues within a period of 12 months have been found indecent.

8. JUDICATURE AMENDMENT ACT 1972

The amendment introduced a new remedy into administrative law called an "application for review". The granting of the application is dependent on whether *mandamus*, *certiorari*, prohibition, declaration or injunction would have issued under the common law but the need for an applicant to commit himself to one or more of these alternatives is removed.

Other provisions cover technical and procedural defects, interim orders, abolition of Supreme Court Districts, and costs where an intervener or counsel assisting the court appears.

9. MENTAL HEALTH ACT AMENDMENT 1972

The Medical Officer of Health and the Police are empowered to take a person before two medical practitioners instead of applying for a reception order and taking him before a magistrate when the latter procedure could cause hardship or danger to any person or would deprive the person concerned of medical treatment urgently required.

¹ Note furnished by the Government of New Zealand.

10. MUNICIPAL CORPORATIONS AMENDMENT ACT 1972

The act makes provision, *inter alia*, for compensating persons killed or injured while assisting traffic officers.

11. NATIONAL HOUSING COMMISSION ACT 1972

The act establishes a Commission to review, co-ordinate and regulate the housing needs of people in New Zealand. The Commission deals with local authorities and other bodies with interests in housing matters and is to report from time to time to the Minister of Housing.

12. NEW ZEALAND COUNCIL FOR EDUCATIONAL RESEARCH ACT 1972

The act establishes a Council to foster the study of educational and associated matters. It furnishes information and advice for the assistance of organizations and individuals; in addition it has the power to make grants to any person approved by the Council to assist him with approved studies.

13. PACIFIC ISLANDS POLYNESIAN EDUCATION FOUNDATION ACT 1972

The Foundation established under this act is given broad financial and administrative powers to be used to advance the education of individual Polynesians or groups of Polynesians.

14. TRANSPORT AMENDMENT ACT 1972

The amendment empowers the authorities to require an individual to give a specimen signature for comparison with that on his driving licence. The procedure for the taking of blood tests is clarified and a constable or a traffic officer is empowered to direct that a vehicle should not be used if he has reasonable grounds to suspect the vehicle is in an unsafe condition.

15. TRAFFIC REGULATIONS 1956, AMENDMENT No. 22 (S.R. 1972/83)

This amendment makes the wearing of seat belts compulsory. Subsequent notices approved four types of seat belts and exempted certain types of motor vehicles and drivers, e.g. vehicles operating with trade plates for journeys of less than 20 miles; taxi, post-office and courier drivers, provided they operate under certain conditions, vehicle servicemen, drivers with certain medical disabilities etc.

16. UNIT TITLES ACT 1972

The act provides for the issue of titles to occupiers of multi-storey buildings and other common property.

17. WOOL MARKETING CORPORATION ACT 1972

A Wool Marketing Corporation is established with broad powers of compulsory acquisition of the New Zealand wool clip if a referendum of

growers approves this. The Corporation also has general powers relating to marketing and development.

II. Judicial decisions

1. *Sione v. Labour Department* (1972)
N.Z.L.R. 278

The appellant was a Tongan citizen who, after stowing away on a liner calling at New Zealand, had leaped overboard into Auckland harbour with the intention of swimming ashore. It was established that at the time of entering New Zealand's inland waters the defendant's intention was not to enter New Zealand but to go to Mexico. Accordingly the Court concluded his entry was involuntary and he was therefore wrongly convicted of entering New Zealand without a permit. However by jumping into the water the appellant had intended to land in New Zealand and he therefore committed the offence of landing unlawfully in New Zealand. The conviction was accordingly amended by substituting the latter offence.

2. *McFarlane v. Sharp and another* (1972)
N.Z.L.R. 64 (C.A.)

The Court of Appeal refused to depart from a 70-year-old decision of that court to the effect that the seizure of documents under a warrant authorizing the search for other items was unlawful. In this recent case, while the Police were conducting a search for the proceeds of and materials used in committing a robbery, evidence of bookmaking was also seized.

3. *O'Connor v. Police* (1972) N.Z.L.R. 379

An 18-year-old girl found in a bottle store with the appellant was told to leave by a police sergeant on the grounds that she was on the premises illegally. Unknown to the appellant the police sergeant overheard himself described by the appellant to his companions outside as an "officious bastard", whereupon the sergeant took the appellant into custody. The appellant was subsequently convicted of disorderly behaviour.

In allowing the appeal the Judge stated that in order to be disorderly the behaviour does not have to be calculated to provoke a breach of the peace but had to be something more than just fitting the description of disorderly. Questions of time, place, circumstance and likelihood of causing serious annoyance or disturbance to others were relevant and in this case it was particularly relevant that the appellant did not know his remark was likely to be overheard by the one and only person to whom it could have been a serious annoyance.

4. *Kelly v. Lower Hutt City* (1972)
N.Z.L.R. 126 (C.A.)

A local body traffic officer saw the appellant driving erratically and pursued him until he arrived at his shop premises. The officer was invited inside but the appellant refused to give

a breath specimen. The traffic officer left and returned some 10 minutes later with another traffic officer. Both were invited onto the premises but again the appellant refused to give a breath specimen and this time he also refused to accompany the traffic officer to a police station. A constable was then called and he arrested the appellant. A blood specimen evidenced an offence. The effect of the Court's decision to uphold the conviction was to validate the traffic officer's exercise of his statutory powers on private property although it was also relevant that the traffic officer had been invited onto the property.

5. *Fleetwood v. Ministry of Transport* (1972) N.Z.L.R. 798

The case concerned an appeal against a conviction for failing to comply with the statutory duty of allowing a specimen of blood to be taken when suspected of driving a car under the influence of alcohol. The appellant argued that the conviction should be set aside because he had given his written consent to the taking of a blood sample, when first requested to do so and further, although refusing the sample to be taken from his arm, had offered other areas namely his thumb, a toe and leg. It was held that the specific exceptions apart, there is a duty to be implied on the part of a suspect to co-operate reasonably throughout the prescribed procedures. However, the place and method of extracting the specimen of blood must be left to the good sense and judgement of the doctor. The arm would appear to be the most logical place for extracting a blood sample. The appeal was dismissed.

6. *Gwynne and Small v. Wairarapa Times-Age Co. Ltd.* (1972) N.Z.L.R. 586

The Court, in an action for defamation, will only grant a new trial on the ground that the verdict is against the weight of the evidence if there are very strong grounds and if the result of a new trial would be an award of merely nominal changes no new trial will be ordered.

7. *Yelash v. In Print Publishing Co. Ltd.* (1972) N.Z.L.R. 83

In a statement of claim seeking damages in respect of alleged defamation, the Court must be satisfied that the pleadings are in some way

frivolous, vexatious, irrelevant or embarrassing before it will order them to be struck out, and when a part of the pleadings depends on a question of law, the Court will not order that part to be struck out unless the legal basis is clearly wrong. The defendant's motion for orders striking out certain matters in the statement of claim succeeded in part only.

8. *G. v. H.* (1972) N.Z.L.R. 1012

The paramount question in considering the quantum maintenance of a child is the needs of the child. Further, the general rule is that both parents shall share the burden of providing for the child whether or not they cohabit as husband and wife.

9. *D. and Wife v. F.* (1972) N.Z.L.R. 951

If a natural mother (in this case aged 16) consents to the adoption of her child only as a result of pressure from her parents, an interim adoption order made on the basis of that consent must be revoked at the mother's instigation.

10. *South Otago Hospital Board v. Nurses and Midwives Board* (1972) N.Z.L.R. 828

A writ of *certiorari* was issued to quash the defendant's decision to revoke its approval of the Hospital Board's grade A training school for nurses at Balclutha. The defendant's failure to supply the Hospital Board with a copy of a report it had made on the school was a breach of natural justice which, though unintentional, obstructed "fair play" in action.

11. *Bowman v. State Services Commission* (1972) N.Z.L.R. 78

A writ of *certiorari* was issued to quash the relevant part of a decision of the State Services Commission Appeal Board to the effect that the plaintiff, an Area Traffic Controller, had been negligent in respect of a matter concerning which no charge had been made. The Court held that if the invalid part of an order is distinct and separate from the remainder, *certiorari* may issue to quash the invalid part only. Thus, the remainder of the decision which was in the plaintiff's favour was left intact.

NIGER

NOTE ¹

1. Decree No. 71-202/PRN of 30 December 1971 amends Decree No. 65-169/MI of 4 November 1965, which laid down the rules for the functioning of district or municipal councils (*Journal officiel*, No. 2, 15 January 1972).

2. Act No. 72-1 of 7 February 1972 authorizes the President of the Republic to ratify the OCAM (African, Malagasy and Mauritian Common Organization) General Convention on Social Security (*Journal officiel*, No. 5, 1 March 1972).

3. Act No. 72-9 of 5 April 1972 authorizes the President of the Republic to ratify the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (*Journal officiel*, No. 8, 15 April 1972).

¹ Note furnished by the Government of Niger.

NORWAY

NOTE ¹

1. Constitutional amendments of 30 May 1972 concerning sections 50, 51, 58 and 59 of the Constitution

The import of these amendments is, *inter alia*, that under the Constitution, the right to vote is no longer conditional upon a person having his permanent domicile within the realm and being there on election day. Further, the amendments mean that the parliamentary representation of the Oslo district is strengthened. The aim of the latter amendment is to achieve a closer correspondence between the population figure in this district and the number of its representatives in the national assembly.

2. Act of 21 April 1972 (No. 20) concerning the Public Referendum on the Question of whether Norway ought to be a Member of the European Communities

The act laid down that a public referendum should be held on the question of whether Norway ought to be a Member of the European Communities.

There is no doubt that, as far as the Constitution is concerned, the way is open for the Storting (Parliament) to decide that an advisory public referendum be held on questions falling within the scope of the Storting. Admittedly, this is not explicitly laid down in the Constitution nor authorized in ordinary statute law, but it follows from established constitutional practice. Moreover, it is generally assumed that, as far as the Constitution is concerned, it is open for the Storting to resolve that an advisory public referendum be held, either by the decision of the Storting in plenum or by a decision in statutory form in accordance with the procedure which the Constitution prescribes for formal acts of legislation.

On four earlier occasions in Norway there has been a nation-wide public referendum in accordance with parliamentary decisions or formal statutes: the public referendum of 13 August 1905 on the dissolution of the Union with Sweden; the public referendum of 12/13 November 1905 on the choice of a king; the public referendum of 5/6 October 1919 on the prohibition against distilled spirits and wines of high alcohol content; and the public referendum of 18 October 1926 on the maintenance of the prohibition against distilled spirits.

The Act of 21 April 1972 (No. 20) laid down rules as to the question which was to be made

the subject of the public referendum: who was entitled to vote, the date and time for voting etc.

3. Act of 25 February 1972 repealing the Act of 20 June 1891 (No. 1) concerning Limitations on the Use of Corporal Punishment

Following the repeal of the aforesaid Act, there is no longer any special authorization for corporal punishment as an element in the upbringing of children. Offences against the person in respect of children are henceforth regulated by the general provisions pursuant to penal legislation.

4. Act of 21 April 1972 (No. 18) amending the General Civil Penal Code of 22 May 1902 (No. 10)

The Act repealed penal prohibitions directed against homosexual relations between men (homosexual relations between women had never been a penal offence), against sexual relations with animals and against concubinage.

5. Act of 16 June 1972 (No. 60) amending the Act of 17 June 1966 concerning the National Insurance Scheme and certain other Acts

The amendments mean, *inter alia*, the right to the old-age pension from the age of 67, as against 70 previously, and wider grounds for obtaining the premature old-age pension from the age of 64. Nevertheless, pursuant to the Act of 15 December 1972 (No. 78) amending the Act of 7 December 1956 (No. 2) concerning Workers' Protection and the Act of 19 December 1958 (No. 3) concerning Terms of Employment for Workers in Agriculture, employees between 67 and 70 years of age are protected against notice of discharge in the same way as other employees.

6. Act of 16 June 1972 (No. 64) concerning maternal and child health centres and health measures among children, etc.

The aim of the Act is, through the establishment of maternal and child health centres, to prevent illness and injury among children, and to promote their physical and mental health. The municipality (or the county municipality, as the case may be) is under an obligation to set up such centres in conformity with plans approved by the King and passed by the county council.

7. Act of 12 May 1972 (No. 27) amending the Act of 6 July 1957 concerning Joint Stock Companies

The Act entitles the employees to share in the process of decision-making in joint stock com-

¹ Note furnished by the Government of Norway.

panies. In companies with over 200 employees a corporate assembly of at least 12 members shall be elected instead of a committee of shareholders' representatives. Two thirds of the members are elected by the general meeting, while one third is elected by and from among the employees. The corporate assembly elects board members, adopts resolutions in matters concerning investments that are substantial compared with the company's resources, or concerning such rationalization or alteration of the operations as will entail a major change or reallocation of the labour force. In companies with between 50 and 200 employees, a third of the board members—in any case at least two—shall be elected by a majority of the employees and from among their midst.

8. Act of 16 June 1972 (No. 47) concerning Marketing Control

The Act supersedes the Act of 7 July 1922 (No. 11) on Unfair Competition. According to its

provisions, it is prohibited in business operations to perform any act which is contrary to sound business practice as between business enterprises or which is unreasonable in regard to consumers. In addition, it contains more detailed regulations as to, *inter alia*, misleading business methods, insufficient information, premiums, gifts to employees, and imitation of another's product. Some of the new provisions aim at protecting the consumers, while others are only concerned with the relationship between business enterprises. A Market Council and a Consumer Ombudsman are instituted for the protection of the consumers. The Market Council may prohibit any act contrary to provisions in the Act when the interests of the consumers call for such prohibition. The Consumer Ombudsman shall see that those provisions which are of importance to the consumers are complied with, and may, if necessary, bring the matter before the Market Council if attempts to come to an amicable arrangement fail.

PAKISTAN

NOTE ¹

The martial law which was promulgated in Pakistan on 25 March 1969 has been withdrawn and the interim Constitution of the Islamic Republic of Pakistan has come into force with effect from 21 April 1972. In this Constitution various fundamental rights and principles of policy have been embodied. Relevant extracts from the interim Constitution follow.

A. Interim Constitution

(Extracts)

Article 3. (1) To enjoy the protection of law and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular:

(a) No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) No person shall be prevented from, or be hindered in doing anything not prohibited by law; and

(c) No person shall be compelled to do anything the law does not require him to do.

Article 4. Loyalty to the Republic is the basic duty of every citizen.

Article 5. Obedience to law is the basic obligation of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

Article 7. (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred, and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this article shall not apply to:

(a) Any law relating to members of the Defence Services, or of the Police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or

(b) Any of the laws specified in the First Schedule as in force immediately before the

commencing day; and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter.

(4) The right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this chapter is guaranteed.

Article 8. No person shall be deprived of life or liberty save in accordance with law.

Article 9. (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 be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest 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 to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or the external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorize the detention of a person for a period exceeding one month unless the appropriate Advisory Board has reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and if the detention is continued after the said period of one month, unless the appropriate Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

¹ Note furnished by the Government of Pakistan.

Explanation. In this clause, "the appropriate Advisory Board" means:

- (i) In the case of a person detained under a federal law, a board consisting of a Judge of the Supreme Court, who shall be nominated by the Chief Justice of Pakistan, and a senior officer in the service of Pakistan, who shall be nominated by the President; and
- (ii) In the case of a person detained under a provincial law, a board consisting of a Judge of the High Court of the province concerned, who shall be nominated by the Chief Justice of that Court, and a senior officer in the service of Pakistan, who shall be nominated by the Governor of that province.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, but not later than one week from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

(6) The authority making the order shall furnish to the Advisory Board all documents relevant to the case, unless a certificate signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any such document, is produced.

(7) Within a period of 24 months no person shall be detained under any such order as aforesaid for more than a total period of 12 months.

(8) Nothing in this article shall apply to any person who for the time being is an enemy alien.

Article 10. (1) No person shall be held in slavery, and no law shall permit or in any way facilitate the introduction into Pakistan of slavery in any form.

(2) All forms of forced labour are prohibited.

(3) Nothing in this article shall be deemed to affect compulsory service:

- (a) By persons undergoing punishment for offences against any law; or
- (b) Required by any law for public purposes.

Article 11. No law shall authorize the punishment of a person;

(a) For an act or omission which was not punishable by law at the time of the act or omission; or

(b) For an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

Article 12. Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Pakistan and to reside and settle in any part thereof.

Article 13. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

Article 14. Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order.

Article 15. Every citizen, possessing such qualifications, if any, as may be prescribed by law in relation to his profession or occupation, shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business;

Provided that nothing in this article shall prevent:

(a) The regulation of any trade or profession by a licensing system;

(b) The regulation of trade, commerce or industry in the interest of free competition therein; or

(c) The carrying on, by the Federal or a provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

Article 16. Every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Article 17. Subject to law, public order and morality:

(a) Every citizen has the right to profess, practise and propagate any religion; and

(b) Every religious denomination and every sect thereof has the right to establish, maintain and manage its religious institutions.

Article 18. No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

Article 19. (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law:

(a) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination;

(b) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth;

(c) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice, and the State shall not deny recognition to any such institution on the ground only that the management of such institution vests in that community or denomination.

(4) Nothing in this article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

Article 20. Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to acquire, hold and dispose of property.

Article 21. (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this article shall affect the validity of:

(a) Any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) Any law relating to the acquisition, administration, or disposal of any property which is or is deemed to be evacuee property or enemy property under any law; or

(c) Any law providing for the taking over by the State for a limited period of the management of any property for the benefit of its owner; or

(d) Any law for the acquisition of any property or means of production for the purpose of:

(i) Providing free education and free medical aid to all or any specified class of citizens; or

(ii) Providing housing facilities to all or any specified class of citizens; or

(iii) Providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(e) Any existing law.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in clause (2) or clause (3), or determined in pursuance thereof, shall not be called in question in any court.

(5) In clauses (2) and (3), "property" means immovable property, or any commercial or industrial undertaking, or any interest in any such undertaking.

Article 22. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this article shall prevent the State from enacting any special provision for the protection of women.

Article 23. In respect of access to places of

public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex or place of birth, but nothing herein shall be deemed to prevent the making of special provision for women.

Article 24. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

Provided that for a period of 10 years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan;

Provided further that in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

(2) Nothing in this article shall prevent any provincial Government, or any local or other authority in a province, from prescribing, in relation to any class of service under that Government or authority, conditions as to residence in the province prior to appointment under that Government or authority.

Article 25. Any section of citizens having a distinct language, script or culture shall have the right to preserve the same.

Article 26. Untouchability is abolished, and its practice in any form is forbidden and shall be declared by law to be an offence.

CHAPTER 2. PRINCIPLES OF POLICY

Article 27. (1) The principles set out in this chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.

(2) In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.

(3) In respect of each year, the President in relation to the affairs of the Federation, and the Governor of each province in relation to the affairs of his province, shall cause to be prepared and laid before the National Assembly or, as the case may be, the Provincial Assembly, a report on the observance and implementation of the Principles of Policy, and provision shall be made in the rules of procedure of the National Assembly or, as the case may be, the Provincial Assembly, for discussion of such report.

Article 28. (1) The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the Principles of Policy

is that of the organ or authority of the State or of the person, concerned.

(2) The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State, any organ or authority of the State or any person on such ground.

(3) The National Assembly, a provincial assembly, the President or a governor, may refer to the Advisory Council of Islamic Ideology for advice any question as to whether a proposed law is or is not repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.

Article 29. No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah, and all existing laws shall be brought in conformity with the Holy Quran and Sunnah.

Explanation: In the application of this Principle to the personal law of any Muslim, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by the school of law to which he belongs.

Article 30. (1) The Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and should be provided with facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.

(2) The teaching of the Holy Quran and Islamiat to the Muslims of Pakistan should be compulsory.

(3) Unity and the observance of Islamic moral standards should be promoted among the Muslims of Pakistan.

(4) The proper organization of Zakat, Auqaf and Mosques should be ensured.

Article 31. Parochial, racial, tribal, sectarian and provincial prejudices among the citizens should be discouraged.

Article 32. Special steps should be taken to ensure full participation of women in all spheres of national life.

Article 33. The legitimate rights and interests of the minorities should be safeguarded, and the members of minorities should be given due opportunity to enter the service of Pakistan.

Article 34. Special care should be taken to promote the educational and economic interests of people of backward classes or in backward areas.

Article 35. Steps should be taken to bring on terms of equality with other persons the members of under-privileged castes, races, tribes and groups and, to this end, the under-privileged castes, races, tribes and groups within a province should be identified by the Government of the province and entered in a schedule of under-privileged classes.

Article 36. The people of different areas and classes, through education, training, industrial development and other methods, should be

enabled to participate fully in all forms of national activities, including employment in the service of Pakistan.

Article 37. Illiteracy should be eliminated, and free education up to the secondary level should be provided for all, as soon as practicable.

Article 38. Just and humane conditions of work should be provided, and children and women should not be employed in vocations unsuited to their age or sex, and maternity benefits should be provided for women in employment.

Article 39. The well-being of the people, irrespective of caste, creed or race, should be secured:

(a) By raising the standard of living of the common man;

(b) By preventing the undue concentration of wealth and means of production and distribution in the hands of a few, to the detriment of the interest of the common man; and

(c) By ensuring an equitable adjustment of rights between employers and employees and between landlords and tenants.

Article 40. All citizens should have the opportunity to work and earn an adequate livelihood, and also to enjoy reasonable rest and leisure.

Article 41. All persons in the service of Pakistan or otherwise employed should be provided with social security by means of compulsory social insurance or otherwise.

Article 42. The basic necessities of life, such as food, clothing, housing, education and medical treatment, should be provided for citizens who, irrespective of caste, creed or race, are permanently or temporarily unable to earn their livelihood on account of infirmity, disability, sickness or unemployment.

Article 43. Administrative offices and other services should, as far as practicable, be provided in places where they will best meet the convenience and requirements of the public.

Article 44. Disparity in the remuneration of persons in the various classes of the service of Pakistan should, within reasonable and practicable limits, be reduced.

Article 45. Persons from all parts of Pakistan should be enabled to serve in the Defence Services of Pakistan.

Article 46. Riba (usury) should be eliminated.

Article 47. Prostitution, gambling and the taking of injurious drugs should be discouraged, and printing, publication and circulation of obscene literature should be prohibited.

Article 48. The consumption of alcoholic liquor (except for medicinal purpose, and in the case of non-Muslims for religious purposes) should be discouraged.

Article 49. The bonds of unity among Muslim countries should be preserved and strengthened, international peace and security should be promoted, goodwill and friendly relations among all nations should be fostered, and the settlement of international disputes by peaceful means should be encouraged.

Article 139. (8) of the interim Constitution reads as follows:

139. (8) The Proclamation of Emergency issued on the 23rd day of November, 1971, shall be deemed to be a Proclamation of Emergency under this article and any law, rule or order made or purported to have been made in pursuance of that Proclamation shall be deemed to have been validly made.

In exercise of his powers under article 139 (3) of the interim Constitution the President of Pakistan, by an Order of 29 April 1972, declared that the right to move any court, including the right to move the Supreme Court for the enforcement of the fundamental right provided for in article 9 (safeguards as to arrest and detention), 12 (freedom of movement), 13 (freedom of assembly), 14 (freedom of association), 15 (freedom of trade, business or profession), 16 (freedom

of speech), 20 (right to hold property), 21 (protection of property rights), 22 (equality of citizens before law) and 24 (safeguard against discrimination in services and elective offices) of the interim Constitution and all proceedings pending in any court for the enforcement of any of the said rights, shall remain suspended for the period during which the Proclamation of Emergency is kept in force.

It may further be stated that in pursuance of the provision in article 7. (3) (b) to the effect that any of the laws specified in the First Schedule of the interim Constitution or any provision thereof shall not be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision relating to the fundamental rights. The laws thus exempted from the operation of the fundamental rights are listed below.

FIRST SCHEDULE

Article 7 (3). Laws exempted from operation of article 7 (1) and (2)

I. PRESIDENT'S ORDERS

1. The Basic Democracies Order, 1959 (P.O. No. 18 of 1959).
2. The Minerals (Acquisition and Transfer) Order, 1961 (P.O. No. 8 of 1961).
3. The Acceding State (Property) Order, 1961 (P.O. No. 12 of 1961).
4. The Economic Reforms Order, 1972 (P.O. No. 1 of 1972).
5. The Companies (Managing Agency and Election of Directors) Order, 1972 (P.O. No. 2 of 1972).
6. The Co-operative Societies (Reforms) Order, 1972 (P.O. No. 9 of 1972).
7. The Life Insurance (Nationalisation) Order, 1972 (P.O. No. 10 of 1972).
8. The Martial Law (Pending Proceedings) Order, 1972 (P.O. No. 14 of 1972).
9. The Rulers of Acceding States (Abolition of Privy Purses and Privileges) Order, 1972 (P.O. No. 15 of 1972).
10. The Industrial Sanctions and Licences (Cancellation) Order, 1972 (P.O. No. 16 of 1972).

II. MARTIAL LAW REGULATIONS AND MARTIAL LAW ORDERS

<i>Number</i>	<i>Description of regulation</i>
1.	Rawalpindi (Requisition of Property) Regulation, 1959
2.	Pakistan Capital Regulation
3.	Scrutiny of Claims (Evacuee Property) Regulation
4.	West Pakistan Border Area Regulation, 1959
5.	32
	Income Tax (Collection of Returns and False Declaration) Regulation
6.	37
	Improper Acquisition of Property
7.	58
	Removal from Service (Special Provisions) Regulation
	(as amended by Martial Law Regulation No. 72)
8.	59
	(as amended)
	Punishment for Assuming Style of Living beyond Ostensible Means
9.	68
	Recovery of Illegal Possession of Government Agricultural Land Regulation
10.	70
	Enemy Property—Delivering of Money due to an Enemy etc. to the Custodian of Enemy Property
11.	81
	(as amended by Martial Law Regulations Nos. 100, 107 and 113)
	Withdrawal of High Denomination Currency Notes

	<i>Number</i>	<i>Description of regulation</i>
12.	85 (as amended by Martial Law Regulation No. 120)	To Improve the Management of the Karachi Race Club Limited
13.	87	Recovery of Price of Evacuee Property and Public Dues Regulation
14.	93	Settlement of Certain Disputes between the Residents of Peshawar District and the Tribal Areas of Khyber and Mohmand Agencies
15.	97	Funds of the Pakistan Muslim League (Convention) and All Pakistan Awami League
16.	104 (as amended by Martial Law Regulation No. 111)	The Foreign Exchange Repatriation Regulation, 1972
17.	105 (as amended by Martial Law Regulation No. 112)	The Foreign Assets (Declaration) Regulation, 1972
18.	114	Removal from Service (Special Provisions) Regulation, 1972
19.	115 (as amended by Martial Law Regulations Nos. 121 and 126)	The Land Reforms Regulation, 1972
20.	116	Removal from Service (Review Petition) Regulation, 1972
21.	117	The Land Reforms (Baluchistan Pat Feeder Canal) Regulation
22.	118	Taking Over Privately Managed Schools and Colleges
23.	119	Revocation of Sale of Enemy Property Regulation, 1972
24.	122	The Devolution and Distribution of Property (Dir and Swat) Regulation
25.	123	The Settlement of Immovable Property Disputes (Dir and Swat) Regulation
26.	124	Revocation of Sale or Transfer of any Property made after 25 March 1969 by a Corporation or Institution and its Vesting in the West Pakistan Industrial Development Corporation on Such Revocation
27.	125	Protecting Industries the Management of which has been taken over under the Economic Reforms Order, 1972
28.		Martial Law Order No. 35 relating to the National Press Trust of Pakistan
29.		Zonal Martial Law Order No. 241 of 1972 of Zone C made to further the effective operation of the West Pakistan Co-operative Societies and Co-operative Banks (Repayment of Loans) Ordinance, 1966 (West Pakistan Ordinance No. XIV of 1966)
30.		Zonal Martial Law Order No. 38 of 1971 of Zone D, as amended by Zonal Martial Law Orders No. 42 of 1971 and No. 48 of 1972 made to further the effective operation of the Co-operative Societies Act, 1925 (Sind Act VII of 1925)

III. ORDINANCES PROMULGATED BY PAKISTAN

1. The Control of Shipping Ordinance, 1959 (XIII of 1959).
2. The Jammu and Kashmir (Administration of Property) Ordinance, 1961 (III of 1961).
3. The Muslim Family Laws Ordinance 1961 (VIII of 1961).

4. The Security of Pakistan (Amendment) Ordinance, 1961 (XIV of 1961).
5. The Associated Press of Pakistan (Taking Over) Ordinance, 1961 (XX of 1961).
6. The Conciliation Courts Ordinance, 1961 (XLIV of 1961).
7. The Trade Organisations Ordinance, 1961 (XLV of 1961).
8. The Jute Ordinance, 1962 (LXXIV of 1962).

IV. FEDERAL ACTS

1. The Political Parties Act, 1962 (III of 1962).
2. The Censorship of Films Act, 1963 (XVIII of 1963).

V. ORDINANCES PROMULGATED BY THE GOVERNOR OF THE FORMER PROVINCE OF WEST PAKISTAN

1. The West Pakistan Government Educational and Training Institution Ordinance, 1960 (W.P. Ordinance No. XI of 1960).
2. The West Pakistan Wakf Properties Ordinance, 1961 (W.P. Ordinance No. XXVIII of 1961).
3. The Societies Registration (West Pakistan Amendment) Ordinance, 1962 (W.P. Ordinance No. IX of 1962).
4. The West Pakistan Industries (Control on Establishment and Enlargement) Ordinance, 1963 (W.P. Ordinance No. IV of 1963).

VI. ORDINANCES PROMULGATED BY THE GOVERNOR OF THE NORTH-WEST FRONTIER PROVINCE

1. The North-West Frontier Province Government Educational and Training Institutions Ordinance, 1971 (N.W.F.P. Ordinance, No. III of 1971).
2. The North-West Frontier Province Chashma Right Bank Canal Project (Control and Prevention of Speculation in Land) Ordinance, 1971 (N.W.F.P. Ordinance No. V of 1971).
3. ⁴The North-West Frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance, 1971 (N.W.F.P. Ordinance No. VIII of 1971).

B. Court decisions

The most important decision of the Supreme Court of Pakistan in this respect is the case of Malik Ghulam Jilani and Altaf Husain Gauhar, editor of the *Dawn*, in Criminal Appeal No. 10 of 1972.

PHILIPPINES

NOTE ¹

In the *Yearbook on Human Rights for 1969* mention was made of the existence in the Philippines of "healthy indications of a growing social consciousness for reform".² This trend has been vigorously pursued and has found concrete expression in a number of constitutional provisions and in the legislation, presidential decrees and executive orders dealt with below.³

The new Constitution, signed on 30 November 1972,⁴ represents a token of great strides towards the realization of basic human rights. The new Constitution, for instance, improved upon the Bill of Rights embodied in the old Constitution particularly with regard to the rights of persons accused of crime. It likewise recognized provisions of the old Constitution such as the right to change the place of trial when trial by a local judge might result in a miscarriage of justice. Likewise, the principle that a prompt and speedy trial should be interpreted to include speedy issuance of a decision as well as a speedy hearing. Hence the new Constitution provided for a maximum period from the date of submission of the case within which a decision should be given, which period may range from 18 months for the Supreme Court to 3 months for lower courts.

Presidential Decree No. 2 of 6 September 1972 proclaimed the entire country as a land reform area. The promulgation of Presidential Decree No. 27 of 21 October 1972 on land reform was one of the many steps taken by the Government to bring about greater equality and to give the poor a greater share of the wealth of the nation as well as better opportunities for advancement.

The Philippine Medical Act of 1969 (Republic Act No. 6111 of 4 August 1969) has been fully implemented, thus providing medical insurance for half of the population of the Philippines.

The Government has also taken stock of its educational programme with a view to its massive reformation so as to help accelerate the rate of economic and social progress.

¹ Note furnished by the Government of the Philippines.

² See *Yearbook on Human Rights for 1969*, p. 197.

³ See also *Yearbook on Human Rights for 1970*, pp. 186-191.

⁴ The Constitution was approved by the Filipino people in a referendum held between 10 and 15 January 1973, the result of which was announced under Proclamation No. 1102, of 17 January 1973, by virtue whereof the Constitution came into full force and effect as of noon on 17 January 1973.

I. Constitutional provisions

The new Philippine Constitution contains broad provisions on human rights which conform with those enumerated in the Universal Declaration of Human Rights.

A. ECONOMIC RIGHTS

The Philippine Constitution entrusts to the State the duty to promote social justice to ensure the dignity, welfare and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment and disposition of private property, and equitably diffuse property ownership and profits (art. II, sect. 6).

The Constitution likewise entrusts upon the State the duty to afford protection to labour, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall also assure the rights of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work. The State may provide for compulsory arbitration (art. II, sect. 9).

Another important constitutional mandate had to do with the State's duty to formulate and implement an agrarian reform programme aimed at emancipating the tenant from the bondage of the soil and achieving the goals enumerated in the Constitution (art. XIV, sect. 12).

B. BILL OF RIGHTS

Article IV of the Philippine Constitution contains a bill of rights—a list of the rights and privileges which individuals enjoy and which cannot be violated by the Government or any public officer. The Bill of Rights limits the exercise of governmental powers, including three inherent powers of government, namely: (a) police power, or the power to regulate life, liberty or property (b) power of taxation or the power to raise money for public revenue; and (c) power of eminent domain, or the power to take (or expropriate) private property. (These powers are inherent in governments with or without constitutions.)

C. "DUE PROCESS OF LAW"

The Bill of Rights guarantees that "no person shall be deprived of life, liberty or property without due process of law" (art. IV, sect 1). Due process of law simply means fair play. It prohibits deprivation of a person's life, liberty

or property by governmental officers in (a) an arbitrary manner when they fail or refuse to give a person the opportunity to be heard, or (b) for arbitrary reasons when their actions are based on flimsy grounds.

D. "EQUAL PROTECTION OF THE LAW"

The Bill of Rights guarantees that no person shall be denied the equal protection of the law (art. IV, sect. 1). This means that all persons of the same class shall be treated alike. The classification of persons must be natural and reasonable. Thus, there is a natural and reasonable classification of persons who are citizens and aliens (foreigners). Consequently, citizens have more rights and duties than aliens (foreigners).

E. CONSTITUTIONAL REQUISITES FOR GOVERNMENTAL EXPROPRIATION OF PRIVATE PROPERTY

The Bill of Rights guarantees that "private property shall not be taken for public use without just compensation" (art. IV, sect. 2). Just compensation means the fair market value of the expropriated property, plus consequential damages, minus consequential benefits.

F. CIVIL RIGHTS OF PRIVACY

The Bill of Rights guarantees (a) the right of people to be secured in their persons and property against unreasonable searches and seizures, except upon a valid search warrant or warrant of arrest issued by a judge or any other officers authorized by law, and (b) the privacy of communication and correspondence, except upon lawful order of the court or when public safety requires, and declares that any evidence obtained in violation of these rights shall be inadmissible for any purpose in any proceeding (art. IV, sects. 3 and 4)

G. CIVIL LIBERTY OF ABODE AND TRAVEL

The Bill of Rights provides that "the liberty of abode and of travel shall not be impaired except upon lawful order of the court or when necessary in the interest of national security, public safety, or public health" (art. IV, sect. 5). Thus, lepers may be confined in leprosaria, criminals detained in jails and enemy aliens interned in time of war.

H. POLITICAL RIGHTS OF EXPRESSION, INFORMATION AND ASSOCIATION

The Bill of Rights guarantees (a) the right of the people to information on matters of public concern, including access to official documents by citizens, subject to legal limitations; (b) the right to form associations or societies not contrary to law; (c) freedom of speech, or of the press; and (d) the right of the people peaceably to assembly and petition the Government for redress of wrongs (art. IV, sects. 6, 7 and 9)

I. CIVIL FREEDOM OF RELIGION

The Bill of Rights proclaims that "no law shall be made respecting an establishment of religion,

or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." (art. IV, sect. 8).

Freedom of religion, like freedom of speech and the press, is already embraced in the concept of liberty in the due process of law clause. This involves two concepts: (1) it forestalls the compulsion by law of the acceptance of any creed or the practice of any form of worship; and (2) it safeguards the free exercise of the chosen form of religion. This particular freedom has two aspects, namely, (a) freedom to believe, which is absolute; and (b) freedom to act in accordance with one's belief, which cannot be absolute in any organized community. Thus, a man may believe in murder as a religious obligation, but he cannot commit murder without being punished according to law. The clause against "establishment of religion" by law is intended to erect "a wall of separation between the Church and State".

The provisions on religious freedom are found not only in the Bill of Rights, they are also found in other articles like section 17, paragraph 3 of article VIII, which ensures that charitable institutions, churches, parsonages or convents appurtenant thereto, mosques and non-profit cemeteries, and all lands, buildings, and improvements actually, directly and exclusively used for religious or charitable purposes shall be exempt from taxation. Section 18 (2) of article VIII likewise provides that "no public money or property shall ever be appropriated, applied, paid or used, directly or indirectly, for the use, benefit or support of any sect, church, denomination, sectarian institution or system of religion, or for the use, benefit or support of any priest, preacher, minister or other religious teacher or dignitary, as such, except when such priest, preacher, minister or dignitary is assigned to the armed forces or to any penal institution, government orphanage or leprosarium". Section 8 (8) of article XV also provides that "at the option expressed in writing by the parents or guardians, and without cost to them and the Government, religion shall be taught to their children or wards in public elementary and high schools as may be provided for by law".

In this connexion, it might be mentioned that under the Civil Code of the Philippines, religious freedom is to be observed in the issuance of authorization to solemnize marriages (art. 93) and that the revised Penal Code punishes certain violators of religious freedom (arts. 132 and 133).

J. OTHER CIVIL RIGHTS UNDER THE PHILIPPINE CONSTITUTION

The Bill of Rights provides that:

(a) No law granting a title of royalty or nobility shall be enacted;

(b) No law impairing the obligations of contract shall be passed;

(c) No *ex post facto* law or bill of attainder shall be enacted;

(d) No person shall be imprisoned for debt or non-payment of a poll tax;

(e) No involuntary servitude in any form shall exist except as a punishment for a crime after conviction;

(f) The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, rebellion, or imminent danger thereof, when the public safety requires it;

(g) All persons shall have the right to a speedy disposition of their cases in all government proceedings; and

(h) Free access to the courts shall not be denied to any person by reason of poverty (art. IV, sects. 10-16 and 23).

An *ex post facto* law is one which penalizes an act which was not illegal when committed, or which increases the penalty after the act was committed. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. Involuntary servitude denotes a condition of enforced and compulsory service of a person to another.

The writ of habeas corpus is an order of a court or judge directed to a person detained for the consideration of the court or judge. Its purpose is to determine the legality of the detention. However, the order of discharge will not be issued if the privilege of the writ of habeas corpus is suspended.

K. CONSTITUTIONAL RIGHTS OF PERSONS ACCUSED OF CRIMES

All persons accused of crimes shall have the following rights:

1. Right to due process of law;
2. Right to reasonable bail before conviction, unless they are charged with capital offences when the evidence of guilt is strong;
3. Rights to be presumed innocent until the contrary is proved; to be heard personally or through counsel; to be informed of the accusation; to have a speedy, impartial, and public trial; and to have compulsory process to secure the attendance of witness and the production of evidence;
4. Right not to be compelled to be witness against themselves (right against self-incrimination), including the right against involuntary confession;
5. Right against imposition of excessive fines or infliction of cruel or unusual punishment; and
6. Right against being twice put in jeopardy (or danger) for the same offence (art. IV, sects. 17-22).

L. SOCIAL AND CULTURAL RIGHTS

It is a constitutional mandate for the State to establish, maintain and ensure adequate social services in the field of education, health, housing, employment, welfare and social security to guarantee the enjoyment by the people of a decent standard of living (art. II, sect. 7).

Under the Constitution, all educational institutions shall be under the supervision of, and subject to regulation by, the State. The State shall establish and maintain a complete, adequate and

integrated system of education relevant to the goals of national development (art. XV, sect. 8 (1)).

All educational institutions are under obligation to inculcate love of country, to teach the duties of citizenship and to develop moral character, personal discipline and scientific, technological and educational efficiency (art. XV, sect. 8 (4)).

The Constitution guarantees academic freedom to all institutions of higher learning (art. XV, sect. 8 (2)). The State is under duty to maintain a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education at least up to the secondary level (art. XV, sect. 8 (5)). The State is likewise under duty to provide citizenship and vocational training to adult citizens and out-of-school youth, and create and maintain scholarships for poor and deserving students (art. XV, sect. 8 (6)).

The State shall also promote scientific research and invention (art. XV, sect. 9 (1)) and arts and letters shall be under its patronage (art. XV, sect. 9 (2)).

The Constitution provides for the exclusive right to writings and inventions for a limited period and for scholarships, grant-in-aid, or other forms of incentives for specially gifted citizens (art. XV, sect. 9 (3)).

It is declared as a constitutional principle that the natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the Government (art. II, sect. 4).

II. Laws enacted by the Philippine Congress

Republic Act No. 6268 of 19 June 1971, amending the second paragraph of article 78 of Republic Act No. 386, known as the Civil Code of the Philippines, allowing certain Moslem marriage practices for another 20 years.

Republic Act No. 6399 of 30 September 1971, appropriating P 90,000 as compensation to the heirs of mass demonstration victims Ricardo Alcantara, F. Catabay, Felicisimo Roldan, B. Bausa, Jesus Mejia and L. Inelda.

Republic Act No. 6425 of 30 March 1972, the Dangerous Drugs Act of 1972. This law purports to combat the drug problem in the country by providing not only for stiffer penalties for drug pushing, but also for massive educational campaigns as well as steps to rehabilitate drug users.

During the period under review several laws were passed standardizing salaries of officials and employes of various government offices, to wit: Republic Act No. 6362 of 30 July 1971, which accelerated the adjustment of salaries of public school teachers; Republic Act No. 6385, of 16 August 1971, which standardized the salaries of officers and employees of the Bureau of Mines; Republic Act No. 6410, of 4 October 1971, which standardized the salaries of certain ranking officials in the Department of Education;

and Republic Act No. 6458, enacted on 12 June 1972, which increased the salaries of officers and employees of the office of the Solicitor General.

III. Presidential decrees

1. LAND REFORM

Presidential Decree No. 2 of 26 September 1972, proclaiming the entire country as a land reform area.

This decree purports to accelerate the agrarian reform programme of the Government so as to bring about the early attainment of the objectives set forth in Republic Act No. 3844, among which is the following: "to achieve dignified existence for the small farmers, free from the pernicious institutional restraints and practices which have not only retarded the agricultural development of the country but have also produced widespread discontent and unrest among our farmers;".

Presidential Decree No. 27 of 21 October 1972, decreeing the emancipation of the tenants from the bondage of the soil, transferring to them the ownership of the land they till and providing the instruments and mechanisms therefor.

This decree is historic in the sense that it effects one of the most far-reaching reforms in the country, as reflected in the decree's pre-ambular paragraphs which read as follows:

"Inasmuch as the old concept of land ownership by a few has spawned valid and legitimate grievances that gave rise to violent conflict and social tension,

"The redress of such legitimate grievances being one of the fundamental objectives of the new society,

"Since reformation must start with the emancipation of the tiller of the soil from his bondage".

Presidential Decree No. 57 of 19 November 1972, amending above-mentioned Presidential Decree No. 27.

This decree purports to further accelerate the attainment of the objectives set forth therein by the incorporation of the following provisions:

1. The landowner shall be exempt from the capital gains tax on the proceeds of the amortization paid him by the Tenant-purchaser and likewise from income tax due on the accruing interest paid as an addition to the total cost of the land.

2. The active participation of rural banks and all other financial institutions shall be required in order to provide an immediate source of funds to augment loans/credits to be made available to the tenants and/or farmers co-operatives consistent with the asserted implementation of the supervised credit programme.

3. The Agricultural Guarantee Fund constituted under section 12 of Republic Act No. 6390 for all its intent and purpose includes the guarantee coverage to the participating financial institutions under the same terms and conditions allowed and applied to the rural banking system.

4. The existing agricultural guarantee loan funds wholly or partly contributed and/or funded

by governmental agencies shall be integrated into the Agricultural Guarantee Fund and shall be governed by the rules and regulations promulgated by the Agricultural Guarantee Fund Board established under section 13 of the mentioned act.

Presidential Decree No. 84 of 22 December 1972, authorizing the Secretary of Agrarian Reforms to sign on behalf of the President of the Philippines land transfer certificates issued to tenant-farmers pursuant to Presidential Decree No. 27.

This decree purports to implement the Government's Land Reform programme with maximum efficiency and speed.

Presidential Decree No 85 of 24 December 1972, creating the Agrarian Reform Fund to support financing requirements of the agrarian reform provided for in Presidential Decree No. 27 and for other purposes.

This is one other decree which seeks to effect the immediate implementation of agrarian reform as provided for in Presidential Decree No 27.

In creating an Agrarian Reform Fund, the decree mobilizes and harnesses properly available Government resources. The "Fund" would finance and/or guarantee the payment of farm lots acquired under Proclamation No. 27, dated 21 October 1972, and would extend agricultural credit support and the guarantee coverage in land reform areas of the country.

2. SOCIAL LEGISLATION

Presidential Decree No. 83 of 20 December 1972

This decree extends further assistance to World War II veterans of the Philippines and their widows and orphans, as well as to the members of the Armed Forces of the Philippines and their dependents by authorizing the Philippine Veterans Bank to set aside the sum of five million pesos (P 5 million) for the operation and maintenance of a commissary and PX facilities for the aforementioned veterans, their widows and orphans, and the members of the Armed Forces of the Philippines and their dependents. In connexion with this objective, the decree considers it necessary to exempt from government taxes, duties and/or charges certain commodities which are to be sold by the commissary from local producers, manufacturers or suppliers.

3. POLITICAL RIGHTS

Presidential Decree No. 82 of 18 December 1972, calling on the delegates of the Constitutional Convention to conduct an information campaign on the proposed new constitution and for other purposes.

This decree purports to accord the Filipino people the opportunity to be enlightened on the various features of the proposed new Philippine Constitution through the efforts of the delegates to the Constitutional Convention.

Presidential Decree No. 86 of 31 December 1972, creating Citizen's Assemblies.

This decree purports to broaden the base of citizen participation in the democratic process and to accord ample opportunities for the citizenry to express their views on important national issues by creating in each barrio in municipalities and in each district or ward in chartered cities, a Citizen's Assembly consisting of all persons who have been residents of the barrio, district or ward for at least six months, are 15 years of age or over, are citizens of the Philippines and who are registered in the list of Citizen's Assembly members kept by the barrio, district or ward secretary.

4. OTHERS

Presidential Decree No. 42 of 9 November 1972, authorizing the plaintiff in eminent domain proceedings to take possession of the property involved upon depositing the assessed value for purposes of taxation.

This decree amends procedural law, more particularly rule 67 of the Rules of Court of the Philippines on Eminent Domain.

The decree purports to make more expeditious entry into possession by the plaintiff of real property where such property is needed for public purposes. The measure is characterized as one which would help effect the desired changes and reforms to create a new social and economic order for the benefit of the country and its people.

Presidential Decree No. 44 of 9 November 1972, amending certain sections of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972 (see above).

The decree purports to correct certain defects and remedy certain deficiencies of that act which have hampered the full and expeditious implementation of its provisions.

It also underscores the Government's concern over the world-wide problem of drug addiction which not only "complicates the peace and order problem" of the country but also "erodes the physical strength as well as the moral well-being" of the people.

Presidential Decree No. 49 of 14 November 1972, on the protection of intellectual property.

This lengthy decree purports to give fuller protection to intellectual property, to encourage arts and letters, to stimulate scientific research and invention and to safeguard the public right to cultural information.

Presidential Decree No. 77 of 6 December 1972, amending section 1 of Republic Act No. 5180, prescribing a uniform system of preliminary investigation by provincial and city fiscals and their assistants, and by state attorneys or their assistants.

This decree simplifies the conduct of preliminary investigation in criminal cases for a more expeditious administration of justice.

Presidential Decree No. 70 of 27 November 1972, insuring the successful operation of malaria eradication campaigns in the Philippines.

This decree purports to greatly help in reducing to the minimum the incidence of malaria, if not totally eradicating it. For this purpose, it authorizes anti-malaria workers of the Malaria Eradication Service of the Department of Health:

(a) To enter private premises, dwellings and yards without being guilty of trespass thereof, in order to spray the houses or to canvass for malaria cases, take blood films, give treatment and other anti-malaria activities necessary to eradicate malaria;

(b) To gather data from other agencies for consolidation of records on the evidence of malaria and to conduct investigation, studies, research and demonstration with the view of discovering a solution to the problems incidental to the purpose of this decree.

IV. Executive Orders and Proclamations on human rights promulgated by the President of the Philippines

Executive Order No. 310 of 16 April 1971, creating the Inter-departmental Committee on Children and Youth.

Executive Order No. 317 of 6 May 1971, creating the Executive Committee of the summer work camp for children of the Tondo fire victims.

Executive Order No. 318 of 7 May 1971, establishing an educational task force.

Executive Order No. 337 of 1 September 1971, creating the Medical Assistance Programme Task Force.

Executive Order No. 361 of 24 December 1971, designating the Department of Agrarian Reform as trustee of the Special Fund for Assistance to the Philippine Land Reform Education Programme.

Proclamation No. 824 of 4 March 1971, declaring 1971 as Social Action Year and the period from 1 March to 30 September 1971, as Membership and Fund Campaign Period of the Council of Welfare Agencies.

Proclamation No. 858 of 25 May 1971, declaring the period from 16 June to 20 June 1971 as National Integration Week.

Proclamation No. 883 of 2 August 1971, declaring the period from 1 August to 7 August of every year as Family Planning Week.

Proclamation No. 935 of 19 November 1971, declaring the period from 15 January to 30 April 1972 for the Twenty-fifth Annual Fund Campaign of the Philippine National Red Cross.

POLAND

NOTE¹

I. Legislation

A. ARTICLE 23 OF THE UNIVERSAL DECLARATION

Compared with previous years, no important change took place in this connexion in Poland during 1972, either in the basic legislative instruments in force or in administrative practice.

The rights of citizens, mentioned in the Universal Declaration of Human Rights, are enjoyed to the full and the planned socialist economy ensures a complete balance between manpower supply and demand. As in previous years, in 1972 the national economic plan guaranteed employment for the whole of the growing labour force; this is confirmed by the condition of the labour market, which has in principle remained unchanged for a number of years.

For example, according to the statistical data issued by the employment office, the number of applicants for work registered with the employment office in 1972 remained at an average level of 66,000 a month, whereas there were 185,000 unfilled job openings. This means that on the average there were nearly three vacant posts for every applicant for work.

No new decision on this subject was taken in 1972, since those adopted in previous years ensure the adequate observance of the policy of full employment in Poland.

B. ARTICLES 22 AND 25 OF THE UNIVERSAL DECLARATION

A number of decisions were taken in 1972 to improve further the social conditions of workers. The most important are described below:

1. In order to guarantee equal social rights for all workers who have to look after a sick child, social insurance was increased by order No. 14 of 14 January 1972 of the Council of Ministers (*Monitor Polski*, No. 5, 1972, item 27) to 100 per cent of the net wage in the case of workers who take leave to look after a child under 14 years of age and who are not eligible for remuneration under existing legislation. The period of eligibility for this allowance was extended from 30 to 60 days a year.

2. The Act of 6 July 1972 (*Dziennik Ustaw*, No. 27, 1972, item 190) extends maternity leave

from 12 to 16 weeks for the first confinement and to 18 weeks for each subsequent or multiple birth. During this period, women workers receive either full net remuneration or a maternity allowance amounting to 100 per cent of the net salary.

3. The Act of 6 July 1972 (*Dziennik Ustaw*, No. 27, 1972, item 191) establishes a comprehensive scheme of sickness insurance amounting to:

100 per cent of the net wage when unfitness for work is due to an industrial injury or an occupational disease;

85 per cent of the net salary in the case of unfitness for work due to other reasons, the amount to be increased to 90 per cent from 1 July 1973 and to 100 per cent from 1 July 1974.

4. Order No. 309 of 8 December 1972 of the Council of Ministers offers military personnel the opportunity of early retirement, when they have completed the requisite period of service to be eligible for retirement (25 years for men and 20 years for women).

The age limit is as follows:

For disabled persons in groups I and II: 50 years of age for women and 55 years of age for men;

For disabled persons in group III: 55 and 60 respectively. The retirement pensions for war disabled and military personnel were increased at the same time (*Monitor Polski*, No. 57, 1972, item 302).

II. Judgements of the Supreme Court

A. PROTECTION OF PERSONAL PROPERTY: DECISION OF 22 SEPTEMBER 1972 (I CR 326/72)

Forgetfulness of the most recent events of daily life, lack of planning for the future and lack of concern about one's fate in the event of sickness are typical manifestations of old age. However, they are not grounds for deprivation of legal capacity. The same is true of a possible aggravation of mental disturbances, which cannot constitute an argument for making a ruling on deprivation of legal capacity. The view that the property of a person who is so disturbed should be preserved for the benefit of that person's relatives conflicts with the principle that deprivation of legal capacity must be in the interest of the person deprived of legal capacity and never for the benefit of the family of that person or for the benefit of third parties.

¹ Note furnished by the Government of the Polish People's Republic.

B. PROTECTION OF LABOUR: DECISION OF 13 APRIL 1972
(III PZP 7/72)

A woman who was not pregnant at the time of receiving notice of the termination of her

employment contract, but who became pregnant during the period of notice, is entitled to the protection prescribed by article 16 (3) of the Act of 2 July 1924 on the employment of young persons and women.

ROMANIA

NOTE¹

In 1972 legislative activity in the Socialist Republic of Romania relating to civil and political rights continued to develop along the general lines of the programme of the Romanian Communist Party, in accordance with the instructions and guidelines adopted by the Party at its various levels of collective leadership, particularly at the National Party Conference (19-21 July 1972). By resolutions and decisions published in *Buletinul Oficial al Republicii Socialiste România*, Nos. 79 and 80 (part I, dated 23 July 1972), the Party established provisions concerning, *inter alia*, the improvement of the organization and management of life in society and the development of socialist democracy; the flowering of the socialist nation and the nationality problem in the Socialist Republic of Romania; the policy and international activities of the Romanian Party and State; the town and village territorial development plans; the major course which Romania's economic and social development should follow in the next two decades; and manpower training and the improvement of the standard of living of the population.

These resolutions and decisions entail a tremendous effort to reassess and supplement legislation in various fields in which, in view of the stage of social development attained, more advanced laws are required.

Noteworthy among the normative acts adopted in 1972 is a group of acts the objective of which is systematically to improve the living conditions of the entire population and attain a high degree of national civilization and prosperity, the supreme and constant goal of the policy of the Romanian Communist Party.

For example, Act No. 8, dated 22 November 1972 (*Buletinul Oficial* No. 135, part I, dated 25 November 1972) concerning planned economic and social development in Romania establishes the principle that the economic and social development of Romania is to be pursued on the basis of the consolidated national plan, the objectives of which are to: increase the forces of production, pursue the task of industrialization, develop intensive agriculture, increase material output at a more rapid rate, promote scientific research, education and culture on a broad scale, and develop a judicious policy designed to increase and distribute the national income, with a view to establishing a solid technical and economic foundation as the standard of living improves. The regulations set forth in the Act (which establish areas of competence, procedures and responsibilities with respect to planning) are based on the

premise underlying the consolidated and indivisible national plan that the planned supervision of economic and social development must be considered an essential and inalienable attribute of national sovereignty and independence. The necessary complementary provisions in regard to national finances are found in the Finance Act (Act No. 9, dated 22 November 1972 (*Buletinul Oficial* No. 136, part I, dated 26 November 1972)).

In the light of the mandate of the State Organs of power, in order to correlate the term of legislative bodies with the periodicity of the Party Congresses and the stages of development of the national economy established by the five-year plans, the Constitution of the Socialist Republic of Romania was amended by Act No. 1, dated 20 April 1972 (*Buletinul Oficial* No. 41, part I, dated 24 April 1972), which extends the term of the legislative bodies and their respective mandates to five years.

Two further normative acts relate to the development plan and the budget of Romania for the current period. These are Act No. 11, dated 23 November 1972 (*Buletinul Oficial* No. 137, part I, dated 28 November 1972) concerning the adoption of the economic and social development plan of the Socialist Republic of Romania for the year 1973 and Act No. 12, dated 23 November 1972 (*Buletinul Oficial* No. 137, part I, dated 28 November 1972) concerning the adoption of the State budget for the year 1973. These instruments envisage, *inter alia*, an amount of 93.8 thousand million lei in centralized investments from the State treasury, the putting into operation of 490 new major production units and 46 larger agricultural and zootechnical units; the carrying out of 216 research projects of national interest; an increase of 255,000 in the number of employees; the training and entry into the production process of 281,000 additional workers; an increase of 120.9 thousand million lei in the volume of sales of retail goods; the construction in 1973 of 111,000 new apartments and 2,400 class-rooms and the provision of an additional 20,900 places in boarding-schools, 26,100 places in nursery schools, children's homes and crèches and 5,650 places in hospitals, sanatoriums and spa complexes. In general, the salary fund will be increased by 10.5 per cent compared with 1972, and the real income of the population will rise by 8 per cent.

In the light of the efforts of society to satisfy the ever-increasing demands of the population and in view of rising expectations vis-à-vis the quality of consumer goods produced and public services delivered, Act No. 6, dated 21 April 1972 (*Buletinul Oficial* No. 42, dated 24 April 1972),

¹ Note furnished by the Government of the Socialist Republic of Romania.

concerning the organization and operation of public control, was adopted. This Act provided that public control activities would be supervised and organized by the Socialist Unity Front, with the assistance, *inter alia*, of labour unions and youth organizations, and the sphere of such control was expanded to cover activities in rural areas as well. Members of control teams were placed on the same footing with State employees in matters relating to the exercise of their rights and the discharge of their responsibilities, and relations between the public control teams and the managers of units under control were made subject to greater regulation. This Act was followed at the end of the year by Act No. 15, dated 28 December 1972 (*Buletinul Oficial* No. 161, dated 29 December 1972) concerning the organization and operation of the Central Workers' Control Council for Economic and Social Activities, a Party and State organ which, under the direction of the Central Committee of the Romanian Communist Party and the State Council, is responsible for exercising unitary control over the economy as a whole, by branch and on a territorial basis, and for implementing the economic and social policy of the Party and the State. It provides guidance and ensures the unitary co-ordination of specialized State control inspection units concerned with construction, labour protection, supervision of the management of fixed-term deposits, installations, measuring and monitoring devices, boilers, fuels and energy, price controls, mining geology, etc. Thus, the Central Workers' Control Council, by virtue of its increased supervisory duties and its responsibilities for analysing the progress of the development of the national economy and proposing measures required to enhance the effectiveness of economic and social activities, has assumed, at a different level, the tasks of the Economic Council (established by Act No. 4, 1969), which has ceased to function.

In another context, with specific reference to matters relating to rights and civil and penal procedure, the State Council, by Decree No. 131, dated 19 April 1972 (*Buletinul Oficial* No. 40, part I, dated 23 April 1972), amended Act No. 25, 1969, concerning the régime for aliens in the Socialist Republic of Romania. For example, the Decree contains provisions which supplement the Act by regulating the procedure for the payment of all debts of persons who are not resident in Romania on the basis of an expeditious procedure for securing the property of aliens so that they may leave Romania within as brief a period of time as possible.

Other regulations were adopted by the State Council in Decree No. 78, dated 8 March 1972 (*Buletinul Oficial* No. 28, part I, dated 8 March 1972), which amended the provisions of the Code of Civil Procedure relating to the material jurisdiction of the Courts. The departmental courts try in the first instance only lawsuits involving property with a value of over 150,000 lei. The power to try lawsuits involving sums up to 150,000 lei (rather than 50,000 lei, as provided in the earlier Decree, No. 52, 1969) is given to the tribunals.

Moreover, with respect to the new penal legislation adopted in 1968, matters relating to

the records of persons who commit offences were further regulated by Act No. 7, dated 21 April 1972 (*Buletinul Oficial* No. 43, part I, dated 29 April 1972) concerning the registry of police records. The registry is the sole instrument which exists for the registration of data needed under the system, namely, data relating to final sentences pronounced by the judicial organs in respect of criminal acts. The Act permits provisional mention of the criminal prosecution—until the final settlement of the case, within a maximum of five years—for purposes of compliance with legal requirements in connexion with the recruitment of managers, the régime for aliens and the régime for passports. At the same time, provision is made for an expeditious procedure to correct erroneous data, and citizens who have a legitimate interest in obtaining certified extracts of their police record, which heretofore had been transmitted only to the organizations concerned, are accorded the right to do so.

By Decree No. 521, dated 27 December 1972 (*Buletinul Oficial* No. 157, part I, dated 27 December 1972), concerning the remission of certain penalties, the State Council, on the occasion of the celebration of the twenty-fifth anniversary of the proclamation of the Republic, declared the total or partial remission of certain penalties, depending on the severity of the penalty and the seriousness of the offence committed. Decree No. 545, dated 30 December 1972 (*Buletinul Oficial* No. 162, part I, dated 30 December 1972), concerning the application of the educational measure consisting of the confinement of delinquent minors in re-education centres, defines this educational measure, which is applied in centres for delinquent minors who have not responded to any other educational measures applied by society. On the basis of certain specific methods and means used in the re-education centres during the period of confinement, an intensive education process is carried out in the spirit of socialist ethics and equity. Minors are inculcated with a love of work and study, respect for the laws of the State, honesty and uprightness, and love of the socialist society, all with a view to their harmonious reintegration in society as a whole.

The Labour Code, adopted in Act No. 10, dated 23 November 1972 (*Buletinul Oficial* No. 140, part I, dated 1 December 1972), is of key importance for the regulation of relations in society and the full development of the personality of the socialist person and of all creative citizens, who are the free beneficiaries of material and spiritual wealth. They are simultaneously producers and the owners of the means of production; they are the sovereign possessors of political and economic power and, at the same time, the conscious creators of their own future, by virtue of their participation in the management of the national wealth, the administration of public affairs and the government of the country as a whole. The Code devotes special attention to the educational aspect of work, to the encouragement of social responsibility for the quality and effectiveness of the work undertaken and to the type of work and of its results as a fundamental criterion for assessing individual

merits. It also attaches particular importance to the need to emphasize the indissoluble unity and reciprocal nature of work done for the individual's benefit and work done for the benefit of society, for the well-being of each worker and the progress of society as a whole. As a labour charter and an expression of the basic principles and norms governing labour relations, the Labour Code establishes the rights and obligations of workers, which include: the unconditional guarantee of the right to work; the incompatibility with the socialist system of all forms of social parasitism and of the appropriation of another's labour in any manner; the right, which is simultaneously an obligation, of all citizens, beginning at the age of 16 (or even at 14 or 15 years), to engage until the age of retirement in work which is useful to society and ensures them a means of livelihood and spiritual development, in accordance with the law; the rights and obligations of the members of labour collectives and the prohibition against restricting, denying or compromising the rights of employed persons. Further provisions relate to the transfer of workers in the interests of the service, with workers retaining the right to refuse to accept a transfer for reasons of health or for other serious reasons; the principles of the socialist discipline of labour; the differentiated regulation of the duration of work, which may not exceed 48 hours weekly and 8 hours daily; the regulation of night work; the regulation of seniority in employment and the termination of the labour contract; labour protection and social insurance; the provision of special rights for women and young workers; provisions concerning labour unions and norms relating to the settlement of labour disputes and supervision of the implementation of labour legislation. Furthermore, by Decree No. 453, 1972 (*Buletinul Oficial* No. 150, dated 14 December 1972), amending Act No. 12, 1971 concerning the promotion in employment of personnel of the State socialist units, the minimum conditions relating to the training and seniority required for the recruitment and promotion of skilled workers working underground in mines were covered by improved regulations which went into effect on 1 January 1973.

Act No. 13, dated 23 November 1972 (*Buletinul Oficial* No. 138, part I, dated 29 November 1972), concerning mutual assistance homes for retired persons, regulates another aspect of the labour and social insurance régime. The Act reorganized the mutual assistance system and extended the right to establish mutual assistance homes to all retired persons and recipients of social assistance, irrespective of the pension scheme to which they belong. Furthermore, by Decrees Nos. 315 and 316, dated 22 August 1972 (both published in *Buletinul Oficial* No. 93, part I, dated 22 August 1972), increases were provided in State social insurance pensions, disability pensions, social assistance and pensions for military personnel. Decrees Nos. 386 and 387, dated 11 October 1972 (both published in *Buletinul Oficial* No. 113, part I, dated 20 October

1972), amended Act No. 27, 1966 and Decree No. 141, 1967, concerning State social insurance pensions, military pensions and supplementary pensions by increasing certain pension calculation percentages relating to age limits and degree of disability and by applying more specific and detailed criteria in the granting of survivor's pensions. Similarly, Decrees No. 150, 1972 (*Buletinul Oficial* No. 61, part I, dated 26 May 1972), No. 280, dated 15 July 1972 (*Buletinul Oficial* No. 78, part I, dated 18 July 1972), No. 410, dated 20 October 1972 (*Buletinul Oficial* No. 115, part I, dated 24 October 1972) and No. 448, dated 20 November 1972 (*Buletinul Oficial* No. 130, part I, dated 21 November 1972), provided for the expansion of the régime for the granting of the children's allowance and for successive increases under that régime. Decree No. 411, dated 20 October 1972 (*Buletinul Oficial* No. 115, part I, dated 24 October 1972), concerning the provision of assistance to mothers with several children, provided for the granting of extended State support to families with several children, and Decree No. 53, dated 16 February 1972 (*Buletinul Oficial* No. 21, part I, dated 17 February 1972) amended Decree No. 770, 1966 on the rules governing the course of pregnancy by permitting the termination of pregnancy also in women over 40 years of age, rather than 45 years of age, as had been provided in the 1966 regulations. Similar sustained legislative interest was also demonstrated in the cultural and health fields.

With a view to improving and modernizing education in Romania as an integral element of the dynamics of social development, as part of the process of establishing a multilaterally developed socialist society, the need was felt to adapt and improve the institutional framework of education. Accordingly, Decree No. 80, dated 8 March 1972 (*Buletinul Oficial* No. 28, part I, dated 8 March 1972) amending Act No. 11, 1968, on education in the Socialist Republic of Romania, established the principle of the dual subordination of certain faculties and sections of establishments of higher education, expanded the size of professorial councils and university senates and made it possible for experts working in production and research units or in the Party or State apparatus to be appointed as associate teaching personnel. The Council of Ministers also adopted a number of decisions to improve the régime governing cultural activities.

In 1972 Romania also concluded or ratified, through the State Council, or adopted, by decisions of the Council of Ministers, a large number of international bilateral and multilateral instruments. The purpose of many of these international instruments is to ensure international peace, co-operation and mutual assistance and they are thus documents which testify eloquently to the perseverance with which the Romanian State applies its principles and those of the Romanian Communist Party in matters concerning international relations, the rights of nations and human rights.

SAN MARINO

NOTE ¹

1. With regard to article 25, paragraph 1, of the Universal Declaration of Human Rights, the Grand and General Council of the Republic of San Marino on 17 January 1972 adopted an Act which, for the purpose of promoting an increase in urban construction, provides for new appropriations for the granting of loans for the construction, restoration and improvement of residential buildings (see Act No. 3 of 17 January 1972, p. 1 of *Bollettino Ufficiale* No. 1 of 15 March 1972). On the same date, Act No. 4 was approved, amending earlier provisions on the subject (see the above-mentioned *Bollettino Ufficiale*, p. 2).

2. Still with regard to article 25, Act No. 15 of 30 May 1972 provides for final compensation for war invalids (see *Bollettino Ufficiale* No. 3, p. 22).

3. With regard to article 23, Act No. 16 of 30 May 1972 amends Act No. 42 of 6 December 1968 which established the *Family Allowance Fund* (see *Bollettino Ufficiale* No. 2, pp. 22-23).

4. With regard to article 13, two agreements were concluded to facilitate freedom of movement by abolishing entry visas—an agreement between the Federal Republic of Austria and San Marino (see *Bollettino Ufficiale* No. 3, p. 21) and an Agreement between Jamaica and San Marino (see *Bollettino Ufficiale* No. 4, p. 53).

5. Again with regard to article 25, Act No. 32 of 27 October 1972 amends the social security system in force (*Bollettino Ufficiale* No. 5, p. 65).

6. With regard to article 23, Act No. 33 of 27 October 1972 introduces improvements for those employed on State work sites and workers in the building sector (*Bollettino Ufficiale* No. 5, pp. 65-66). Similarly, Act No. 34 of 27 October 1972 amends the provisions in force for the protection of employment and workers (*Bollettino Ufficiale* No. 5, p. 66). Again, Act No. 41 of 22 December 1972 introduces substantial improvements in the working conditions of State employees (*Bollettino Ufficiale* No. 6, pp. 81-104).

¹ Note furnished by the Government of the Republic of San Marino.

SENEGAL

1. Act No. 72-25 of 19 April 1972 concerning rural communities¹

(Extracts)

TITLE I

General provisions

Article 1. A rural community shall be constituted by a certain number of villages belonging to the same locality, united by a common bond resulting in particular from their proximity to each other, having common interests and capable of finding the means required for their development.

A rural community shall be a legal entity under public law and shall be financially autonomous. Its representative organs shall be the rural council and the president of the rural council, carrying out within the rural community the functions defined in this Act.

Article 2. Rural communities shall be established by decree, following notification from the departmental development committee. The decree shall establish the name of the rural community, which shall be that of the central village, and shall determine its boundaries.

Any change of name of a rural community or modification of its boundaries shall be proclaimed by decree, following notification from the rural councils concerned.

If a rural community is to be joined to another or if a part of a rural community is to be joined to another community or is to be made a separate community, notification by the rural councils and the district, departmental and regional councils concerned shall be required.

In such cases, the decrees proclaiming the merger or separation of the rural communities in question shall expressly determine all other conditions governing the merger or separation, including the disposal of property belonging to the local authorities concerned.

In the case of mergers or divisions of rural communities, the rural councils shall be automatically dissolved and replaced by a special delegation. Elections shall be held within six months of the dissolution.

TITLE II

Rural councils

Chapter 1. Composition

Article 3. The rural council shall be composed of: 12 members for rural communities of less than 5,000 inhabitants; 15 members for rural communities of 5,001 to 10,000 inhabitants; 18 members for rural communities of 10,001 to 15,000 inhabitants; 21 members for rural communities of over 15,000 inhabitants.

Article 4. Two thirds of the members of the rural councils shall be elected by direct universal suffrage and one third by the general assembly of the co-operative or co-operatives operating in the rural community.

In both cases, the election shall be by the list system and by a majority on a single ballot; there shall be no vote-splitting, preferential voting or incomplete lists.

Article 5. Should the elections be invalidated or the rural council lose one third of its members through vacancies, supplementary elections shall be held within six months of the invalidation or the last vacancy.

The same procedure shall be followed in the case of dissolution of a rural council or resignation of all its incumbent members.

In the year preceding renewal of the entire membership, supplementary elections shall be mandatory only if the rural council has lost half its membership.

Article 6. Rural councillors shall be elected for a term of five years. This term shall run from the date of the renewal of the entire membership of each council, regardless of the date of such renewal.

However, the mandate of a rural council may be shortened or extended by decree, in order to make its renewal of membership coincide with the date of the general renewal of rural councils.

Article 7. Senegalese nationals who have attained the age of 21, are duly registered on the electoral list of the rural community and are not under any legal disability, shall be entitled to vote in the elections and to be elected. In order to be registered on the electoral list of the community, a person must have his main residence in that community.

Article 8. The following may not be rural councillors:

1. Persons deprived of electoral rights;

¹ *Journal officiel de la République du Sénégal*, No. 4224, 13 May 1972.

2. Persons under legal guardianship;
3. Persons who have not fulfilled their obligations under the laws and regulations on army recruitment;
4. Persons who have been convicted under articles 101, 102, 103 and 104 of the Penal Code;
5. Except where otherwise provided in international conventions, naturalized aliens for a period of 10 years from the date of the naturalization decree unless the Government has removed this disqualification as a reward for exceptional services rendered to Senegal, in accordance with article 12 of Act No. 61-10 of 7 March 1961;
6. Councillors declared to have resigned under articles 36, 38 and 39 of this Act, in rural elections held following the date of their resignation.

Article 9. The following shall not be eligible to stand for election during the term of their service:

1. Military personnel and persons treated as such, of all ranks, on active service, and those liable to civilian service;

2. Officials and employees of the State, local authorities and public institutions.

Judges of the courts and tribunals, justices of the peace, and cadis and their alternates shall not be eligible to stand for election while they are exercising their functions and for a period of six months after the cessation of those functions.

Entrepreneurs or concessionaries shall not be eligible to stand for election in the jurisdictional area in which they exercise their functions when they are bound by an agreement placing them in a permanent relationship of dependence or interest with respect to the rural community.

Article 10. The rules governing elections to rural councils shall be determined by the general electoral laws, in particular by the provisions of the Acts of 5 April 1884 and 18 November 1955 which are not contrary to this Act, together with the texts amending or supplementing those Acts.

Article 11. No one may be a candidate for election to more than one rural council.

Ascendants and descendants, spouses, brothers or sisters and relations by marriage in the same degree may not be members of the same rural council at the same time. The councillor whose election to the rural council took place first shall be considered as elected.

However, in the case of relations by marriage, the relationship shall cease when the person who has brought it about and the issue of that person's union with the other spouse are deceased or, in the case of divorce, when there are no longer any living issue of the marriage.

Article 12. In order to be members of the rural council, representatives of co-operative groups must be registered on the electoral list of the rural community and must not fall within the categories of ineligibility or incompatibility established by law.

In addition, they must be members of a co-operative of the rural community.

The shall cease to be members of the rural council if they are no longer members of the co-operative.

Article 13. A rural councillor who, for any reason, falls within the categories of ineligibility or incompatibility established by law may at any time be declared to have resigned by the supervisory authority, subject to an appeal brought before the Appeals Court within 10 days of the notification and before the Supreme Court in accordance with the established procedure.

...

Article 18. The president of the rural council or his alternate shall preside over meetings of the council.

Meetings of the rural council shall be public. All inhabitants of the rural community shall be entitled to consult the verbatim records of the deliberations. The officer presiding over the meeting shall have sole responsibility for maintaining order. He may have any individual who causes a disturbance removed from the room.

...

2. Act No. 72-61 of 12 June 1972 concerning the Family Code ²

RÉSUMÉ

The Act consists of 854 articles and is divided into eight books, entitled: Persons, Marriage, Filiation, Blood Relationship and Affinal Relationships, Disabilities, Matrimonial Régimes, Intestate Succession, and Donations *inter vivos* and Wills.

Articles 853 and 854 of the Act deal with the international jurisdiction of Senegalese tribunals and the international effect of judgements. They read as follows:

Article 853. International competence of Senegalese courts

Senegalese courts shall be competent to deal with any case in which the plaintiff or the defendant has Senegalese nationality on the day on which proceedings are instituted. There shall be an exception to this rule when the judgement passed must be executed abroad or when the parties renounce the jurisdiction privilege to which they are entitled by law. The court which has territorial jurisdiction is determined by the Senegalese regulations governing territorial jurisdiction.

² *Ibid.*, No. 4233, 1 July 1972.

Senegalese courts shall also be competent to deal with disputes between aliens when the defendant is domiciled in Senegal or when the element determining the court which is to have jurisdiction as referred to in articles 34 to 36 of the Code of Civil Procedure is situated in Senegal.

All these provisions are subject to the rules concerning the immunity of diplomatic agents, foreign sovereigns and States, and treaties concerning judicial competence.

Article 854. International effect of judgements

Foreign judgements may be enforced in Senegal only if they bear the *exequatur* provided for in articles 788 *et seq.* of the Code of Civil Procedure and without prejudice to legal assistance treaties and other diplomatic conventions.

However, the judgements rendered by a foreign tribunal concerning the status and capacity of persons shall be operative in Senegal independently of any *exequatur* decision except when such judgements necessitate writs of execution.

3. Act No. 72-63 of 26 July 1972 establishing the municipal régime of the chief communes of regions other than the commune of Dakar³

TITLE I

General provisions

Article 1. The chief communes of the region shall be legal entities under public law enjoying a special status.

Their representative organs shall exercise the functions specified in this Act.

Article 2. The texts governing the communes under ordinary law shall be applicable to the communes with special status except where they are contrary to the provisions of this Act.

Article 3. The municipal authority of a commune with special status shall be composed of the municipal council, the municipal administrator and his assistant.

Article 4. The provisions of this Act shall not apply to the commune of Dakar.

TITLE II

The municipal council

Chapter 1. Composition

Article 5. The municipal councils of communes with special status shall include:

(a) *For each of the communes of Kaolack, Saint Louis and Thiès:* 43 members: 37 represent-

ing the population and 6 representing economic or social groups;

(b) *For each of the communes of Diourbel, Tambacounda and Ziguinchor:* 37 members: 33 representing the population and 4 representing economic or social groups.

Article 6. Representatives of the population shall be elected by direct universal suffrage on the basis of the list system and by a majority on a single ballot from a communal list, with no vote-splitting, preferential voting or incomplete lists.

Representatives of economic or social groups shall be appointed on the proposal of the most representative bodies in conditions established by decree.

Article 7. The municipal council shall elect from among its elected members: One president, five vice-presidents, one mayor and one secretary in the communes of Kaolack, Saint Louis and Thiès;

One president, three vice-presidents, one mayor and one secretary in the communes of Diourbel, Tambacounda and Ziguinchor.

Only elected councillors shall participate in the election.

³ *Ibid.*, No. 4242, 12 August 1972.

SUDAN

Republican Decree No. 104 of 1972 concerning the establishment of the first People's Council, 1972¹

(Extracts)

In order to promote popular authority based on the popular will, which was liberated by the May revolution from the fetters of backwardness,

In order to give concrete form to the revolutionary democracy of the May revolution, which is built on an alliance of the forces of the working people, composed of farmers, workers, soldiers, intellectuals and national capitalism and which is guided by the National Labour Charter,

In order to achieve national unity on the abiding basis of Sudanese territoriality,

Relying on a mass civic structure, created by the May revolution in the form of comprehensive mass organizations, vocational and group associations and institutions of local popular government,

The President of the Republic,

On behalf of the people,

Having regard to article 37 of Republican Order No. 5,

Has issued the following Republican Decree concerning the establishment of the first People's Council:

CHAPTER I

Preliminary provisions

Title and effective date of this Decree

Article 1. This Decree shall be called "Republican Decree concerning the Establishment of the First People's Council 1972" and shall take effect as from the date of its signature.

...

CHAPTER II

Composition of the People's Council, constituencies and seats

Composition of the People's Council

Article 3. (a) The People's Council shall be composed of the Ministers, who shall be members by virtue of their office, and of 207 members elected or appointed in accordance with the provisions of this Decree.

(b) The President shall appoint an able and qualified citizen as the first Chairman of the People's Council.

(c) The President may address the People's Council at any time and may be present at any of its meetings.

Allocation of constituencies and seats

Article 4. The constituencies for and seats on the People's Council shall be allocated as follows:

- (a) 90 territorial constituencies;
- (b) 44 mass constituencies;
- (c) 73 national seats.

Basic principles of the composition of the People's Council

Article 5. The following basic principles shall be observed in the composition of the People's Council:

(a) Guaranteed representation of nationals by geographical region, on the basis of territorial constituencies so as to reflect the over-all composition of the social forces;

(b) Guaranteed representation of the mass civic organizations of the revolution so as to reflect the dedicated leadership element of the May revolutionary movement;

(c) Guaranteed representation of the group organizations so as to reflect the organized movements influencing production among the social forces;

(d) Representation of those possessing the experience, knowledge and patriotic revolutionary standing necessary for the drafting of the Constitution and legislation;

(e) Representation of soldiers and regular forces so as to reflect their revolutionary and popular character and their role in serving and defending the people;

(f) Representation of scientific professionals of the university-trained intelligentsia who are involved in implementing development programmes and are instrumental in the building of the modern State;

(g) Representation of the broad vocational sectors instrumental in the public services.

Election of representatives of the territorial and mass constituencies

Article 6. The number of seats allocated to representatives of the territorial and mass constituencies in each province shall be established by the electoral regulations, which shall also govern the manner in which the elections are conducted.

¹ Text furnished by the Government of the Democratic Republic of the Sudan.

*Allocation of national seats filled
by appointment*

Article 7. Thirty-two of the national seats shall be filled by appointment by the President, as follows:

(a) Twenty seats to persons possessing the experience, knowledge and patriotic revolutionary standing necessary for the drafting of the Constitution and legislation;

(b) Seven seats to representatives of the people's armed forces, the security forces and the paramilitary forces;

(c) Five seats to representatives of the leadership of the mass organizations.

Allocation of national seats filled by election

Article 8. (a) Forty-one of the national seats shall be filled by election, and shall be allocated to the following groups:

(i) The organized movements of the social forces;

(ii) Scientific professionals of the university-trained intelligentsia;

(iii) The broad vocational sectors instrumental in the public services.

(b) The seats referred to in paragraph (a) above shall be allocated among the various groups in the manner stipulated in articles 9, 10 and 11, respectively, of this Decree.

*Allocation of the seats of the organized
movements of the social forces*

Article 9. (a) Twenty-one seats shall be allocated to the organized movements of the social forces.

(b) The distribution of the seats referred to in paragraph (a) of this article shall be as follows:

(i) Nine seats to representatives of farmers belonging to associations; the members of the executive committees of the provincial associations shall form a single electoral body, which shall select representatives to fill these seats, in accordance with the electoral regulations;

(ii) Seven seats to representatives of workers belonging to trade unions; the members of the administrative councils of the central trade unions shall form a single electoral body, which shall select representatives to fill these seats, in accordance with the electoral regulations;

(iii) Five seats to representatives of national capitalism; the committees of the provincial chambers of commerce, the Central Committee of the Sudanese Industrial Union and the committees of the central wholesalers' and retailers' associations of the various provinces shall form a single electoral body which shall select representatives to fill these seats, in accordance with the electoral regulations.

*Allocation of seats to scientific professionals
from the intelligentsia*

Article 10. (a) Seven seats shall be allocated to scientific professionals of the university-trained

intelligentsia who are involved in the implementation of development programmes and are instrumental in the building and functioning of the modern State and who belong to an association or other organization as stipulated by the Minister of Public Services and Administrative Reform.

(b) The seats referred to in paragraph (a) of this article shall be distributed as follows:

One seat to the medical professions; any person holding a university degree and belonging to an association or other organization of these professions shall be eligible to vote in the election;

One seat to the agricultural professions; any person holding a university degree and belonging to an association or other organization of these professions shall be eligible to vote in the election;

One seat to the engineering professions; any person holding a university degree and belonging to an association or other organization of these professions shall be eligible to vote in the election.

...

*Allocation of the seats of the broad vocational
sectors*

Article 11. (a) Thirteen seats shall be allocated to representatives of the broad vocational sectors instrumental in the public services.

(b) The seats referred to in paragraph (a) of this article shall be distributed as follows:

Two seats to technical officials belonging to associations or trade unions;

Two seats to semi-professional officials belonging to associations or trade unions;

Two seats to semi-technical officials belonging to associations or trade unions; Membership in such associations and trade unions shall be as stipulated by the Minister of Public Services and Administrative Reform;

One seat to professors from higher educational institutions above the secondary level other than universities;

Three seats to teachers in senior and general secondary schools;

Three seats to primary school teachers.

...

*The right to stand for election
to the People's Council*

Article 14. (a) Subject to the provisions of this Decree, the right to stand for election in any constituency or to any seat shall be guaranteed to all citizens who fulfil the requirements set forth in article 15 of this Decree.

(b) No citizen shall stand for election in more than one constituency or to more than one seat.

(c) Any citizen occupying a position of leadership in any mass organization, local popular institution, association, trade union or other body and desiring to stand for election to membership in the People's Council shall resign from such position before submitting his nomination papers for membership in the Council. He may be re-elected or reappointed to such position of leadership after he becomes a member of the Council.

*Conditions of eligibility for membership
in the People's Council*

Article 15. A person shall be eligible for membership in the People's Council if he is:

- (a) Sudanese;
- (b) Not less than 25 years of age;
- (c) Of sound mind;
- (d) Able to read and write;
- (e) In possession of his political rights.

Conduct of elections

Article 16. (a) No candidate shall be declared a victor by acclamation.

(b) No voting in any constituency or in respect of any seat shall take place unless the number of candidates is greater than the number of allocated seats.

...

SWEDEN

NOTE ¹

1. During 1972, Sweden has decided to ratify the European Convention on the International Validity of Criminal Judgements. The instrument of ratification will be deposited in the beginning of 1973. The legislation necessary to ensure the application of the Convention has passed Parliament in 1972 and is already partly in force.

2. Amendments have been made to the provisions on punishment of members of the armed services. The provisions concerning the death penalty in certain cases when Sweden is at war are abrogated. This means that the last remainders of the death penalty disappear from Swedish law. The arrest punishment is abolished and a new kind of disciplinary punishment for servicemen is introduced which implies confinement to the barracks area when not on duty.

3. The King-in-Council has submitted to Parliament a bill on reduction of sanctions due to detention in jail etc. If a person is sentenced to imprisonment for a fixed term, fines, suspension or disciplinary punishment in a case for which he has been detained in jail, the Court may ordain that the sentence shall be considered as having been wholly or partly served by such detention. Under this section as presently worded, the decision is discretionary and depends upon what is deemed reasonable in view of the circumstance.

The proposed amendment implies that such reduction shall be compulsory instead of discretionary. Reduction shall be granted also with regard to youth imprisonment and internment. The reduction or exclusion of sanctions shall be complete, i.e. every day of deprivation of liberty shall be considered as one day of execution of the sentence that is finally imposed. Deprivation of liberty for less than 24 hours is not taken into account. According to the draft bill, not only such detention in jail that is ordered by a Court shall be taken into consideration for reduction of sanctions, but also arrest, which is ordered by the police authority or the prosecutor.

4. A Government committee has submitted a report entitled "Computers and Privacy" (Swedish Government official report *SOU* 1972: 47). The report contains a draft act on automatic data processing as regards information on individuals and draft amendments, *inter alia*, to the Freedom of the Press Act and the Penal Code. The proposed act on automatic data processing is aimed at upholding the "principle of privacy". To this end the Committee proposes that information on individuals may not be stored unless permission has been granted by a special public

authority. In addition, the proposed act contains rules on what information may be stored, correction of information, compulsory notification free of charge, upon request, to the person about whom information has been stored, criminal sanctions and right to compensation. By the Swedish "principle of publicity" everybody is, in principle, granted access to documents kept by public authorities. The "principle of publicity" is embodied in the Freedom of the Press Act, which forms part of the Swedish Constitution. The proposed amendment to this Act is aimed at safeguarding the application of this principle also with respect to computer-stored information kept by public authorities. The amendment to the Penal Code shall make it a crime unduly to obtain or to tamper with computerized information.

5. A Government committee has submitted a report on credit information and privacy (*SOU* 1972: 79). The aim of the proposals is to uphold the "principle of privacy" in activities concerning credit status information. The committee distinguishes between two categories of such activities, "information on individuals" and information on businessmen and enterprises, "business information". The proposed act implies that no information on criminality, alcoholism, illness or other personal circumstances of a specially delicate nature may be taken into account in credit information activity or be stored by credit information agencies. In addition, if information on an individual contains an opinion that is not clearly favourable, the individual concerned shall, without any request and free of charge, get a copy of the information. There are also provisions safeguarding insight into credit information activities and correction of information stored. Credit information activity may not be carried on without a special license granted by the King-in-Council. It is proposed that a special authority, the Credit Status Information Board, shall supervise activities in this field.

6. A Government committee has submitted a report on prevention of political acts of violence with international background (*Ds Ju* 1972: 35). The report contains proposals for legislation implying extraordinary measures in order to prevent that acts of violence with an international background be committed by aliens that can reasonably be assumed to be members of or working for such political organizations or groups which can be feared to use violence, threat or coercion in their operations within Sweden. Such aliens shall be registered by the National Police Board. Aliens registered on this ground may not enter Sweden and shall be expelled if they are found in the country. However, a political refugee may not be expelled even if he is registered on

¹ Note furnished by the Government of Sweden.

such ground, but he will then be subject to special surveillance.

7. A specially appointed expert has submitted a report proposing an act on compensation for certain unjustified restrictions of liberty, decided by judicial or administrative authorities such as, *inter alia*, arrest, detention, travel prohibitions and treatment in social institutions (SOU 1972: 73). The expert proposes that compensation shall be awarded (1) if, upon appeal, less severe restrictions shall apply and the new decision is based upon essentially the same facts as the decision appealed against, (2) if the individual is acquitted or public prosecution is withdrawn, or (3) if the individual in case of institutional treatment is discharged and that decision is based upon essentially the same facts as the decision by which the treatment was ordered and it is evident that these facts were not sufficient to warrant such treatment. The proposed act also contains some basic provisions for the calculation of the amount of compensation to be paid.

8. A Government committee has submitted a report on the crime of defamation. In addition to existing possibilities to exclude sanctions for defamation, the committee proposes that no punishment shall be imposed for a statement which implies defamation, if, considering the way in which the statement was made and other circumstances, the making of the statement can be regarded as required by public interest. The defamation of a deceased person shall, according to the proposal, incur punishment only if the act can be regarded as disturbing the memory of the deceased.

9. An expert has been appointed by the Government to review the Sterilization Act. The re-examination shall primarily include the question of whether a person's own demand for sterilization should form a sufficient base for such an operation.

10. A delegation has been appointed for the promotion of equality between men and women. The delegation shall propose appropriate measures to carry out the Government's general policy aiming at equality between men and women, and to support steps taken in this regard by local authorities, organizations, industry and commerce etc.

11. The Swedish Riksdag passed a law in December 1972 on the right of immigrants to leave of absence with pay when taking part in instruction in the Swedish language. This law enters into force on 1 July 1973 and is applicable to alien employees who got their first job in Sweden after the end of 1972.

In principle, the law gives an alien worker the right to leave of absence for language instruction amounting to 240 hours of working time, and the right to receive full pay for that time. Any employer who neglects his obligations under the law is liable to pay damages to the employee.

The Ministry of Labour and Housing is now preparing an extension of the law so that it will also be applicable to alien employees who started work in Sweden before 1973. A government bill on this proposal is expected to be put before the spring session of the Riksdag.

SWITZERLAND

List of constitutional provisions adopted in 1972, legislation which entered into force in 1972 and decisions relating to human rights rendered by the Swiss Federal Court in 1972¹

A. Federal law

I. CONSTITUTIONAL PROVISIONS

Article 34 sexies of the Federal Constitution concerning the promotion of housing construction.

Article 34 septies declaring house-letting leases to be generally binding and concerning measures for the protection of tenants.

II. LEGISLATION

1. Protection of life and health

Federal Act of 21 March 1969 on trade in poisons (Act on poisons) and Implementation Ordinance of 23 December 1971.

Federal Council Ordinance of 20 September 1971 concerning the export of meats and meat products.

2. Social Welfare

Ordinance of 4 August 1972 of the Federal Department of the Interior concerning the payment of supplementary disability-insurance benefits in special cases.

3. Adequate standard of living

Federal Council Order of 18 October 1972 concerning the payment of a single cost-of-living allowance to Federal personnel.

4. Measures relating to education and culture

Federal Council Order of 23 December 1971 amending the Ordinance for the implementation of the Federal Act on the provision of subsidies for expenses incurred by the cantons for scholarship programmes.

Federal Council Order of 10 August 1971 amending the Ordinance on the protection of the fine arts by the Confederation.

5. Rest and leisure

Federal Council Order of 26 January 1972 amending Civil Service Regulations No. I.

B. Cantonal law

I. CONSTITUTIONAL PROVISIONS

1. Political rights of women

Article 38. (amended) of the Constitution of the canton of St. Gallen.

Article 3. (amended) of the Constitution of the canton of Schwyz.

Articles 19 and 20. (amended) of the Constitution of the canton of Appenzell Ausser Rhoden.

Articles 7 and 49. (amended) of the Constitution of the canton of Graubünden.

2. Legal protection

Articles 25 and 61. (amended) of the Constitution of the canton of Schwyz (establishing an administrative court which is independent of the Government and the administration).

3. Elections by universal suffrage

Article 29. (amended) of the Constitution of the canton of Fribourg (introducing the system for the popular election of State Councillors and Prefects).

II. LEGISLATION

1. Protection of life and health

Ordinance of 13 March 1972 of the Government of the canton of Graubünden concerning dental care in the schools.

Regulations of 16 February 1972 of the State Council of the canton of Valais concerning cemeteries, burial, cremation, exhumation, the transport of human remains and autopsies.

2. Social welfare

Ordinance of 22 December 1971 of the Executive Council of the canton of Berne concerning the canton's contribution for handicapped children.

Order of 19 April 1972 of the State Council of the canton of Vaud concerning measures on behalf of the physically handicapped in the construction field.

Decree of 23 August 1971 of the Grand Council of the canton of Schaffhausen concerning children's allowance for workers.

¹ Prepared by the Division of Justice of the Federal Department of Justice and Police.

Partial amendment adopted on 30 September 1971 by the Grand Council of the canton of Graubünden, of the Ordinance for the implementation of the Act on family allowances for workers.

Act of 21 March 1972 of the canton of Neuchâtel concerning institutions for the aged.

3. Adequate standard of living

Order of 26 May 1972 of the State Council of the canton of Neuchâtel concerning the payment of a supplementary allowance to public officials whose salaries are paid out of the State Budget.

Order of 9 September 1971 of the Grand Council of the canton of Schwyz amending the Ordinance on Civil Service salaries and concerning the conditions of employment of State employees.

4. Measures relating to education and culture

Act of 30 April 1972 of the canton of Appenzell Auser Rhoden concerning the assumption of school fees by the canton and other educational assistance.

Regulations of 7 January 1972 of the State Council of the canton of Neuchâtel concerning the Technical College.

Ordinance of 24 May 1972 of the State Council of the canton of Zurich concerning the Uitikon cantonal labour education institute.

Act of 6 June 1971 of the canton of Berne concerning the agricultural vocational school.

Regulations of 2 August 1972 of the Executive Council of the canton of Berne concerning general complementary schools for young people.

5. Rest and leisure

Ordinance of 30 April 1954 of the Executive Council of the canton of Berne concerning vacations, leave and public holidays for State employees (amendment of 22 February 1972).

Act of 21 March 1972 of the canton of Neuchâtel concerning compulsory paid vacations.

Amendment, adopted on 7 May 1972 by the Assembly (*Landsgemeinde*) of the canton of Glarus, of article 6 of the cantonal Introductory Act of 1 May 1966 to the Federal Act of 13 March 1964 concerning labour in trade and industry (Labour Act).

6. Legal protection

Act of 30 June 1970 of the canton of Thurgau concerning the conduct of criminal proceedings (Code of Criminal Procedure).

7. Protection of privacy

Act of 24 September 1972 of the canton of Zurich amending the Introductory Act to the Swiss Civil Code (Abolition of the Ban on Concubinage).

C. Decisions of the Swiss Federal Court (ATF)

1. Protection of personal freedom

Personal freedom. Custody pending trial. (ATF 98 Ia 98).

...

Under Geneva law, a convicted and sentenced person who, prior to the hearing at which the decision was rendered, had enjoyed full liberty rather than provisional liberty within the meaning of the Constitution and cantonal law may not be imprisoned during appeal proceedings (preamble para. 4).

2. Equality before the law

Article 4 of the Constitution. Equality of treatment. (ATF 98 Ia 20).

The conviction of a hunter for a violation of the Federal Act on hunting and the protection of birds which, through oversight, the cantonal authorities frequently permit to go unpunished does not constitute inequality of treatment.

3. Freedom of expression

Ordinance concerning the use of university premises. (ATF 98 Ia 362).

1. The right to make use of university premises derives from the purpose of the public institution and not from the constitutional rights of individuals (freedom of the press, freedom of association, freedom of assembly and freedom of expression).

...

Form of publication of official notices in communes: article 4 of the Constitution, freedom of thought, freedom of association, personal freedom. (ATF 98 Ia 409).

1. ...

2. A communal provision designating two political newspapers circulated in the commune as organs for the publication of official notices does not violate article 4 of the Constitution when all official communications published in those newspapers are also posted on the public column of the commune. This method of providing for publication is also consistent with the constitutional guarantees of freedom of thought, freedom of association and personal freedom (preamble paras. 2 to 5).

4. Religious freedom

Worship tax; article 49, sixth paragraph, of the Constitution. (ATF 98 Ia 405).

Parish tax on the landed property of non-residents. Liability to this tax arises from the mere fact of belonging to the denomination in question, there being no requirement that the person in question be a member of the parish (confirmation of prior decisions).

5. Non-retroactivity of criminal law

Article 41, paragraph 3 (3), of the Penal Code; competence to revoke the suspension of a sentence (ATF 98 IV 73).

1. The principle of the non-retroactivity of criminal law does not apply in questions of procedure or jurisdiction.

2. Exceptions to this rule.

6. *Acquisition of nationality*

Acquisition of nationality under the law; application by analogy of article 5, paragraph 1, of the Nationality Act. (ATF 98 Ib 81).

Even if the objective conditions laid down in article 5, paragraph 1, of the Nationality Act have not been satisfied, the legitimate child of an alien father and a Swiss mother shall acquire at birth cantonal and communal citizenship and, hence, Swiss nationality where the child's status is the same as that of a child who cannot acquire another nationality at birth.

7. *Guarantee of ownership*

Construction of private local roads, guarantee of ownership, superseding force of Federal law. (ATF 98 Ia 43).

A cantonal regulation which provides that, failing agreement between the owners of the property concerned, private roads needed to transport supplies to development sites may be built by the commune at the owners' expense and the commune may be granted the right of expropriation for that purpose; this regulation does not violate Federal law (preamble para. 2c).

Reasonable arrangements for the provision of supplies to development sites may also be deemed to be in the public interest where the property owners themselves are made responsible for such provisions (preamble para. 3).

...

THAILAND

NOTE¹

In 1972 Thailand was governed by the National Executive Council (NEC) until the promulgation of the Constitution on 15 December 2515 Buddhist Era (B.E.) (1972). A number of laws affecting human rights promulgated during the year are dealt with in parts II and III below.

I. Constitution

The Constitution of the Kingdom of Thailand, B.E. 2515 (1972)² consists of 23 sections as follows:

Section 1. Thailand is a Kingdom, one and indivisible.

The King is Head of State and holds the position of Head of the Thai Armed Forces.

Section 2. The sovereign power emanates from the Thai people. The King who is Head of State exercises such power only in conformity with the provisions of this Constitution.

Section 3. The King exercises the legislative power through the National Legislative Assembly, the executive power through the Council of Ministers and the judicial power through the courts.

Section 4. The King is in a sacred position and must not be violated, accused nor sued in any way whatsoever.

Section 5. There shall be a Privy Council consisting of not more than nine Privy Councillors. The appointment and retirement of Privy Councillors shall be at the King's pleasure.

Section 6. There shall be a National Legislative Assembly consisting of two hundred and ninety-nine members to be appointed by the King from persons of Thai nationality by birth and of not less than thirty-five years of age.

Membership of the National Legislative Assembly shall be for a term of three years from the day of appointment by the King.

The King has the prerogative to reappoint a person who vacates office upon the expiration of the term of office.

If a vacancy in the membership of the National Legislative Assembly occurs on any account other than the expiration of the term of office, a replacing member may be appointed by the King from persons possessing qualifica-

tions under paragraph one. In the case of such appointment, the replacing member may hold office only for the term of the person he replaces.

Section 7. The King appoints members of the National Legislative Assembly in accordance with the resolutions of the Assembly, one to be President of the Assembly and one or more to be Vice-Presidents of the Assembly.

Section 8. Subject to section 10, the presence of not less than one third of the total number of members at a sitting of the National Legislative Assembly is required to constitute a quorum.

Subject to sections 10 and 11, the National Legislative Assembly has the power to issue rules concerning election and performance of duties of the President of the Assembly, Vice-President of the Assembly and members of the committees, procedure of sittings, initiation and consideration of bills, consideration of draft Constitution, presentation of motions, debates, passing of resolution, interpellation, maintenance of rules and order and other matters for the exercise of its powers and duties.

Section 9. The King enacts laws by and with the advice and consent of the National Legislative Assembly.

Bills may be initiated only by members of the National Legislative Assembly or by the Council of Ministers; but money bills, which mean bills dealing with all or any of the following matters, namely, the imposition, abolition, reduction, alteration or modification, remission, or compulsory regulation concerning taxes or duties, appropriation, receipt, custody, payment of, or creation of obligations binding, State funds, or reduction of State revenue, or raising, guaranteeing or redeeming of loans, or bills dealing with currency, may be initiated only by the Council of Ministers.

In the case of doubt as to whether a bill initiated by members of the National Legislative Assembly is a money bill or not, the President of the Assembly shall have the power to decide thereon.

Section 10. The Council of Ministers shall present a draft Constitution to the National Legislative Assembly.

¹ Note furnished by the Government of Thailand.

² *Government Gazette*, vol. 89, part 192, 15 December B.E. 2515 (1972). Text of the Constitution in English provided by the Office of the Juridical Council of Thailand.

The draft Constitution shall be considered in three readings. The consideration in the first and second readings shall be in accordance with rules of sitting of the National Legislative Assembly. The consideration in the third reading may take place only after the lapse of fifteen days from the date of conclusion of the second reading.

The voting in the third reading shall be by roll-call and the votes of not less than two thirds of the total number of members approving its promulgation as Constitution is required.

In the sitting held under paragraph three, the presence of not less than three fourths of the total number of members is required to constitute a quorum.

When the National Legislative Assembly votes for it in the third reading, the President of the Assembly shall submit it to the King for signature and promulgation as the Constitution.

The promulgation of the Constitution shall be countersigned by the President of the Assembly.

Section 11. In the case where the National Legislative Assembly votes against the draft Constitution in the first or third reading, the Council of Ministers shall present a new draft Constitution within ninety days from the date on which the National Legislative Assembly votes against it.

The provision of section 10 shall apply to the consideration and promulgation of the draft Constitution presented by the Council of Ministers under paragraph one.

Section 12. At a sitting of the National Legislative Assembly, every member has the right to interpellate a Minister of State on any matter within the scope of his authority, but the Minister of State has the right of refusal if he is of the opinion that such matter should not yet be disclosed for the reason of safety or vital interest of the State or such interpellation is prohibited by rules. As to the interpellation in the National Legislative Assembly, a member may not make further debate or interrogation.

Section 13. At a sitting of the National Legislative Assembly, words expressed in making a statement of facts or giving an opinion or casting a vote by any person are absolutely privileged. No action or charge in any manner whatever shall be brought against such person.

The privilege provided in paragraph one shall extend to members of the committees of the Assembly, printer and publisher of the minutes of a sitting by order of the Assembly.

In the case where a member of the National Legislative Assembly is kept in custody, detained or charged in a criminal case, he shall be released or the proceedings thereof shall be suspended upon request of the President of the Assembly.

Section 14. The King appoints the President of the Council of Ministers and an appropriate number of Ministers of State upon advice of the President of the Council of Ministers to form a Council of Ministers having the duties of administering the affairs of State.

The King has the prerogative to relieve a Minister of State from office upon advice of the President of the Council of Ministers.

The President of the Council of Ministers and Ministers of State shall not concurrently be members of the National Legislative Assembly.

The President of the Council of Ministers and Ministers of State have the right to attend and express opinion at any sitting of the National Legislative Assembly but they have no right to vote.

The President of the Council of Ministers has the powers and duties to carry out and supervise the administration of the affairs of State.

Ministers of State have the powers and duties as determined by law and as delegated by the Council of Ministers or the President of the Council of Ministers.

The expiration of membership of the National Legislative Assembly under section 6 shall not affect the administration of the affairs of State by the Council of Ministers and the holding of office of the President of the Council of Ministers and Ministers of State.

Section 15. In an emergency where there is necessity to maintain the security of the Kingdom or to prevent public calamity, or to have a law dealing with taxation or currency, the King has the prerogative to issue an Emergency Decree which shall have the force of an Act.

Upon the promulgation of an Emergency Decree, the Council of Ministers shall submit it to the National Legislative Assembly without delay. If the National Legislative Assembly gives its approval, such Emergency Decree shall continue to have the force of an Act. If the National Legislative Assembly gives its disapproval, the Emergency Decree shall lapse; provided that it shall not affect the act performed during the enforcement of such Emergency Decree.

The approval or disapproval of an Emergency Decree shall be published in the *Government Gazette*. In the case of disapproval, it shall become effective as from the date of its publication in the *Government Gazette*.

Section 16. The King has the prerogative to issue a Royal Decree which is not contrary to law.

Section 17. During the enforcement of this Constitution, if the President of the Council of Ministers deems appropriate to prevent, repress or suppress any act subverting the security of the Kingdom, the Throne, national economy or affairs of State, or any act disturbing or threatening public order or good morals, or any act destroying national resources or deteriorating public health and sanitation, notwithstanding such act occurs before or after the day on which this Constitution is promulgated, or occurs within or outside the Kingdom, the President of the Council of Ministers shall, by resolution of the Council of Ministers, be authorized to make any order or take any action accordingly, and such order or action as well as acts performed in compliance therewith shall be considered lawful.

The President of the Council of Ministers shall, after having made order or taken action in accordance with the provision of paragraph one, inform the National Legislative Assembly thereof.

Section 18. All laws, Royal Rescripts and Royal Commands concerning the affairs of State shall be countersigned by the President of the Council of Ministers or a Minister of State.

The appointment of the President of the Council of Ministers shall be countersigned by the President of the Assembly.

Section 19. A judge is independent in the trial and adjudication of cases in accordance with the law.

Section 20. Before forming the Council of Ministers, the Chairman of the National Executive Council exercises the functions of the Council of Ministers and of the President of the Council of Ministers.

Section 21. All announcements of the National Executive Council or orders of the Chairman of the National Executive Council which were given or issued during the revolution from 17 November B.E. 2514 (1971) to the day on which this

Constitution is promulgated, regardless of their forms and legislative, executive or judicial force, as well as acts performed in compliance therewith, shall be considered lawful.

Section 22. Whenever no provision of this Constitution is applicable to a case, it shall be decided in accordance with the administrative practice of Thailand under the democratic régime.

In the case where a question concerning the decision of a case under the provision of paragraph one arises in the affairs of the National Legislative Assembly or is referred to the National Legislative Assembly by the Council of Ministers, it shall be decided by the National Legislative Assembly.

Section 23. In the case where a question arises as to whether any act or performance is contrary to or inconsistent with or not in compliance with the provisions of this Constitution, it shall be decided by the National Legislative Assembly.

II. Civil and political rights

A. Life, liberty and security of persons

1. *NEC Announcement No. 78 of 16 February B.E. 2515 (1972)*³

The NEC considered that the provisions relating to the inquest to be conducted in the case of the death of a person caused by a competent official or which had occurred while the person was in the custody of a competent official under the Prevention of Communist Activities Act, B.E. 2495 (1952),⁴ were not appropriate because in certain cases the inquest could not be carried out. The NEC therefore amended section 22 of the Act⁵ to dispense with the inquest if 'it would hinder the operations of the competent official in connexion with the prevention and suppression of communist activities or endanger the life of the competent official entrusted with that duty. In such cases, the Director for the Prevention of Communist Activities of the area would report to the Inquiry Official.

2. *NEC Announcement No. 226 of 15 October B.E. 2515 (1972)*⁶

Whereas NEC considered that the military authority should be in charge of the selection of the conscripts for active service and that the law on military service should be amended, the

Chairman of NEC made an announcement amending sections 5, 9, 14, 24, 27, 28, 36, 46 and 47 of, and adding sections 28 *bis*, 28 *ter* and 28 *quater* to, the Military Service Act, B.E. 2497 (1954),⁷ as follows:

(1) A person who must have his name listed as conscript shall have it listed at the *amphoe* as follows:

(i) Any person whose father is still living or whose father is not living but whose mother is still living or whose parents are not living and who has been put under guardianship, shall have his name listed as a conscript at the *amphoe* where his father, mother or guardian, as the case may be, has residence;

(ii) Any person who was born out of wedlock and has not been recognized by his father or whose mother is not living and who has been put under guardianship, shall have his name listed as a conscript at the *amphoe* where his mother or guardian, as the case may be, has residence;

(iii) A person not mentioned in (i) and (ii) or a person who may not have his name listed as a conscript under (i) or (ii) on any account whatsoever, shall have it listed as a conscript at the *amphoe* where he has residence or has been found if he has no definite residence.

After having been listed, he shall be considered to have military residence in the *amphoe* where he was listed as a conscript.

There shall be only one military residence (section 5).

(2) A conscript who is between 18 and 30 years of age may be recruited for active service. After having been recruited for active service, he shall be in active service for two years. The period of two years may be reduced if he has special

³ *Government Gazette*, vol. 89, part 26, 16 February B.E. 2515 (1972).

⁴ *Ibid.*, vol. 68, part 69, 13 November B.E. 2495 (1952).

⁵ As amended by the Prevention of Communist Activities Act (No. 2), B.E. 2512 (1969) (*Government Gazette*, vol. 86, part 14, 18 February B.E. 2512 (1969); see *Yearbook on Human Rights for 1969*, p. 266).

⁶ *Government Gazette*, vol. 89, part 157, 18 October B.E. 2515 (1972).

⁷ *Ibid.*, vol. 71, part 13, 16 February B.E. 2497 (1954).

qualifications or if it is a special case to be prescribed by a Ministerial Regulation. A person having special qualifications may claim this right only if he has furnished evidences thereof to the selecting committee on the date of selection or to the military unit where he applies for military service.

The period of active service shall be counted as from the day on which he is listed for active service or recruited for active service, as the case may be. After having completed his active service, he shall be released as 1st category reservist as follows:

1st class reservist for seven years;

2nd class reservist for ten years;

3rd class reservist for six years;

respectively until he has been released from being a 1st category reservist.

A person who has finished a military training course prescribed by the Ministry of Defence under the law on promotion of military training and possesses such qualifications as prescribed by a ministerial regulation may be recruited for less than two years of active service or may be listed for active service and released as 1st category reservist without having been recruited for active service under the rules and procedures prescribed by a ministerial regulation. However, he may claim this right only if he has furnished evidences thereof to the selecting committee on the day of selection or to the military unit where he has applied for active service or been listed for active service as the case may be. In connexion with the category of reserve and the lengths of service, the proceedings shall be the same as for the release of a conscript who has been recruited for active service under paragraph two.

The *changwat* Governor and *changwat* Recruitment Officer shall issue a certificate as evidence to the person who has been released as a reservist. If this certificate is destroyed or lost, the holder shall apply for a new one by paying a fee of 1 baht. If the destruction or loss is caused by *force majeure*, the holder is exempted from the fee (section 9).

(3) After having been listed as conscripts, the following persons shall not be called for selection and recruitment for active service in normal time, namely:

(i) Priests, novices and Buddhist clergymen of a Chinese or Annamese sect who are preachers recognized by the Ministry of Education;

(ii) Monks of any other religion who are in permanent charge of religious affairs prescribed by a Ministerial Regulation and have certificates issued by the *changwat* Governor;

(iii) Persons who have been under a military training course prescribed by the Ministry of Defence under the law on promotion of military training;

(iv) Students of the Pre-military School of the Ministry of Defence;

(v) Teachers who are under the supervision of such ministries, *dabuangs*, departments or local governments as prescribed by a Ministerial Regulation and who have certificates issued by the *changwat* Governor;

(vi) Students of the Adult Education Training Centre of the Ministry of Education;

(vii) Students of the Civil Flying Training Centre of the Ministry of Communications;

(viii) Persons who have acquired Thai nationality by naturalization;

(ix) Persons who have been imprisoned for 10 years or over by one or more final judgements of the Courts or have been relegated.

An exemption for a call for selection for active service in normal time and the issue of certificates under (ii) and (v) shall be in accordance with the rules, procedure and forms prescribed by a ministerial regulation (section 14).

(4) In calling the conscripts for active service, the *Nai amphoe* shall summon those who have been listed as conscripts under sections 16, 18 and 19 for selection in accordance with the rules, procedure and forms prescribed by a Ministerial Regulation (section 24).

(5) A conscript who has been summoned shall appear before the selecting committee at the time designated in the summons and furnish his conscript certificate, identification card and certificate of qualifications or evidences of his education thereto. If he fails to appear for selection, it shall be considered that he has evaded the selection unless:

(i) He is an official who has been duly instructed to perform an urgent official service or is abroad for official service by order of the Minister;

(ii) He is a student who is studying abroad, as prescribed by a Ministerial Regulation;

(iii) He is an official or person working during a state of fighting or war in a government office or workshop which is an auxiliary thereto and under the supervision of the Ministry of Defence;

(iv) He is working with a military unit in the field service;

(v) He is prevented to appear by *force majeure*;

(vi) He appears for selection elsewhere;

(vii) He has been so sick that he is unable to appear and asks a *sui juris* and trusted person to so inform the selecting committee on the day of selection.

A case in (1) (2) (3) or (4) requires a specific grant of permission from the Minister of the Interior or the person entrusted by him (section 27).

(6) The Minister of Defence shall designate the persons holding positions equivalent to the commander of a division who shall be empowered to appoint a selecting committee and a senior committee (section 28).

(7) The person designated by the Minister of Defence under (6) shall appoint one selecting committee in each *changwat* for selecting the conscripts for active service. It shall consist of a commissioned officer of the rank of lieutenant-colonel or higher, as chairman; and of two commissioned officers at most of a rank not higher than that of the chairman; the Recruitment Officer of the *changwat* or his representative; and one or more commissioned officers who are

physicians, as members. If it is not possible to appoint a commissioned officer who is a physician member of the committee, any physician may be appointed in his place.

The duties of the selecting committee and the procedure of selection shall be in accordance with the rules and procedure prescribed by a ministerial regulation (section 28 *bis*).

(8) The person designated by the Minister of Defence under (7) shall appoint in each *changwat* one senior committee consisting of the *changwat* Governor or his representative as chairman; and one recruitment officer of a rank not lower than that of the Recruitment Officer of the *changwat* and one other official in the position of chief of section or its equivalent, as members.

Members of the senior committee shall not be members of the selecting committee.

The senior committee shall have the power to decide a petition made under section 31 of the Act or a difference among the members of the selecting committee who have referred their recommendations for consideration.

The decision of the senior committee shall be final (section 28 *ter*).

(9) The *Nai amphoe* of the locality where the selection is held shall have the following duties:

- (i) To prepare a place for selection;
- (ii) To provide officials and documents for the selecting committee for inspection on the day of selection;
- (iii) To classify the conscripts who come from each *tambon* for convenience in calling their names;
- (iv) To inquire into the requests of persons and refer the matters to the selecting committee for consideration;
- (v) To check the lists of names of the conscripts, and record the result of the selection;
- (vi) To perform such other duties as prescribed by a Ministerial Regulation (section 28 *quater*).

(10) The conscripts or reservists have the duty to do military service when they are called for examination, military training, test of readiness and mobilization.

The Ministry of Defence has the power to call them for examination, military training or test of readiness, as it deems fit, but the mobilization shall be made by a Royal Decree.

In calling the conscripts or reservists to do military service according to paragraph one, the Ministry of Defence shall be in charge of planning and supervision and the Ministry of the Interior shall be in charge of the service of summons and shall send them for military service according to the desire of the Ministry of Defence.

The exemption of a call for active service or the exemption of active service under this section shall be in accordance with the rules and procedure prescribed by a Ministerial Regulation (section 36).

(11) Any conscript or reservist who evades the military service in a call for military training, test of readiness or mobilization under section 36

of the Act shall be liable to imprisonment of three months to four years (section 46).

(12) Any conscript or reservist who evades the military service in a call for examination under section 36 of the Act shall be liable to imprisonment not exceeding three months or to a fine not exceeding 300 baht or to both (section 47).

3. *NEC Announcement No. 254 of 17 November B.E. 2515 (1972)*⁸

As a large number of recruits have deserted their posts in the Army, Navy and Air Force on many accounts, especially out of necessity in connexion with their families and occupations, they have to hide all the time and may not earn their living as ordinary people, which constitutes an economic loss for the country. Some of them having felt guilty and returned to their posts, NEC therefore considered that they should be given an opportunity to become good citizens and the Chairman of NEC made the following announcement:

(1) In the case of a person who was recruited under the law on military service, deserted his post before 18 November B.E. 2515 (1972) and returned to it before 15 February B.E. 2516 (1973),

(i) If he has not yet been prosecuted or has been prosecuted but has not yet been sentenced by the Court, his case shall be settled and he shall not be liable to any punishment;

(ii) If he has been undergoing any punishment according to a judgment of the Court or to an order of his superior on 18 November B.E. 2515 (1972), he shall be pardoned (clause 1).

(2) If the person in (1) has been guilty of any other offence, he shall be released from the punishment for deserting military service only, and the infliction of punishment for any offence other than that for deserting military service shall be carried out first (clause 2).

4. *Amnesty Act, B.E. 2515 (1972)*⁹

Under this Act amnesty was granted to persons who had revolted on 17 November B.E. 2514 (1971) and those who had been engaged in any related activities were deemed to be absolutely free from guilt and liability.

5. *Royal Decree on Pardon, B.E. 2515 (1972)*¹⁰

This Royal Decree was promulgated by virtue of section 16 of the Constitution of the Kingdom of Thailand B.E. 2515 (see above, part I) on the occasion of the investiture of the Crown Prince on 28 December B.E. 2515.¹¹

⁸ *Ibid.*, vol. 89, part 176, 21 November B.E. 2515 (1972).

⁹ *Ibid.*, vol. 89, part 198, 26 December B.E. 2515 (1972).

¹⁰ *Ibid.*, vol. 89, part 199, 27 December B.E. 2515 (1972).

¹¹ See also *Royal Decree on Pardon, B.E. 2514 (1971)* promulgated on the occasion of the twenty-fifth anniversary of the coronation of the King (*Yearbook on Human Rights for 1971*, pp. 235-237).

6. *NEC Announcement No. 300 of 13 December B.E. 2515 (1972)*¹²

In order to prevent corruption in the selection of conscripts for active service, the Chairman of NEC amended sections 25 and 25 *bis* of the Military Service Act, B.E. 2497 (1954)¹³ as follows:

After having completed 20 years of age in any year, a conscript must appear before the authority at the local *amphoe* of his military domicile and receive a summons within that year.

A conscript who is no longer in the position set forth in section 14 (3) or for whom the specific grant of deferment given under sections 27 (2) and 29 (3) expires in any year, must within that year appear before the authority at the local *amphoe* of his military domicile and receive a summons or have his name deleted from the list of conscripts to be summoned, as the case may be.

B. Arrest, detention or exile

1. *NEC Announcement No. 196 of 8 August B.E. 2515 (1972)*¹⁴

The purpose of the Act on Offences from Use of Cheques, B.E. 2497 (1954)¹⁵ is to assure the holder of a cheque that he will receive money according to the sum specified in the cheque and to punish any person who has committed a fraud by means of using a dishonoured cheque, but it appears in practice that a certain group of persons have abused this Act in order to force their debtors to make payments. The Chairman of NEC therefore amended the proceedings relating to the custody of a person alleged to have committed an offence against the said Act, as follows:

(i) If the aggregate sum of money specified in a cheque or cheques is not more than 50,000 baht, he shall be placed in custody as long as it is necessary to take his statement to ascertain his identity and place of residence;

(ii) If the aggregate sum of money specified in a cheque or cheques is more than 50,000 baht, he shall be placed in custody according to the Criminal Procedure Code, and if the person involved applies for provisional release, the inquiry official or public prosecutor shall grant it with bail or security not exceeding the sum specified in the cheque or cheques.

In the case where the person alleged to have committed an offence against this Act has committed an offence against any other law, the Criminal Procedure Code shall be complied with.

If the offender under section 3 of the Act pays to the holder of the cheque or to the bank the money specified in the cheque within 15 days of the date of notification by the holder of the

cheque to the person who issued it of the bank's refusal to pay the money, the case shall be settled according to the Criminal Procedure Code (section 5).

2. *NEC Announcement No. 199 of 10 August B.E. 2515 (1972)*¹⁶

Under this Announcement, the Chairman of NEC empowers the inquiry official to place a person alleged to have committed an offence against the Act on Prevention of Communist Activities, B.E. 2495 (1952)¹⁷ as amended by the Act on Prevention of Communist Activities (No. 2), B.E. 2512 (1969)¹⁸ irrespective of his being alleged to have committed an offence against any other act, in custody as long as it is necessary for inquiry, national security or public order, regardless of the procedure and length of custody provided for by law.

3. *NEC Announcement No. 330 of 13 December B.E. 2515 (1972)*¹⁹

Since NEC set up a committee to investigate the corruption relating to the selection of conscripts for active service in B.E. 2515 and certain persons involved therein were punished, but the investigation has not yet been completed and has to be carried on, the Chairman of NEC made the following announcement:

(1) The committee investigating corruption relating to the selection of conscripts for active service in B.E. 2515, which was set up by Order of the Chairman of NEC No. 14/2515 of 4 April B.E. 2515, and the sub-committees set up by the committee as well as those yet to be set up by it shall have further the powers and duty relating to this matter (clause 1).

(2) The powers and duty of the committee are to inquire, arrest and place in custody a person alleged to have been involved in the corruption relating to the selection of conscripts for active service until the Prime Minister grants release or provisional release, as well as to summon any person for information, search and seize related documents and evidential materials (clause 2).

C. Fair trial

1. *NEC Announcement No. 36 of 9 January B.E. 2515 (1972)*²⁰

In order to expedite the trial of a case which is under the jurisdiction of the Military Court under NEC Announcement No. 2 of 17 November B.E. 2514 (1971)²¹ or No. 12 of 22 November

¹² *Ibid.*, vol. 89, part 123, 11 August B.E. 2515 (1972).

¹³ *Ibid.*, vol. 69, part 68, 13 November B.E. 2495 (1952).

¹⁴ *Ibid.*, vol. 86, part 14, 18 February B.E. 2512 (1969).

¹⁵ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

¹⁶ *Ibid.*, vol. 89, part 4, 10 January B.E. 2515 (1972).

¹⁷ *Ibid.*, vol. 88, part 124, 18 November B.E. 2514 (1971).

¹² *Government Gazette*, vol. 89, part 190, 13 December B.E. 2515 (1972).

¹³ *Ibid.*, vol. 71, part 13, 16 February B.E. 2497 (1954).

¹⁴ *Ibid.*, vol. 81, part 123, 11 August B.E. 2515 (1972).

¹⁵ *Ibid.*, vol. 71 part 64, 12 October B.E. 2497 (1954).

B.E. 2514 (1971)²² but consists of several acts, one of which constitutes an offence in itself and is not under the jurisdiction of the Military Court, the Chairman of NEC ordered that it be placed under the jurisdiction of the Military Court according to NEC Announcement No. 13 of 24 November B.E. 2514 (1971).²³

2. *NEC Announcement No. 163 of 15 June B.E. 2515 (1972)*²⁴

Whereas NEC considered that juveniles who are over 16 years of age should have a sense of responsibility and if they have committed more violent crime, they should be tried by ordinary Court, under this announcement, the Chairman of NEC repealed and replaced section 8 of the Act on the Establishment of Children's and Juvenile Courts, B.E. 2494 (1951),²⁵ as amended by the Act on the Establishment of Children's and Juvenile Courts (No. 2), B.E. 2506 (1963)²⁶ with the following:

A Children's and Juvenile Court shall have the same power as a *changwat* Court in the following cases:

(1) Any criminal case in which a child or juvenile is alleged to have committed what the law provides to be an offence except a criminal case in which a juvenile over 16 years of age is alleged to have committed an offence under sections 277 *bis*, 277 *ter*, 280, 288, 289, 313, 314, 315, 339 *bis*, 340 or 340 *bis* of the Penal Code.

If a case which an ordinary Court is trying is not under the jurisdiction of the Children's and Juvenile Court according to paragraph one, but consists of several acts each of which constitutes an offence in itself and is not under the jurisdiction of such Court, or if it appears in the course of the trial that the accused has committed an offence against the law which is under the jurisdiction of the Children's and Juvenile Court, such Court shall have the power to try and adjudicate such case.

(2) Any criminal case transferred under section 9 by an ordinary Court and, in such case, such person shall be regarded as a juvenile for the benefit of this Act.

(3) Any civil action brought or put forward to the Court or any proceeding to be taken in the Court concerning a minor which is governed by sections 27, 28, 1520, 1523, 1527, 1529, 1536, 1538 (6), 1539 (4), 1546, 1547, 1552, 1553, 1555, 1556, 1561-1567, 1570 (5), 1574-1577, 1580, 1610, 1611 and 1692 of the Civil and Commercial Code.

(4) Any case on which the Court must pass a judgment or issue an order affecting the person of a child or juvenile which is provided by law to

be under the jurisdiction of the Children's and Juvenile Court (clause 1).

3. *NEC Announcement No. 302 of 13 December B.E. 2515 (1972)*²⁷

Under this announcement, the Chairman of NEC amended sections 19, 26 and 46 of the Organization of Military Courts Act, B.E. 2498 (1955)²⁸ as follows:

(1) A military *changwat* Court shall have jurisdiction over all criminal cases under the law except a case in which the accused is a commissioned officer.

As for a case for which no minimum punishment is provided by law or the minimum punishment does not exceed one year of imprisonment and fine of 2,000 baht or such imprisonment and fine, the military *changwat* Court shall have the power to adjudicate it, if it is of the opinion that the charge should be dismissed or the accused should be punished for each offence with imprisonment not exceeding one year or a fine not exceeding 2,000 baht or with both imprisonment and fine not exceeding the said limits.

The military *changwat* Court shall give its opinion on a case in which it has no power to adjudicate and refer the file to a military *monthon* Court or *krungthep* Military Court, as the case may be, for adjudication (section 19).

(2) A military *changwat* Court shall consist of three judges in order to constitute a quorum for trial and adjudication, namely: two commissioned officers; and one military judge (section 26).

(3) In any case of custody of a person who is under the jurisdiction of a Military Court under section 16, irrespective of being involved in a criminal case under the jurisdiction of any Military Court, the superior officer shall have the power to place him in custody and the law on military discipline, in so far as the punishment of detention is concerned, shall apply *mutatis mutandis*.

In any case where the law on military discipline does not specify the detainer or detainee or grants the maximum detention not exceeding 90 days, the officer who has the rank of commander of a division or higher shall have the power to place the involved person in custody several consecutive times, provided that each time shall not exceed 12 days, and not exceeding 90 days altogether. If there is no officer of the rank of commander of a division or higher or if the person involved is not in the same locality as his superior officer, the commanding officer of that locality shall have the power to place him in custody.

In the case of a person who is under the jurisdiction of a Military Court at the time of committing an offence and is involved in a criminal case which is under the jurisdiction of a Military Court but who, at the time of the alleged offence, is not in the service of the Ministry of Defence or has been released from

²² *Ibid.*, vol. 88, part 128, 22 November B.E. 2514 (1971).

²³ *Ibid.*, vol. 88, part 130, 24 November B.E. 2514 (1971).

²⁴ *Ibid.*, vol. 89, part 91, 15 June B.E. 2515 (1972).

²⁵ *Ibid.*, vol. 68, part 43, 3 July B.E. 1404 (1951).

²⁶ *Ibid.*, vol. 80, part 124, 31 December B.E. 2506 (1963).

²⁷ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

²⁸ *Ibid.*, vol. 72, part 83, 18 October B.E. 2498 (1955).

active service or is under the jurisdiction of the military Court under section 16 (5) but has not yet been recruited for active service in any military unit, the officer who has the rank of commander or higher of military *changwat* of the locality where the offence committed or the person was arrested shall have the power to place him in custody several consecutive times, provided that each time shall not exceed 12 days, and that the total period shall not exceed 90 days.

The custody under this section shall be considered as that under the Criminal Procedure Code (section 46).

4. *NEC Announcement No. 303 of 13 December B.E. 2515 (1972)*²⁹

Under this announcement, the Chairman of NEC amended sections 6,³⁰ 7,³¹ 9 and 11 of the Martial Law, B.E. 2457 (1914),³² and added section 15 *bis* thereto, as follows:

(1) In the area under the Martial Law, the military authority shall have the power over the civilian authority in so far as the fighting, suppression or maintenance of law and order is concerned, and the civilian authority shall obey the military authority (section 6).

(2) In the area under the Martial Law, the civilian courts still retain their jurisdiction as in normal times except for cases which are under the jurisdiction of a Court martial, and the person having the power to enforce the Martial Law has the power to make an announcement that a criminal case in which any offence specified in the list annexed to this Act is committed in the area under the Martial Law during the enforcement of that Law be tried and adjudicated by a Military Court, as well as to amend or repeal it.

The announcement made under paragraph one shall apply only to the case in which the offence is committed after the time specified therein, and such time may be the time of issuance of the announcement or thereafter. Such announcement shall be published in the *Government Gazette*.

In addition to the aforesaid case, if a criminal case in which an offence is committed in the area under the Martial Law is of special importance concerning the national security or public order, the Supreme Commander of the armed forces may direct that it be tried and adjudicated by a Military Court (section 7).

(3) Concerning a search, the authority shall have the power to:

(i) Examine or search all things to be requisitioned, prohibited or seized or to live in or be in illegal possession as well as to search a person, vehicle, dwelling, building or any place at any time;

(ii) Censor news, letters, telegrams, boxes, parcels or any other thing sent to or from the area under the Martial Law;

(iii) Censor books, printed matters, newspapers, advertising pictures, articles or verses (section 9).

(4) As for the prohibition, the authority shall have the power to:

(i) Prohibit any kind of meeting;

(ii) Prohibit the issue, disposal and distribution of books, printed matter, newspapers, pictures, articles or verses;

(iii) Prohibit advertising, entertaining shows, receiving or transmitting radio or television broadcasts;

(iv) Prohibit the public from using public thoroughfares, regardless of there being roads, waterways, airways including railways or tramways which are still in operation;

(v) Prohibit the possession or use of communication equipments, arms, arm equipments, and chemicals or any thing which may be harmful to men, animals, plants or property or may be used in making chemicals or any other thing which is of harmful property;

(vi) Prohibit persons from leaving their dwelling between the times to be prescribed;

(vii) Prohibit persons from entering or living in any area which the military authority deems necessary for fighting, suppression or maintenance of law and order; and after the prohibition has been announced, all persons living in that area shall leave it within the time to be prescribed in the announcement;

(viii) Prohibit persons from doing or having such activity prescribed by the Minister of Defence as being prohibited during the enforcement of the Martial Law (section 11).

(5) In cases where the military authority has a reason to believe that a person is an enemy or has violated the provisions of this Act or disobeyed its orders, it shall have the power to detain him for inquiry or as long as military necessity requires, provided that the detention does not exceed seven days (section 15 *bis*).

5. *NEC Announcement No. 333 of 13 December B.E. 2515 (1972)*³³

The purpose of this Announcement is to amend sections 145 and 150 of the Criminal Procedure Code³⁴ as follows:

(1) In the case of an issue of a non-prosecution order other than that of the Director-General of the Public Prosecution Department, if it is in Bangkok Metropolis, the file of inquiry with the order shall be submitted forthwith to the Director-General, Deputy Director-General or Assistant Director-General of the Police Department. If it is in any other *changwat*, the file of inquiry with the order shall forthwith be submitted to the

²⁹ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

³⁰ Last amended by the Martial Law (No. 3), B.E. 2487 (1944) (*Government Gazette*, vol. 61, part 79, 31 December B.E. 2497 (1959)).

³¹ Last amended by the Martial Law (No. 5), B.E. 2502 (1959) (*Government Gazette*, vol. 76, part 78, 11 August B.E. 2515 (1972)).

³² *Ibid.*, vol. 31, 13 September B.E. 2457 (1914).

³³ *Government Gazette*, vol. 89, part 190, 13 December B.E. 2515 (1972).

³⁴ Last amended by the Act amending the Criminal Procedure Code (No. 6) B.E. 2499 (*Government Gazette* vol. 73, part 16, 21 February B.E. 2499 (1956)).

changwat Governor. However, the public prosecutor shall not be debarred from dealing with the alleged person as provided in section 143.

In a case where the Director-General, Deputy Director-General or Assistant Director-General of the Police Department in Bangkok Metropolis or the *changwat* Governor in any other *changwat* disagrees with the order of the public prosecutor, the file, together with such dissenting opinions, shall be submitted to the Director-General of the Public Prosecution Department for decision. If the prescription for that case is nearly over, or there is another reason making it necessary to expedite the prosecution, the prosecution shall in the meantime be instituted in accordance with the opinion of the Director-General, Deputy Director-General or Assistant Director-General of the Police Department or the *changwat* Governor.

The provisions of this section shall apply *mutatis mutandis* to appeal, *dika* appeal or withdrawal of a charge, appeal or *dika* appeal by the public prosecutor (section 145).

(2) The inquiry official of the locality where the corpse is, and the *changwat* health official, physician attached to the health centre or hospital shall conduct the *post mortem* inquest as soon as possible, and the particulars shall be noted. If there is no such person or he is unable to perform his duty, the official of the Ministry of Public Health attached to such locality or the physician attached to the *tambon* shall be required.

In the case of death caused by the act of an official alleged to be carrying out his duty, or if a person has died while being kept in custody by an official alleged to be carrying out his duty, the inquest must be conducted in the presence of a public prosecutor attached to the locality where the inquest is held.

It shall be the duty of the inquiry official to notify the persons whose duty it is to conduct the inquest (section 150).

D. Freedom of movement

1. Notification of the Ministry of the Interior No. 1/2515 of 10 April B.E. 2515 (1972)³⁵

The Minister of the Interior, by virtue of section 14 of the Prevention of Communist Activities Act, B.E. 2495 (1952),³⁶ as amended by the Prevention of Communist Activities Act (No. 2), B.E. 2512 (1969),³⁷ and with the approval of the Council of Ministers, determined the area of *changwat* Yasothon as a communist infiltrated area.

2. Notifications of the Ministry of the Interior No. 19/2515 of 8 June B.E. 2515 (1972), and Nos. 23/2515 and 24/2515 of 12 December B.E. 2515 (1972)³⁸

The Minister of the Interior, by virtue of sec-

tion 17 of the Prevention of Communist Activities Act, B.E. 2495 (1952),³⁹ as amended by the Prevention of Communist Activities Act (No. 2), B.E. 2512 (1969),⁴⁰ prohibited persons from entering or living in certain communist infiltrated areas without the permission of the Director in charge of Prevention of Communist Activities.

E. Right to a nationality

NEC Announcement No. 337 of 13 December B.E. 2515 (1972)⁴¹

As it appears that the persons who were born of alien parents and have acquired Thai nationality are not always loyal to the country, the Chairman of NEC has issued the following Announcement:

(1) Any person who was born in the Kingdom of Thailand of an alien father or of an alien mother without a legitimate father and whose father or mother at the time of his birth:

(i) Was allowed to reside in the Kingdom of Thailand as a special case;

(ii) Was granted temporary stay in the Kingdom of Thailand; or

(iii) Was in the Kingdom of Thailand without permission under the law on immigration; shall be deprived of his Thai nationality, unless the Minister of the Interior deems it appropriate and issues a specific order otherwise (clause 1).

(2) A person under (1) who was born after the coming into force of this Announcement (14 December B.E. 2515) shall not acquire Thai nationality unless the Minister of the Interior deems it appropriate and issues a specific order otherwise (clause 2).

(3) All laws, by-laws and regulations in so far as they are provided in this Announcement or are contrary to or inconsistent with it shall be replaced by this Announcement (clause 3).

F. Right to own property

1. NEC Announcement No. 96 of 29 February B.E. 2515 (1972)⁴²

The purpose of this Announcement is to amend the provisions of the Land Code⁴³ relating to the issuance of certificates of utilization and title deeds for land and the registration of rights and juridical acts concerning land in order to prevent disputes between persons who have possessed or utilized land and to expedite the proceedings thereof. In so far as the right to own property is concerned, the amendments are as follows:

(1) The transfer of ownership or possession of any piece of land for which a title deed or

³⁵ *Ibid.*, vol. 69, part 68, 13 November B.E. 2495 (1952).

⁴⁰ *Ibid.*, vol. 86, part 14, 18 February B.E. 2512 (1969).

⁴¹ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

⁴² *Ibid.*, vol. 89, part 33, 3 March B.E. 2515 (1972).

⁴³ *Ibid.*, vol. 71, part 78, 30 November B.E. 2497 (1954).

³⁵ *Government Gazette*, vol. 89, part 59, 11 April B.E. 2515 (1972).

³⁶ *Ibid.*, vol. 69, part 68, 13 November B.E. 2495 (1952).

³⁷ *Ibid.*, vol. 86, part 14, 18 February B.E. 2512 (1969).

³⁸ *Ibid.*, vol. 89, part 92, 16 June B.E. 2515 (1972); and vol. 89, part 191, 15 December B.E. 2515 (1972).

certificate of utilization has been given must be made in writing and registered by the competent official (clause 4 *bis*).

(2) If a person who has a right to any piece of land according to a title deed or certificate of utilization therefor has abandoned, has not utilized, or has left it for a period of over

(i) Ten consecutive years in the case of a piece of land for which a title deed has been given;

(ii) Five consecutive years in the case of a piece of land for which a certificate of utilization has been given,

he shall be considered as having intentionally waived his right to the piece of land which has been abandoned, has not been utilized, or has been left. After the Court has revoked the certificate of right to the said piece of land upon application of the Director-General (Director-General of the Land Department), further proceedings under this Code shall devolve upon the State (section 6).

(3) After having surveyed and mapped the land or verified its utilization under section 58, the competent official shall issue a title deed or certificate of utilization, as the case may be, to a person specified in paragraph two when it appears that such piece of land possessed by such person is the land for which a title deed or certificate of utilization may be issued under this Code.

The persons to whom the competent official may issue a title deed or certificate of utilization under paragraph one are as follows:

(i) A person who has an evidence of notification of possession of land, *baichong*, *baiyapyam*, certificate of utilization, title deed, *trachong* with an endorsement as "utilized" or has the right under the law on allocation of land for living;

(ii) A person who has complied with section 27 *ter*;

(iii) A person who has possessed and utilized the land after the day this Code comes into force without *baichong*, *baiyapyam* or evidence of having the right under the law on allocation of land for living.

A person under (ii) or (iii) shall receive a title deed or certificate of utilization, as the case may be, for a piece of land not exceeding 50 rai. If the piece of land is more than 50 rai, an approval must be given by the *changwat* Governor, subject to the regulation laid down by the Committee.

For the purpose of this section, a person having an evidence of notification of possession of land under paragraph one shall include a person who has possessed and utilized the land subsequent to the aforesaid person.

Within 10 years of the day on which a title deed or certificate of utilization is given under paragraph one, a person under (iii) who has received the certificate of right in the said land shall not transfer it to another person except in case of succession or transfer to the official service and such land shall not be subject to the enforcement of judgment by the Court (section 58 *bis*).

(4) Any person who violates section 9 (e.g. prohibition to take possession or clear the State

land or destroy resources of the State land without permission) shall be liable to imprisonment not exceeding one year or to a fine not exceeding 5,000 baht or to both.

If the offence under paragraph one is committed on a piece of land which is *domaine public* for common use of the people or for the special use of the State, the offender shall be liable to imprisonment not exceeding three years or to a fine not exceeding 10,000 baht or to both.

If the offence under paragraph two is committed on a piece of land of more than 50 rai, the offender shall be liable to imprisonment not exceeding five years or to a fine not exceeding 20,000 baht or to both.

In the case where a person is found guilty under this section, the Court has the power to give a judgment ordering the offender as well as his labourers, employees, representatives and dependents to leave the land.

All equipment, utensils, beasts of burden, vehicles or machines which have been used in the commission of an offence or as a means to secure the result of the said offence shall be forfeited, irrespective of there being a person sentenced by a judgment (section 108 *bis*).

2. *NEC Announcement No. 146 of 10 May B.E. 2515 (1972)* ⁴⁴

The purpose of this Announcement is to expedite the proceedings in connexion with the acquisition of private land for public irrigation by means of amending section 12 of, and adding section 12 *bis* to, the Public Irrigation Act, B.E. 2485 (1942) ⁴⁵ as follows:

(1) The competent official has the power to take possession and use the land which has been expropriated under the law on expropriation of immovable property for irrigation even though compensation has not yet been given, provided that he notifies the owner or possessor of the land of it not less than 30 days in advance.

In the case where there is a building, house or any construction on the expropriated land and its owner or possessor who has the duty to demolish it has not done so within 60 days from the date of being notified of it under paragraph one, the competent official has the power to demolish it, provided that the owner or possessor of the land shall pay the expenses for the demolition or that they will be deducted from the compensation which the owner or possessor is entitled to receive (section 12).

(2) In the case where it is necessary to proceed with the construction of any irrigation work without delay, the competent official shall have the power to take possession of any immovable property and proceed with any irrigation activity thereon before expropriating it under the law on expropriation of immovable property, provided that the competent official notify the owner or possessor of such immovable property of it not less than 60 days in advance.

⁴⁴ *Ibid.*, vol. 89, part 76, 12 May B.E. 2515 (1972).

⁴⁵ *Ibid.*, vol. 59, part 62, 22 September B.E. 2485 (1942).

An irrigation work which must be proceeded to without delay under paragraph one shall be determined by the Council of Ministers and published in the *Government Gazette* (section 12 bis).

3. *NEC Announcement No. 290 of 27 November B.E. 2515 (1972)*⁴⁶

Under this Announcement the Special Highway Authority of Thailand has been established to build and maintain special highways. The Minister of the Interior shall, with the approval of the Council of Ministers, determine a special highway to be constructed or expanded and have it published in the *Government Gazette* (clause 22). If it appears that it is necessary to expropriate any immovable property for the construction or expansion of any special highway, it shall be expropriated by an Act and the law on highways, in so far as the expropriation of immovable property for the construction and expansion of highways is concerned, shall apply *mutatis mutandis* except otherwise provided by this Announcement (clause 23).

After having expropriated the immovable property by an Act under this Announcement, the expropriation official and the person having the right to receive compensation shall try to reach an agreement on the amount of compensation; if it cannot be agreed upon, the expropriation official shall fix the amount of compensation and the person having the right to receive compensation may receive or refuse to receive it; in the case where such person refuses to receive it, the expropriation official shall deposit it with the Court and such person may apply for it from the Court at any time.

The fact that the person having the right to receive compensation has not agreed to the amount of compensation fixed by the expropriation official or has received or refused to receive the compensation deposited with the Court does not deprive him of the right to institute an action claiming from the expropriation official additional compensation which he thinks he should be entitled to within one year from the day on which he receives it or the expropriation official deposits it with the Court, as the case may be. In the case where the Court gives a judgment ordering the expropriation official to pay additional compensation, the person having the right to receive compensation shall also receive 7½ per cent interest per annum on the amount of additional compensation as from the day on which the expropriation Act comes into force.

The possession, use or demolition of immovable property as well as the construction or expansion of the special highway shall not be interrupted by the action instituted by the person having the right to receive compensation.

After having given compensation to the person having the right to receive it or after having deposited it with the Court, the expropriation official shall have the power to occupy, use and demolish such immovable property by notifying

its owner or the possessor of it in writing not less than 60 days in advance. In such case, the owner, possessor or person having any other right shall not be entitled to claim for damage deriving from the said Act (clause 24).

4. *NEC Announcement No. 295 of 28 November B.E. 2515 (1972)*⁴⁷

The purpose of this Announcement is to revise the highway laws by repealing the Highway Act B.E. 2482 (1939)⁴⁸ and the Highway Act (No. 2) B.E. 2497 (1954).⁴⁹ In so far as the right to own property is concerned, the provisions are as follows:

(1) In the case where it is necessary for the construction of highways, the Director of Highways (or the person entrusted by him) shall have the power:

(i) To use temporarily any private land along the highway that has no construction thereon;

(ii) To use and take any material to be used for the construction of highways which is in any private land, as well as to build a road through any land for using and taking any material to be used for such purpose;

Before proceeding with (i) or (ii), the Director of Highways shall notify the owner or possessor of the land of it in writing not less than seven days in advance.

In the case where the owner or possessor of the land or person having any other right has suffered any damage from the act of the Director of Highways under (i) or (ii), the provisions of (6) shall apply *mutatis mutandis* (clause 26).

(2) In order to prevent any public calamity caused by an emergency, the Director of Highways shall have the power to use any private land or take any material to be used for the construction of highways in any private land in the area of calamity or adjacent to it in so far as it is necessary for the benefit of the construction of highways and shall have the power to requisition beasts of burden or vehicles as well as machines, tools and equipment to be used for the construction of highways.

The requisition under paragraph one and wage rates shall be prescribed by a Royal Decree.

In the case where the owner or possessor of the land or person having any other right has suffered any damage from the act of the Director of Highways under paragraph one, the provisions of (6) shall apply *mutatis mutandis* (clause 27).

(3) When it is necessary to regulate the entrances to and exits from any highway in order to ease traffic congestion on any highway and provide convenience or safety of traffic thereon, a person shall not do any of the following on any land along the highway, wholly or partly:

(i) Build or rebuild any construction according to the categories, kinds or nature prescribed by

⁴⁷ *Ibid.*, vol. 89, part 184, 1 December B.E. 2515 (1972).

⁴⁸ *Ibid.*, vol. 56, 13 November B.E. 2482 (1939).

⁴⁹ *Ibid.*, vol. 71, part 60, 21 September B.E. 2497 (1954).

⁴⁶ *Ibid.*, vol. 89, part 182, 29 November B.E. 2515 (1972).

a Ministerial Regulation, build or rebuild any gasoline service station, or install any sign board for advertisement, within 15 metres from the boundaries of the highway,

(ii) Build a trade centre, gymnasium, theatre, clinic, school or provide a market, fair, or have any other activity which will induce a large number of people to assemble, within 15 metres from the boundaries of the highway,

Provided that permission in writing may be granted by the Director of Highways. In the permit, the Director of Highways may impose any condition.

A Royal Decree shall determine on which highway or section of highway the above prohibitions are to be imposed (clause 44).

(4) If it is necessary to acquire any immovable property for the construction or expansion of highways, it shall be expropriated and the law on expropriation of immovable property,⁵⁰ shall apply *mutatis mutandis*, except where specially provided in this Announcement.

For the purpose of expropriating immovable property under paragraph one, a Royal Decree determining the area to be expropriated may be enacted (clause 63).

(5) In the case where a Royal Decree determining the area to be expropriated has been enacted and the Minister has determined any highway to be constructed without delay and has published it in the *Government Gazette*, the expropriation official (or the person entrusted by him) shall have the power to occupy the immovable property, demolish any construction thereon, remove any property and proceed with the construction of the highway or with any activity concerning the construction of the highway thereon.

Before proceeding with the above provision, the expropriation official shall so notify the owner or possessor of such immovable property in writing not less than 30 days in advance unless he has given his consent thereto before the due date (clause 66).

(6) In occupying any immovable property, demolishing any building or removing any property under (5), the expropriation official shall give fair compensation to its owner or possessor. The proceedings relating to the compensation to be given to the owner or possessor of the expropriated or damaged property are similar to those mentioned in the case of expropriation of immovable property for the construction of special highways (clauses 3, 67 and 68).

(7) After the Royal Decree determining the area to be expropriated has been enacted and the expropriation official has determined the surveying boundaries, the owner or possessor of any immovable property which is within the range of 100 metres from the surveying boundary shall not dispose of such immovable property by means of selling, exchanging, giving, mortgaging, letting, or otherwise, unless he has been granted per-

mission in writing by the expropriation official (clause 70).

5. *NEC Announcement No. 334 of 13 December B.E. 2515(1972)*⁵¹

The right to own property under the Land Code has been affected by this Announcement as follows:

(1) After having granted the right of possession of any land to any person, the competent official shall issue a *baichong* and give it to him as evidence. If it appears later to the competent official that such person has utilized the land as well as complied with the rules, regulations, requirements and conditions, the competent official shall issue a certificate of land right to him without delay (clause 30).

(2) Within 10 years from the day on which a title deed or certificate of land utilization is given in connexion with a *baichong* issued under sections 30 and 33 of the Land Code, the person who has acquired the right over the said land may not transfer such land to any other person except in case of inheritance.

Such land shall not be subject to enforcement of judgment within the above-mentioned period (clause 31).

G. Right of association and assembly

1. *NEC Announcement No. 140 of 1 May B.E. 2515 (1972)*⁵²

The Co-operative Society Act, B.E. 2511 (1968)⁵³ has been amended by this Announcement so that a number of farmers who share a common desire to help each other in their farming but have not yet been able to form a co-operative society may form a group according to the rules and procedure prescribed by a Royal Decree (section 118 *bis*). A group of farmers formed under the aforesaid Royal Decree shall be a juridical person (section 118 *ter*).

2. *NEC Announcement No. 141 of 1 May B.E. 2515 (1972)*⁵⁴

Under this Announcement, the formation and powers of a group of farmers can be summarized as follows:

(1) Farmers of not less than 30 in number who have been in the same *tambon* and have a common desire to help each other in their farming may form a group of farmers by applying to the Registrar for registration (clause 9).

(2) A member of a group of farmers must:

(i) Be a natural person, of Thai nationality and *sui juris*;

(ii) Principally engage in farming and have his activities or domicile in the locality where the group of farmers is in operation;

(iii) Not be a bankrupt;

⁵⁰ Expropriation of Immovable Property Act, B.E. 2497 (1954) (*Government Gazette*, vol. 71, part 13, 16 February B.E. 2497 (1954)).

⁵¹ *Government Gazette*, vol. 89, part 190, 13 December B.E. 2515 (1972).

⁵² *Ibid.*, vol. 89, part 70, 2 May B.E. 2515 (1972).

⁵³ *Ibid.*, vol. 85, part 55, 19 June B.E. 2511 (1968).

⁵⁴ *Ibid.*, vol. 89, part 70, 2 May B.E. 2515 (1972).

(iv) Have at least one share but not more than one-fifth of the total number of shares (clause 4);

(3) A person may be a member of only one group of farmers at the same time and only one person of each family may be a member (clause 5).

(4) The liability of a member is limited to the amount paid on the share held by him.

A member cannot avail himself of a set-off against the group of farmers as to payments on shares (clause 6).

(5) In carrying out its objectives, a group of farmers shall have the power to:

(i) Acquire, buy, own, possess, borrow, hire, hire-purchase, take transfer of lease or hire-purchase, mortgage, pledge, sell or dispose of property by any means;

(ii) Lend, let, sell by hire-purchase, give credit, or transfer to, or take mortgage or pledge of property from, its members;

(iii) Join a venture with any other group of farmers;

(iv) Engage in any business or trade for the benefit of its members;

(v) Provide services to its members;

(vi) Give technical assistance to its members;

(vii) Do any other business relating to the fulfilment of its objectives, with the approval of the Registrar of Co-operative Societies (clause 13).

(6) A group of farmers shall have a committee to carry out its activities, which shall consist of members to be elected by its general meeting according to the rule and procedure laid down by it.

The Committee must comply with the laws, regulations, rules, policy and resolutions of the general meeting and represent the group in dealing with outsiders (clause 16). Other matters are similar to those governed by the law on co-operative societies.

H. Right to take part in government and public service

1. NEC Announcement No. 326 of 13 December B.E. 2515 (1972)⁵⁵

The purpose of this Announcement is to revise the Administration of *Tambon* Act, B.E. 2499 (1956)⁵⁶ and the Administration of *Tambon* Act (No. 2), B.E. 2511 (1968),⁵⁷ and in so far as the right to take part in government and public service is concerned, the provisions are as follows:

(1) There shall be a *Tambon* Council consisting of a *kamnan* (head of *tambon*) of the locality as chairman, a *phu yai ban* (head of village) of every village in *tambon* and a *tambon* physician as members *ex officio* and members to be elected

by the inhabitants of each village; and there shall be a *tambon* adviser to be appointed by the *Palat amphoe* or local development officials, and a secretary of the *tambon* Council to be appointed from local government school teachers, by the *Changwat* Governor at the recommendation of the *Nai amphoe* of the locality (clause 5).

(2) To be eligible to be elected member of the *Tambon* Council a person must

(i) Be of Thai nationality;

(ii) Be *sui juris*;

(iii) Have had his domicile or permanent residence in the village for a period of not less than six months;

(iv) Have sincere faith in the constitutional government;

(v) Not be a priest, novice, monk or clergyman;

(vi) Not be physically disabled, be of unsound mind or have a mental infirmity, be addicted to a harmful habit-forming drug or infected with any disease determined by the Minister of the Interior and published in the *Government Gazette*;

(vii) Not be a permanent official or local official or employee;

(viii) Not be notorious for dishonesty or immorality;

(ix) Not have been dismissed or removed from office in a *changwat* organization, municipality, sanitary board or *tambon* organization, within the past three years;

(x) Not have been imprisoned by a final judgment of imprisonment except in case of a punishment for an offence committed by negligence or for a petty offence, if less than three years have passed since his release;

(xi) Have a basic knowledge of a level not lower than junior primary education or such knowledge accredited by the Ministry of Education as equivalent thereto, except that, in a locality where a person having such knowledge cannot be found, the *changwat* Governor may consider it as he deems fit (clause 6).

(3) In an election of a member of the *tambon* Council, the *Nai amphoe* or the person entrusted by him as chairman, together with the *kamnan* and *phu yai ban* in such a *tambon*, shall call a meeting of the inhabitants who must:

(i) Be of Thai nationality;

(ii) Be *sui juris*;

(iii) Have had their domicile or permanent residence in the village for a period of not less than six months;

(iv) Not be priests, novices, monks or clergymen;

(v) Not be of unsound mind or have a mental infirmity.

The person who has been elected by the majority of the inhabitants shall be considered as elected member of the *tambon* Council and the *Nai amphoe* shall report the result of the election to the *changwat* Governor for issuance of credentials to the elected member.

In case of election by an equality of votes, the persons so elected shall draw lots.

⁵⁵ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

⁵⁶ *Ibid.*, vol. 74, part 11, 29 January B.E. 2500 (1957).

⁵⁷ *Ibid.*, vol. 85, part 46, 21 May B.E. 2511 (1968).

The election may be made either in public or in secret (clause 7).

2. *NEC Announcement No. 364 of 13 December B.E. 2515 (1972)*⁵⁸

Under this Announcement the Local Administration Act, B.E. 2457 (1914),⁵⁹ has been amended as follows:

(1) A person who is eligible to be elected *phu yai ban* (head of village) must:

(i) Be male, head of the family and of Thai nationality;

(ii) Not be less than 25 but not more than 60 years of age;

(iii) Have had his domicile or permanent residence in the village for a period of not less than six months;

(iv) Have sincere faith in the constitutional government;

(v) Not be a priest, novice, monk or clergyman;

(vi) Not be physically disabled, be of unsound mind or have a mental infirmity, be addicted to any harmful habit-forming drug or infected with a disease determined by the Minister of Interior and published in the *Government Gazette*;

(vii) Not be a permanent official or local official or employee;

(viii) Not be notorious for dishonesty or immorality;

⁵⁸ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

⁵⁹ *Ibid.*, vol. 31, 17 July B.E. 2457 (1914).

(ix) Not have been dismissed or removed from office as a result of dishonesty in office in a *changwat* organization, municipality, sanitary board or *tambon* organization, in the past three years;

(x) Not have been imprisoned by a final judgment of imprisonment, except in case of a punishment for an offence committed by negligence or for a petty offence, if less than three years have passed since his release;

(xi) Have a basic knowledge of a level not lower than junior primary education or such knowledge accredited by the Ministry of Education as not lower than junior primary education (section 12).

(2) The *Nai amphoe* shall provide for the election of a *kamnan* (head of *tambon*) from the *phu yai ban* in *tambon* who have applied for it. The person who is eligible to be elected *kamnan* must be qualified, with a "not disqualified" under section 11.

A person elected by a majority of votes shall be considered as *kamnan* and the *Nai amphoe* shall report the result of the election to the *changwat* Governor for issuance of credentials to the *kamnan*.

In case of election by an equality of votes, the persons so elected shall draw lots.

The election procedure shall be in accordance with the rule laid down by the Ministry of the Interior (section 30).

(3) If the office of *kamnan* becomes vacant, a replacing *kamnan* must be elected within 60 days from the date the *Nai amphoe* has been informed of the vacancy (section 32).

III. Economic, social and cultural rights

A. Protection of young persons

1. *NEC Announcement No. 47 of 17 January B.E. 2515 (1972)*⁶⁰

The purpose of this announcement is to prevent a youth from entering certain kinds of entertaining establishments by amending section 16 of the Control of Service-providing Establishments Act, B.E. 2509 (1966).⁶¹ Under the amendment, a licensee of an establishment providing services shall not employ a person under 18 years of age, nor shall he allow entry during open hours to a person under 20 years of age who does not work in the establishment.

2. *NEC Announcement No. 132 of 22 April B.E. 2515 (1972)*⁶²

The purpose of this Announcement is to repeal

⁶⁰ *Ibid.*, vol. 89, part 9, 17 January B.E. 2515 (1972).

⁶¹ *Ibid.*, vol. 83, part 88, 4 October B.E. 2509 (1966); see *Yearbook on Human Rights for 1966*, pp. 352-353.

⁶² *Ibid.*, vol. 89, part 66, 25 April B.E. 2515 (1972).

the Act on Control of Children and Students, B.E. 2481 (1938)⁶³ and replace it with the following provisions:

(1) The Minister of Education or the person entrusted by him shall have the power to appoint inspectors of pupils and students for the execution of this Announcement and they shall be considered as officials under the Penal Code.

The proceedings of inspectors of pupils and students shall be in accordance with the regulation laid down by the Minister (clause 3).

(2) Pupils and students must behave in accordance with the rules and disciplines of their schools or educational establishments, dress or wear uniforms in accordance with the regulations or laws thereof. They must neither dress nor behave in such a way as is considered inappropriate to their age or condition of pupils or students, as determined by a Ministerial Regulation,⁶⁴ e.g. having long hair, associating with prostitutes, carrying arms, smoking cigarettes etc. (clause 4).

⁶³ *Ibid.*, vol. 56, 17 April B.E. 2482 (1939).

⁶⁴ *Ibid.*, vol. 89, part 106, 11 July B.E. 2515 (1972).

(3) A police officer or an inspector of pupils and students finding a pupil or student who dresses or behaves in violation of the provisions of (2) shall have the power to take him to the headmaster, director or chief of the school or educational establishment for inquiry and warning or punishment, or to inform him verbally or in writing if such pupil or student cannot be taken thereto.

After having warned or punished him, the school or educational establishment shall advise his parent or guardian to warn him once again.

The Minister shall have the power to lay down a rule or regulation on punishment of pupils or students for schools or educational establishments to carry it out (clause 5).

(4) In the case where a pupil or student violates the provisions of (2) for the second time, the school or educational establishment shall punish him according to the rule or regulation and advise his parent or guardian to come and promise that he shall look after such pupil or student and that no further such violation shall take place (clause 6).

(5) If his parent or guardian fails to come or make the promise in accordance with the provisions of (4) or if any pupil or student violates the provisions of (2) for the third time, the school or educational establishment shall send him, together with a report on previous punishments, to the police station of the locality where such school or educational establishment is situated and a police officer having the rank of sub-lieutenant or higher shall have the power to summon such parent or guardian for admonition or execution of a bond with a security that he shall take care of such pupil or student so that such violation may not be made within a period to be fixed but not exceeding one year. A breach of such bond shall be liable to a fine not exceeding 500 baht (clause 7).

(6) If any pupil or student violates the provisions of (2) for the fourth time, the school or educational establishment shall send him to the committee in charge of control of behaviour of pupils and students to be appointed by the Minister, for consideration and handing over to a special school or educational establishment. In the case where such pupil or student is less than 18 years of age, the committee may send him to a reception home for appropriate assistance or welfare under the law (clause 8).

(7) If a violation of the provisions of (2) takes place in the school or educational establishment where such pupil or student is studying, the headmaster, director or chief of such school or educational establishment shall proceed with the provisions of (3), (4), (5) or (6) as the case may be (clause 9).

(8) A parent or guardian who fails to execute a bond with security under the provisions of (5) shall be liable to a fine not exceeding 1,000 baht (clause 10).

3. *NEC Announcement No. 294 of 27 November B.E. 2515 (1972)*⁶⁵

The purpose of this Announcement is to provide social welfare for children, which may be summarized as follows:

(1) The Director-General (Director-General of the Department of Public Welfare or a person entrusted by him) shall have the power to establish reception homes, nursery homes, children's institutions, child welfare protection homes and child and family guidance clinics of such number as necessity requires.

The establishment of a reception home and a child welfare protection home shall be published in the *Government Gazette*.

The *changwat* Governor shall have the power to establish in the area under his jurisdiction nursery homes and child and family guidance clinics of such number as necessity requires.

There shall be a child guardian for each reception home, nursery home, children's institution or child and family guidance clinic, who shall have the power to take care of the children in such institution in so far as their behaviour and living are concerned (clause 2).

(2) The Director-General shall have the power to appoint child guardians and competent officials for the execution of this Announcement.

The *changwat* Governor shall have the power to appoint child guardians for reception homes and competent officials for child and family guidance clinics.

The child guardians and competent officials shall be considered as officials under the Penal Code (clause 3).

(3) Children who are entitled to receive welfare under this Announcement are:

- (i) Children who have no parents or guardian;
- (ii) Children who have been abandoned or lost;
- (iii) Children who have been improperly brought up by their parents or guardian or whose parents or guardian cannot look after them on account of being imprisoned, detained, incapacitated, or physically or mentally ill;
- (iv) Children who are physically, intellectually or mentally incapacitated (clause 9).

(4) Children who are entitled to be protected under this Announcement are those who have behaviour problems or have inappropriate behaviour and are out of the control of their parents or guardians (clause 12).

(5) The Director-General or *changwat* Governor shall promote and control the operation of private reception homes, nursery homes and child and family guidance clinics so that they may be beneficial to the physical and mental growth of children.

The Ministry of the Interior shall give such aids as prescribed by a Ministerial Regulation to private reception homes, nursery homes and child and family guidance clinics (clause 16).

⁶⁵ *Ibid.*, vol. 89, part 182, 29 November B.E. 2515 (1972).

(6) A parent or guardian of a child must look after and take proper care of him (clause 19); if he fails to do so, he shall be liable to a fine not exceeding 500 baht; if such failure results in bodily or mental harm to the child, he shall be liable to imprisonment not exceeding one month or to a fine not exceeding 1,000 baht or to both (clause 23).

(7) A person shall not:

(i) Abandon his child to a clinic, nursery home or a person who has been employed to look after such child;

(ii) Advertise for adoption or to give a child for adoption, except for the benefit of official service;

(iii) Buy or sell a child or exchange a child with property, except in the case of such property being *khongman*⁶⁶ or *sinsod*⁶⁷ under the Civil and Commercial Code;

(iv) Employ a child to beg or do anything which promotes a child to beg;

(v) Sell or give liquor, cigarettes or any other harmful habit-forming thing to a child or mislead a child to drink, smoke or take any harmful habit-forming thing, except in case of medical treatment;

(vi) Allow a child to bet;

(vii) Mislead or encourage a child to behave improperly (clause 19).

A person who violates any of the above prohibitions shall be liable to imprisonment not exceeding one month or to a fine not exceeding 1,000 baht or to both (clause 24).

B. Right to work

1. NEC Announcement No. 103 of 16 March B.E. 2515 (1972)⁶⁸

By this Announcement NEC revised the laws on labour and the settlement of labour disputes and repealed Announcement No. 19 of the Revolutionary Party of 31 October B.E. 2501 (1958)⁶⁹ and the Settlement of Labour Disputes Act B.E. 2508 (1965).⁷⁰ Wide powers are conferred on the Ministry of the Interior with respect to labour matters in general as well as the protection of labour. Provisions are also set out regarding the establishment of a compensation fund for employees.

⁶⁶ Property given on the part of the man and received on the part of the woman as evidence and security that the marriage shall take place.

⁶⁷ Property given on the part of the man to the parents or guardian of the woman in return for the woman agreeing to marry.

⁶⁸ *Government Gazette*, vol. 89, part 41, 16 March B.E. 2515 (1972). For an English translation of the Announcement, see International Labour Office, *Legislative Series*, 1972—Thai. 1.

⁶⁹ *Ibid.*, vol. 75, part 87, 31 October B.E. 2501 (1958); see *Yearbook on Human Rights for 1958*, p. 218.

⁷⁰ *Ibid.*, vol. 82, part 114, 31 December B.E. 2508 (1965); see *Yearbook on Human Rights for 1965*, pp. 306-307.

2. NEC Announcement No. 58 of 26 January B.E. 2515 (1972)⁷¹

The purpose of this Announcement is to consolidate the laws on control of commercial undertakings affecting public safety and welfare and the laws determining Ministries in charge of the execution of the aforesaid laws, which may be summarized as follows:

(1) The following commercial undertakings shall be considered as public utilities:

- (i) Railways;
- (ii) Tramways;
- (iii) Excavation of canals;
- (iv) Air navigation;
- (v) Water works;
- (vi) Irrigation;
- (vii) Electric works;

(viii) Production for sale or sale of gas by means of pipelines;

(ix) All such other undertakings affecting public safety or welfare as specified by a Royal Decree.

In the enactment of a Royal Decree under (ix) a Ministry shall be designated to be in charge of such undertaking (clause 3).

(2) A person shall not engage in any commercial undertaking which is a public utility unless he has received permission or concession from the Minister (clause 4).

(3) Whenever the competent Minister issues a notification requiring permission for any of the undertakings hereunder and the like, a person shall not engage in such undertaking without permission from the competent Minister:

- (i) Insurance;
- (ii) Warehousing;
- (iii) Banking;
- (iv) Saving;
- (v) *Crédit foncier*;

(vi) Endorsement or discount of bills;

(vii) Fund raising, lending, discounting or re-discounting of bills or other negotiable or credit instruments;

(viii) Purchasing, selling or exchanging instruments of claims or property, e.g. government bonds, shares, debentures or commercial instruments or agency, brokerage, managership or giving advice relating to investment in the aforesaid instruments or provision of market or centre for purchasing, selling or exchanging the aforesaid instruments.

In issuing a notification according to paragraph one, the Minister may specify the categories or nature of the undertaking (clause 5).

(4) In the case where there is a specific law governing any undertaking specified in clause 3 or 5, the said undertaking shall be in accordance with such law (clause 6).

(5) In granting permission or concession under the provisions of (2), the competent Minister may, for public safety or welfare, impose any condition which he deems necessary.

⁷¹ *Ibid.*, vol. 89, part 15, 27 January B.E. 2515 (1972).

The competent Minister may change the condition imposed under paragraph one, provided that appropriate time allowance for the enforcement of the condition so changed is given (clause 7).

(6) The Ministry of Finance shall have the powers and duties relating to the undertaking in (3) (iii) to (viii) and the like (clause 8). In this respect the Minister of Finance may delegate the powers of the Ministry of Finance to the Bank of Thailand (clause 14).

(7) The Ministry of Communications shall have the powers and duties relating to railways and air navigation (clause 9).

(8) The Ministry of Agriculture and Cooperatives⁷² shall have the powers and duties relating to irrigation and excavation of canals (clause 10).

(9) The Ministry of the Interior shall have the powers and duties relating to tramways, water works, electric works and production for sale or sale of gas by means of pipelines (clause 11).

(10) The Ministry of Commerce⁷³ shall have the powers and duties relating to insurance and warehousing or similar undertakings (clause 12).

(11) Whoever violates the provisions of (2) or (5) shall be liable to imprisonment not exceeding one year or to a fine not exceeding 20,000 baht or to both (clause 16).

(12) Any licensee or concessionaire under the provisions of (2) or any licensee under the provisions of (3) who fails to comply with a condition imposed under the provisions of (5) shall be liable to a fine not exceeding 20,000 baht and, in case of a continuous offence, to a daily fine not exceeding 1,000 baht as long as such failure still exists (clause 17).

3. *NEC Announcement No. 281 of 24 November B.E. 2515 (1972)*⁷⁴

The purpose of this Announcement is to regulate the businesses of aliens in order to maintain the balance of trade and economy of the country. The Announcement is not applicable to aliens engaged in business in the Kingdom by permission of the Thai Government for a definite period or by agreement between the Thai and a foreign Government (clause 2). Unless so permitted by a Royal Decree, an alien shall not engage in certain types of business, such as rice farming, trade in real property, accountancy, fishery, wood-processing, sale of antiques. An alien shall not engage in certain other types of business, such as the wholesale business or mining, unless a permit has been granted by the Director-General of the Department of Labour, who also has the power to suspend or revoke

⁷² As amended by clause 13 of NEC Announcement No. 216 of 29 September B.E. 2515 (*Government Gazette*, vol. 89, part 145, 29 September B.E. 2515 (1972)).

⁷³ As amended by clause 17 of NEC Announcement No. 216 of 29 September B.E. 2515 (*Government Gazette*, vol. 89, part 145, 29 September B.E. 2515 (1972)).

⁷⁴ *Government Gazette*, vol. 89, part 180, 25 November B.E. 2515 (1972).

the permit if the holder has not complied with certain conditions. A person who has been refused a permit or whose permit has been suspended or revoked may appeal to the Minister of Commerce through the Committee on Business of Aliens.

4. *NEC Announcement No. 322 of 13 December B.E. 2515 (1972)*⁷⁵

The purpose of this Announcement is to regulate the work of aliens by repealing the Act on Promotion of Occupations and Professions, B.E. 2484 (1941)⁷⁶ and replacing it with provisions which may be summarized as follows:

(1) This Announcement shall apply neither to certain categories of persons, e.g. the heads and members of diplomatic and consular missions (clause 2), nor to the performance of duties of certain categories of aliens, e.g. persons who are given permission by the Government of Thailand or who enter the Kingdom for the performance of any duty or mission for the benefit of education, culture or such other activities as prescribed by a Royal Decree (clause 3).

(2) Any occupation or profession in which an alien is absolutely or conditionally prohibited to engage in any locality or at any particular time shall be prescribed by a Royal Decree (clause 5).

Any alien who engages in any work in violation of the Royal Decree issued under paragraph one shall be liable to imprisonment not exceeding five years or to a fine not exceeding 10,000 baht or to both (clause 28).

(3) Subject to the provisions of (5) and (18), an alien may engage in any work which is not prohibited by a Royal Decree issued under (2) only upon receipt of a permit from the Director-General (Director-General of the Department of Labour or the person entrusted by him) (clause 6).

(4) Subject to the law on immigration, any person who wishes to employ an alien in his business in the Kingdom may apply on behalf of such alien for a permit from the Director-General.

The Director-General may issue a permit to the alien under paragraph one only after the entry into the Kingdom of that alien (clause 7).

(5) An alien who has been permitted to work in the Kingdom under the law on promotion of industrial investment or under any other law shall apply for a permit from the Director-General within 30 days from the date of his entry into the Kingdom.

The alien who has been permitted to enter the Kingdom under paragraph one before the day this Announcement comes into force shall apply for a permit from the Director-General by 13 March B.E. 2516 (1973).

Upon receipt of the application, the Director-General shall issue a permit without delay (clause 8).

⁷⁵ *Ibid.*, vol. 89, part 190, 13 December B.E. 2515 (1972).

⁷⁶ *Ibid.*, vol. 58, 11 December B.E. 2484 (1941).

(6) An alien who applies for a permit under (3) must:

- (i) Have a place of residence in the Kingdom or have been permitted to stay temporarily in the Kingdom under the law on immigration;
- (ii) Not be a person of unsound mind;
- (iii) Have knowledge and ability to engage in the work for which the permit has been requested (clause 9).

(7) The permits shall be valid as follows:

- (i) A permit issued to an alien under (18) paragraph one shall be valid for the life of the alien except in case of change of occupation;
- (ii) A permit issued to an alien under (5) shall be valid as long as he has been permitted to stay in the Kingdom for engaging in the work under that particular law;
- (iii) A permit issued to an alien who has been permitted to stay temporarily in the Kingdom under the law on immigration shall be valid as long as he is permitted to stay (clause 10).

(8) In case of necessity, the permit holder under (7) (ii) may apply for renewal of his permit to the Registrar (person appointed by the Minister as registrar for alien work) and the Registrar shall renew forthwith the permit for a period permitted under such particular law (clause 11).

(9) If a permit under (7) (iii) expires and the permit holder wishes to engage in the work further, he shall apply to the Registrar before the permit expires. Upon the expiry of the permit, he may not engage in the work unless the Registrar permits him to engage in it temporarily (clause 12).

(10) If the application for a permit under (3), (4), (5) or (18), or the application for renewal of a permit under (8) or (9), or the application for change of work or change of work locality under (11) is refused, the applicant is entitled to lodge a written appeal with the Minister (Minister of the Interior) through the Director-General or the Registrar, as the case may be, within 30 days from the date of being informed of the refusal. Upon receipt of the appeal, it shall be referred to the Committee for proceeding under (15) within 15 days, and the decision of the Minister shall be final.

Before giving his decision under paragraph one, the Minister shall, upon request of the appellant, have the power to permit him to engage in the work for the time being (clause 14).

(11) A permit holder shall not change his work or the work locality specified in the permit unless permission has been granted by the Registrar (Clause 16).

Any person who violates paragraph one shall be liable to imprisonment not exceeding one month or to a fine not exceeding 2,000 baht or to both (clause 30).

(12) A person shall neither employ an alien without a work permit for his business nor employ an alien in a business which is different in nature from that specified in his work permit (clause 17).

Any person who employs an alien in violation of paragraph one shall be liable to imprisonment

not exceeding three years or to a fine not exceeding 6,000 baht or to both (clause 31).

(13) In the case where an alien is employed in a business or transferred to a locality other than that permitted under (11) or retires from working, the person who employs such alien in his business shall notify the Registrar of it within 15 days from the date of employment, transfer or retirement, as the case may be (clause 18).

Any person who fails to comply with paragraph one shall be liable to a fine not exceeding 1,000 baht (clause 32).

(14) There shall be a committee called the Committee for Consideration of Alien Work, consisting of the Under-Secretary of State for the interior as chairman; a representative of the Ministry of Foreign Affairs, the Ministry of Industry, the Department of Local Administration, the Police Department, the Department of Public Welfare, the Department of Commercial Registration, the Department of Internal Trade, the Office of the Board of Investment and of the Office of the National Economic and Social Development Board, respectively, as members; and a representative of the Department of Labour as member and secretary of the Committee (clause 19).

(15) The Committee shall have the duty to make decisions, give advice to or be consulted by the Minister in the following matters:

- (i) Issuance of Royal Decrees under (2);
- (ii) Issuance of Ministerial Regulations under this Announcement;
- (iii) Examination of appeal against the order under (10) (clause 20).

(16) Any alien who engages in any work without permit under (5) or (18) shall be liable to a fine not exceeding 1,000 baht (clause 26).

(17) Any alien who engages in any work without permit or in violation of the conditions stipulated in the permit under (3) or violates (9) shall be liable to imprisonment not exceeding three months or to a fine not exceeding 5,000 baht or to both (clause 29).

(18) An alien who has had residence in the Kingdom under the law on immigration, has engaged in any work before 13 March B.E. 2516 (1973) and wishes to carry on that work shall apply for a permit from the Director-General by 11 June B.E. 2516 (1973). Upon receipt of the application, the Director-General shall issue the permit without delay.

An alien who has been granted permission to stay temporarily in the Kingdom under the law on immigration and has engaged in any work before 13 March B.E. 2516 (1973) may continue to engage in such work as long as he has been granted permission to stay in the Kingdom; if the period granted is more than 90 days from 13 March B.E. 2516 (1973) and such alien still wishes to carry on such work, he shall apply for a permit under (3) (clause 34).

(19) A person who has employed aliens in his business before 13 March B.E. 2516 (1973) shall submit a statement to the Registrar by 27 April B.E. 2516 (1973) concerning aliens so employed (clause 35).

TRINIDAD AND TOBAGO

NOTE¹

I. Legislation

1. INDUSTRIAL RELATIONS ACT, 1972

(Summary)

Assented to on 6 June 1972

Under its section 1 (2) this act shall have effect notwithstanding sections 1 and 2 of the Constitution.²

The act consists of 88 articles and is divided into a preliminary part and six parts dealing, *inter alia*, with the industrial court, the registration, recognition and certification board, the certification of recognition, the collective agreements and the disputes procedure.

Article 4 (1) establishes an Industrial Court which shall be a superior court of record and shall have, in addition to the jurisdiction and powers conferred by this act, all the powers inherent in such a court.

As stated in article 7 (1), the Court, in addition to the powers inherent in it as a superior court of record, shall have jurisdiction:

- (a) To hear and determine trade disputes;
- (b) To register collective agreements and to hear and determine matters relating to the registration of such agreements;
- (c) To enjoin a trade union and other organization or workers or other persons or an employer from taking or continuing industrial action;

¹ Note furnished by the Government of Trinidad and Tobago.

² See *Yearbook on Human Rights for 1962*, pp. 294 and 295.

(d) To hear and determine proceedings for industrial relations offences under this Act; and

(e) To hear and determine any other matter brought before it, pursuant to the provisions of this Act.

The Court shall have the same power to punish contempts of the Court as is possessed by the High Court of Justice.

2. INDUSTRIAL RELATIONS (AMENDMENT) ACT, 1972

(Extract)

Assented to on 8 January 1973

Deemed to have come into operation on 31 July 1972

The Industrial Relations Act, 1972 is amended as follows:

(a) In section 34 (3):

(i) By substituting for paragraphs (b) and (c) thereof the following:

“(b) (i) The particular worker has become a member of the union after having paid a reasonable sum by way of entrance fee and has actually paid reasonable sums by way of contributions for a continuous period of eight weeks immediately before the application was made or deemed to have been made; or

(ii) The particular worker has actually paid reasonable sums by way of contributions for a continuous period of not less than two years immediately before the application was made or deemed to have been made;”

II. Judicial decisions

In connexion with civil appeal No. 2 of 1971, the principle of the recognition and protection of human rights and fundamental freedoms was considered in the matter of the application of Rex La Salle. To date the appellant in this matter has not taken steps to prosecute his appeal in the Privy Council.

In the matter of the Constitution and in the matter of the application of Georges Weekes (action No. 308/72), in which the applicant alleged sections 1, 2, 3, 4, 5 and 7 of the Constitution

had been or were likely to be contravened in relation to him, the Supreme Court of Judicature held that there was no infringement. The applicant lodged an appeal which to date has not been prosecuted.

In the matter of the Constitution of Trinidad and Tobago in the matter of the application of Ramnarine Seeram Maharaj—the applicant moved the Court for an order declaring the Cane Farmers' Incorporated and Cess Act, 1965 *ultra vires* the Constitution of Trinidad and Tobago

null and void and of no effect, on the ground that it deprived him of the right to the enjoyment of his property and his freedom to contract freely.

The court held *inter alia* that freedom of contract is not a right protected by the Constitution and that the applicant's right to the enjoyment of property was not infringed, for in

this latter case the Cane Farmers' Incorporated Cess Ordinance, 1961 had been reproduced in the act within the meaning of section 3(2) (b) of the Constitution—virtually the whole of the act is exempted from the protective restraint imposed by the Constitution upon the abrogation, abridgement or infringement of the fundamental rights of the citizen.

TUNISIA

1. Decree No. 72-259 of 31 August 1972, publishing the Treaty of Friendship between Tunisia and Iran ¹

(Extract)

Article IV of the Treaty of Friendship reads as follows: "The High Contracting Parties undertake to settle any dispute which may arise between them through the normal diplomatic channel or by any other peaceful means, in accordance with the principles laid down by the Charter of the United Nations."

2. Decree No. 72-260 of 31 August 1972, publishing the Cultural Agreement between the Government of the Republic of Tunisia and the Imperial Government of Iran ²

(Extract)

Article I of the Agreement reads as follows: "The Contracting Parties undertake to protect and develop cultural co-operation between the two countries with a view to contributing to a better knowledge of their cultures, their respective civilizations and their intellectual activities."

¹ *Journal officiel de la République tunisienne*, No. 16, 5 September 1972.

² *Ibid.*

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE ¹

I

As a result of the further development of all branches of the national economy, considerable progress was made in 1972 in raising the people's level of living. The data quoted below from the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR show that the vital economic, social and cultural rights of the broad masses of the population of the Ukraine are being safeguarded.

The national income—the foundation on which the development of the economy and the expansion of the material well-being of the people rest—rose during 1972 by more than 1.6 thousand million roubles.

In accordance with the Directives of the Twenty-fourth Congress of the Communist Party of the Soviet Union, the implementation of measures to raise the level of living of the people continued. In 1971 and 1972 about 7 million persons received increases in wages, pensions and allowances. . . .

The average annual number of manual and non-manual workers in the national economy was 17.2 million and increased during the year by 500,000, or 2.7 per cent. The average annual number of collective farm workers engaged in the communal economy of collective farms was 5.3 million. In the various branches of material production the number of manual and non-manual workers, as also of collective farm workers, increased by 1.3 per cent. The number of workers in non-productive branches rose by 4 per cent.

As in previous years, there was full employment in the Republic. In certain sectors of the economy and in certain districts there was a shortage of manpower.

On the basis of the growth of the economy the further improvement of the material well-being and raising of the cultural level of the people continued. In 1972 the pay of doctors, teachers and child-care personnel in pre-school establishments, teachers in secondary specialized educational establishments and vocational-technical schools and certain other workers in educational establishments was raised, as was the pay of instructors in higher educational establishments who do not have a higher degree. Wage rate for tractor operators/repair men employed by agricultural and forestry enterprises were raised. The night differential in light industry and in the food and tyre industries was increased.

The average monthly cash wage for manual and non-manual workers was 122 roubles as compared with 119 roubles in 1971, representing an increase of 2.9 per cent. With the addition of payments and benefits from social consumption funds, the pay package thus amounted to 166 roubles as compared with 161 roubles in 1971. The wages of collective farm workers rose by 3.7 per cent.

Education grants were substantially increased: in the case of students at higher educational establishments they rose by an average of 25 per cent and in the case of students at secondary specialized educational establishments and at technical schools within the system of vocational-technical education they rose by 50 per cent. The standard benefits for food and medication costs in hospitals were increased.

Payments and benefits received by the population from social consumption funds totalled about 14 thousand million roubles, an increase of 7.5 per cent over the previous year. These funds financed free education, medical care, pensions, allowances and other forms of social security and social insurance, paid leave, students' grants, free and reduced-rate passes to sanatoria and rest homes, the upkeep of kindergartens and crèches and other types of social and cultural services.

Individual deposits in savings banks increased by 1.7 thousand million roubles during the year.

State and co-operative retail trade turnover amounted to 30.9 thousand million roubles, an increase of 6.9 per cent in comparable prices. . .

The volume of household services to the population was 11 per cent higher—19 per cent in rural areas—than in 1971. The number of enterprises providing household services increased by more than 1,500 during the year. However, the plan established for the provision of household services to the population was not fulfilled; there are shortcomings in the quality of the services provided to the population and delays in filling individual orders.

A large volume of housing and social and cultural construction was completed.

According to preliminary data, 378,000 well-equipped apartments with a total floor space of approximately 19 million square metres, financed by the State, by collective farms and by individuals, were brought into occupancy. During the past year, 1.7 million citizens improved their housing.

In towns and rural localities of the Republic, general education schools with places for 258,000 pupils, pre-school establishments with places for 64,000 children and a large number of hospitals, polyclinics and other cultural and social facilities were brought into operation. However, plans for

¹ Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

the construction of dwellings and social and cultural facilities in the Republic as a whole and by a number of ministries and regional executive committees were underfulfilled.

Steps were taken to provide improved amenities in towns and rural localities. The number of towns and urban-type settlements having water supply systems increased during the year by eight and the number having sewage systems increased by five. Eighteen towns and urban-type settlements and 551 rural population centres were supplied with gas. In the past year more than 700,000 apartments were supplied with gas, including approximately 300,000 in rural areas. Trolley-bus services were instituted in the towns of Lutsk and Lisichansk.

Further progress was achieved in the development of public education and culture. Approximately 15 million persons received education of one type or another.

A total of 8.4 million persons attended general education schools of all types. Some 841,000 persons graduated from eight-year schools and 565,000 graduated from general secondary schools, including 182,000 boys and girls receiving secondary education at evening (shift) general education schools and vocational-technical schools.

Enrolment in extended-day schools and groups exceeded 1.5 million and was thus 7.2 per cent higher than in 1971.

Attendance at permanent pre-school establishments totalled approximately 1.8 million, or 7 per cent more than in 1971. In addition, more than 1 million children attended seasonal children's establishments.

Attendance at higher educational establishments totalled 803,000, including 400,000 in day courses, or 14,000 more than in the previous year. Attendance at secondary specialized educational establishments totalled 792,000, including 492,000 in day courses, or 2,000 more than in the previous school year.

In the current school year 158,000 persons have been admitted to higher educational establishments, including 89,000 in day courses, and 240,000 have been admitted to secondary specialized educational establishments, including 147,000 in day courses.

Some 351,000 specialists, including 127,000 with higher education and 224,000 with secondary specialized education, were absorbed into the national economy.

By the end of 1972 more than 73 per cent of the persons employed in the national economy in the Republic had higher or secondary (complete and incomplete) education.

Training and advanced training of manual and non-manual workers and collective farm workers was carried out on a large scale. During the year, 292,000 young skilled workers graduated from vocational-technical schools and 327,000 persons were admitted to such schools, including 39,000

to those providing secondary education in addition to vocational training. Some 4.5 million people were trained for new occupations or improved their skills directly at enterprises, at institutions and organizations and at collective farms and receiving individual or group instruction or taking courses.

At the end of the year there were approximately 29,000 cinema installations and cinema attendance for the year exceeded 850 million.

Medical services to the population improved. During the year the number of doctors in all specialities rose by 4,000, and the number of hospital beds by 13,000. The number of beds in sanatoria, rest homes, convalescent homes and tourist centres increased.

More than 4.5 million people were treated or rested at sanatoria and health resorts, on tours and at tourist centres. More than 4 million children and adolescents spent the summer at pioneer and school camps, children's sanatoria and holiday and tourist centres or went to children's establishments in rural areas. More than 16 million people participated in excursions.

The population of the Republic on 1 January 1973 was 48.2 million. (From the newspaper *Pravda Ukrainy*, 1 February 1973.)

II

In 1972, a number of standard-setting laws relating to human rights were adopted in the Ukrainian SSR.

In accordance with article 101 of the Constitution of the Ukrainian SSR, citizens of the Ukrainian SSR have the right to education. The following decisions concerning this subject were adopted by the Government of the Ukrainian SSR:

(a) Decision of the Central Committee of the Communist Party of the Ukraine and of the Council of Ministers of the Ukrainian SSR dated 7 July 1972 entitled "Completion of the transition to universal secondary education for young people and the further development of the general education school in the Ukrainian SSR" (*Collection of Orders of the Ukrainian SSR*, 1972, No. 7, p. 56);

(b) Decision of the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR dated 24 July 1972 entitled "Further improvement of the system of vocational-technical education in the Ukrainian SSR" (*Collection of Orders of the Ukrainian SSR*, 1972, No. 8, p. 72);

(c) Decision of the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR dated 8 August 1972 entitled "Measures for the further improvement of higher education in the Ukrainian SSR" (*Collection of Orders of the Ukrainian SSR*, 1972, No. 8, p. 75).

UNION OF SOVIET SOCIALIST REPUBLICS

NOTE ¹

The Supreme Soviet of the Union of Soviet Socialist Republics enacted a number of laws and decrees on matters relating to human rights in 1972. These laws, or extracts from them, are reproduced below.

1. Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, of 25 December 1972, concerning the abolition of taxes on the pay, up to 70 roubles per month, of manual and non-manual workers and the reduction of the rates of taxes on pay of up to 90 roubles per month

The Presidium of the Supreme Soviet of the USSR decrees:

1. In accordance with the directives laid down at the Twenty-Fourth Congress of the Communist Party of the Soviet Union for the five-year plan for the national economic development of the USSR for the period 1971-1975:

(a) In respect of manual and non-manual workers whose pay at their principal place of employment ranges up to 70 roubles inclusive, the income tax and the tax on bachelors and on those citizens of the USSR who live alone or have small families shall be abolished;

(b) In respect of manual and non-manual workers whose pay at their principal place of employment ranges from 71 to 90 roubles per month inclusive, the rates of the income tax and the tax on bachelors and on those citizens of

the USSR who live alone or who have small families shall be reduced by an average of 35.5 per cent.

2. The present Decree shall also apply to servicemen, students and other citizens who are liable to income tax on the same basis as manual and non-manual workers.

3. The Council of Ministers of the USSR shall be directed to confirm the reduced rates of tax on wages and salaries in accordance with the present Decree.

4. The present Decree shall be implemented in successive areas of the USSR at the same time as the introduction in the area concerned of the minimum pay of 70 roubles per month for manual and non-manual workers in the production sectors of the national economy.

2. Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, of 17 December 1972, instituting the Order of the Friendship of Peoples

The Presidium of the Supreme Soviet of the USSR decrees:

1. In commemoration of the fiftieth anniversary of the establishment of the Union of Soviet Socialist Republics an order of "the friendship of peoples" shall be instituted, to be awarded for great services to the cause of the strengthening of friendship and fraternal co-operation between the socialist nations and nationalities, or for a significant contribution to the economic, socio-political or cultural development of the Union of Soviet Socialist Republics and the Union Republics.

2. A Statute of the Order of the Friendship of Peoples shall be established.

3. A description of the Order of the Friendship of Peoples shall be established.

3. Statute of the Order of the Friendship of Peoples established by Decree of the Presidium of the Supreme Soviet of the USSR on 17 December 1972

1. In commemoration of the fiftieth anniversary of the establishment of the Union of Soviet

Socialist Republics the Order of the Friendship of Peoples has been instituted, to be awarded for great services to the cause of the strengthening of friendship and fraternal co-operation between the socialist nations and nationalities, or for a significant contribution to the economic, socio-political

¹ Note furnished by the Government of the Union of Soviet Socialist Republics.

or cultural development of the Union of Soviet Socialist Republics and the Union Republics.

2. The Order of the Friendship of Peoples shall be awarded to:

Citizens of the USSR;

Enterprises, establishments, organizations, military units or formations, Union or Autonomous Republics, Territories, regions, autonomous regions, national areas or cities.

The Order of the Friendship of Peoples may also be awarded to persons who are not citizens of the USSR.

3. The Order of the Friendship of Peoples shall be awarded for:

A great contribution to the cause of the strengthening of friendship and fraternal co-operation between the socialist nations and nationalities;

Great labour achievements in the develop-

ment of the national economy of the USSR and the Union Republics;

Services to national State construction in the USSR;

Outstandingly successful work in promoting the development of science, or the mutual understanding and enrichment of the cultures of the socialist nations and nationalities, active participation in educating the Soviet people in the spirit of proletarian internationalism, dedication and loyalty to the Soviet homeland;

Outstanding service in the strengthening of the defensive capacity of the USSR;

Great service in the development of fraternal friendship and co-operation between the peoples of the socialist countries, or the strengthening of peace and friendly relations between peoples.

4. Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, of 3 February 1972, amending article 22 of the Basic Principles of the Criminal Procedure of the USSR and the Union Republics

The Presidium of the Supreme Soviet of the USSR decrees:

1. Article 22 of the Basic Principles of the Criminal Procedure of the USSR and the Union Republics (Records of the Supreme Soviet of the USSR, 1959, No. 1, item 15; 1970, No. 36, item 362) shall be amended so that the second and third paragraphs read as follows:

Participation of counsel for the defence in the preliminary investigation and in the court examination shall be obligatory in cases involving minors, mute, deaf or blind persons or other persons who, on account of some physical or mental deficiency, cannot themselves exercise their right to be defended. In such cases a counsel for the defence will be called into the case from the moment the accused is informed of the charge brought against him.

In cases involving persons who do not speak the language in which court proceedings are held and persons accused of a crime for which the punishment may be the death penalty, participation of a counsel for the defence shall be obligatory from the moment the accused is notified of the closing of the preliminary investigation and is given access to the records of all the proceedings relating to the case for his perusal.

2. The Presidiums of the Supreme Soviets of the Union Republics are directed to amend the Codes of Criminal Procedure of the Union Republics in accordance with this Decree.

5. Resolution of the Supreme Soviet of the Union of Soviet Socialist Republics on measures for the further improvement of nature conservation and the rational utilization of natural resources

(Extract)

The conservation of nature and the rational utilization of natural resources under conditions of the rapid development of industry, transport and agriculture, the advance of the scientific and technological revolution and the growth of the diverse material and cultural requirements of the Soviet people is becoming one of the most important tasks facing the State; the successful implementation of the national economic problems and the prosperity of present and future generations depend on its solution. Such a solution in a socialist society is indissolubly linked with the protection of the people's health and with the

guaranteeing to Soviet citizens of the necessary conditions for fruitful labour and leisure.

In the Soviet Union a stable basis for organizing the most correct utilization of natural wealth and the effective conservation of nature is provided by socialist State ownership of the land, underground resources, waters and forests. These conditions ensure the planned management and rapid development of the economy.

The rational utilization, conservation and regeneration of natural resources and a careful regard for nature are constituent elements in the programme for the construction of communism in

the USSR. The Communist Party and the Soviet State show untiring concern for the conservation of nature and the rational utilization of its riches.

The Supreme Soviet of the USSR stresses that the achievements of the scientific and technological revolution and our strong industrial base, under socialist management, permit the judicious use of all natural riches and a successful solution of the historically vital task of neutralizing the side effects of economic activity that are harmful to nature and mankind.

The integrated utilization of natural resources, the introduction of technological processes which prevent the discharge of harmful waste products, more extensive use of biological means of water purification and control of agricultural pests, forestry plantation schemes and land improvement, together with other measures, can ensure effective protection of the environment. Accordingly, the further programme for the development of the economy of the Soviet Union as a whole and of individual branches of the economy in particular must be carried out on the basis of

thorough, integrated research accompanied by scientific forecasting of possible consequences and an obligatory system of measures to prevent harmful effects on the natural environment. It is our duty to preserve and increase all the wealth and beauty of nature for the benefit of the generations who will be living in a communist society.

The Supreme Soviet of the Union of Soviet Socialist Republics decrees:

1. That it shall be one of the most important State tasks to work tirelessly for nature conservation and for improved utilization of natural resources, strict observance of the law pertaining to the preservation of land underground resources, forests and waters, flora and fauna, and the atmospheric air, bearing in mind that scientific and technological progress must be accompanied by a careful regard for nature and its resources and must contribute to the creation of the most favourable conditions for the life, health, work and leisure of the working people.

...

6. Law of the Union of Soviet Socialist Republics, of 20 September 1972, concerning the status of deputies to Soviets of Working People's Deputies in the USSR

The Constitution of the USSR delegates the power of the working people of our country to the Soviets of Working People's Deputies, which constitute the political base of the USSR. Deputies are authorized by the people to participate in the administration of State power by the Soviets and to express the people's will and defend the people's interests.

To be a deputy is a great honour and a great responsibility. The people entrust deputies with important State and social duties. It is the duty of a deputy to devote all his energies and knowledge to the construction of communism and to promote in every possible way the further strengthening of the union between the working class and the collective-farm peasants, friendship and fraternity between the peoples of the USSR, the consolidation of the socio-political unity of Soviet society, the steady improvement of the workers' standards of living and culture and the strengthening of the might of the socialist homeland. A deputy has the task of translating into action the election platform of the inviolable coalition of Communists and non-party members, which embodies the policy of the Communist Party and the interests of the people.

In all activities a deputy must justify the trust of the electorate and always be equal to the demands made on him by the people.

I. General provisions

Article 1. Deputies as the fully authorized representatives of the people to Soviets

Deputies are the fully authorized representatives of the people to the Soviets of Working People's Deputies, which are the organs of State power.

In accordance with the Constitution of the USSR, deputies to the Supreme Soviets of the USSR, the Supreme Soviets of Union Republics, the Supreme Soviets of Autonomous Republics, territorial or regional Soviets of Working People's Deputies, Soviets of Working People's Deputies of autonomous regions or national areas and district, city, urban-district, community and village Soviets of Working People's Deputies receive their authority through being elected to the Soviet on the basis of universal, equal and direct suffrage by secret ballot.

Article 2. Participation of deputies in the administration of State power by the Soviets

The administration of State power by the Soviets shall be based on the active participation of every deputy in every aspect of the work of the Soviets; deputies shall take decisions in matters relating to State, economic and socio-cultural construction, arrange for the implementation of decisions of the Soviets and participate in supervising the work of State organs, enterprises, institutions and organizations and in the exercise of other powers of the Soviets.

Deputies shall be guided in their work by general State interests; they shall take account of the requests of the people in their electoral districts and also of the economic, cultural, national and other characteristics of the Union Republic, Autonomous Republic, autonomous region or national area in which they were elected or in whose territory their election district is situated.

Deputies shall do their work on the basis of the legislation of the Union of Soviet Socialist Republics and the Union Republics and Autonomous Republics and also of the decisions of the relevant Soviets of Working People's Deputies.

Article 3. Legislation concerning the competence of deputies

The competence of deputies to Soviets of Working People's Deputies in the USSR is defined by this law and also:

By the legislation of the USSR in the case of deputies to the Soviet of the Union and the Soviet of Nationalities of the Supreme Soviet of the USSR;

By the legislation of the USSR and the Union Republics in the case of deputies to the Supreme Soviets of Union Republics;

By the legislation of the USSR, Union Republics and Autonomous Republics in the case of deputies to the Supreme Soviets of Autonomous Republics;

By the legislation of the USSR and Union Republics, and in Autonomous Republics also by the legislation of the Autonomous Republics, in the case of deputies to Soviets of Working People's Deputies in territories, regions, autonomous regions, national areas, districts, cities, urban districts, communities and villages.

Article 4. Term of service of deputies

A deputy's term of service shall commence on the day of his election to the Soviet of Working People's Deputies. A credentials committee elected by the Soviet shall verify deputies' credentials. The Soviet shall, according to the report of the credentials committee, determine whether to recognize the credentials or to declare void the election of individual deputies.

The term of service of deputies shall end on the day of the election of a new Soviet.

Article 5. Combination of work as a deputy with work in the production and service sectors

Deputies shall carry out their mandate without interrupting their production or service activities. Work as deputy shall be performed without remuneration.

Deputies shall actively participate in productive and socio-political life and shall set an example in complying with Soviet laws and observing labour discipline and the rules of the socialist community.

Article 6. Contact between the deputy and the voters and his accountability and responsibility to them

Deputies shall keep in contact with the voters, working people's collectives and social organizations that nominated them as candidates for election as deputies, and also with enterprises, institutions, organizations and State organs in the territory of their election districts.

Deputies shall be responsible to the voters and accountable to them.

Deputies who do not justify the trust placed in them by the voters or who commit acts unworthy of the high calling of deputy may at any time be recalled by a decision of the majority of the voters in accordance with the procedure prescribed by law.

Article 7. Carrying out the mandate of the voters

Deputies shall participate in the organizing of the people to carry out the mandate of the voters and shall work towards the fulfilment of that mandate by supervising its implementation by enterprises, institutions and organizations.

The appropriate Soviet shall consider the mandates approved at meetings of voters, confirm a plan of measures for fulfilling the mandates, take them into account in drawing up plans for economic and socio-cultural construction and in drawing up the budget, arrange for the fulfilment of the voters' mandate and supervise its implementation.

Article 8. The relations of a deputy with the Soviet and its organs

A deputy, in his capacity as a member of a collegial representative organ of State power, shall be required to participate actively in the work of the Soviet and those of its standing committees and other organs to which he has been elected and to carry out the instructions of the Soviet and its organs.

A Soviet may hear reports by deputies on their fulfilment of their obligations and of the decisions and instructions of the Soviet and its organs.

The Presidiums of the Supreme Soviets and the Executive Committees of the Soviets shall give the deputies of the respective Soviets any help they may need in their work, inform the deputies of the work of the Soviet and its organs, the progress of the implementation of plans for economic and socio-cultural construction, the fulfilment of the voter's mandate, and the measures taken as a result of criticism and proposals put forward by deputies and shall promote the study by deputies of Soviet legislation and of the past work of the Soviets.

Article 9. Ensuring by the State of the conditions in which deputies can carry out their work

The Soviet State guarantees that every deputy shall enjoy the necessary conditions for the unhindered and effective exercise of his rights and fulfilment of his obligations.

Any persons who hinder a deputy in carrying out his work or infringe on the honour and dignity of the deputy as a representative of State power shall be held responsible in accordance with the law.

Article 10. Termination of a deputy's authority before the expiry of his term of service

A deputy's authority shall be terminated before his term of service has expired if he is recalled by the voters.

A deputy's authority may be terminated before his term of service has expired by a decision of the Soviet taken because of a personal declaration by the deputy that he wishes to resign his authority as a deputy owing to circumstances which prevent him from exercising that authority, or because of a court judgement of "guilty" which has been pronounced in respect of a person who is a deputy and which has become final.

II. The work of deputies in Soviets

Article 11. Participation of a deputy in sessions of the Soviet

At sessions of a Soviet the deputies shall collectively discuss and take decisions on fundamental questions falling within the competence of the Soviet.

A deputy must be present at every session of the Soviet and participate actively in its work.

The Presidium of the Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of a Union Republic, the Presidium of the Supreme Soviet of an Autonomous Republic or the executive committee of a Soviet shall give deputies advance notice of the time and place of sessions of the Soviet and the matters that have been submitted to it for consideration and shall make available to them all materials needed in connexion with those matters.

Should a deputy be unable to attend a session, he shall so inform the Presidium of the Supreme Soviet or the executive committee of the Soviet.

Article 12. Rights of a deputy at a session of a Soviet

A deputy may vote on any matters considered by the Soviet at its session and shall have the right to elect and be elected to organs of the Soviet.

A deputy shall be entitled to submit questions for consideration by the Soviet, to make proposals regarding the agenda of the session, the substance of matters under consideration and the manner in which they are considered, the personal composition of organs established by the Soviet and the candidatures of persons who are elected, appointed or confirmed by the Soviet, to make requests, participate in debates, ask questions, submit draft decisions and amendments to them, explain the grounds for his proposals, give explanations of vote and furnish information.

A deputy shall be entitled to introduce proposals requesting a Soviet to hear a report or communication from any organ or person accountable or responsible to the Soviet.

A deputy may submit his proposals and comments in writing on a matter under discussion at a session to the presiding officer.

Article 13. The right of deputies to Supreme Soviets to propose legislative instruments

Deputies to the Supreme Soviet of the USSR, deputies to the Supreme Soviets of the Union Republics and deputies to the Supreme Soviets of the Autonomous Republics shall be entitled to propose legislative instruments in the Supreme Soviet to which they have been elected.

Article 14. Inquiries by deputies

Consideration by Soviets of inquiries from deputies is an effective means of supervising the work of organs of State administration and officials.

Deputies to the Supreme Soviet of the USSR, deputies to the Supreme Soviets of the Union Republics and deputies to the Supreme Soviets of the Autonomous Republics shall be entitled to address inquiries respectively to the Government of the USSR, the Government of the Union Republic, the Governments of the Autonomous Republic, or to ministers and administrators of any organs of State management established by the Supreme Soviet of the USSR or of the Union or Autonomous Republic.

Deputies to the Supreme Soviet of a Union Republic and deputies to the Supreme Soviet of an Autonomous Republic shall also be entitled to address inquiries on matters relating to the administration of the Republic to the directors of enterprises, institutions and organizations subordinate to the Government of the USSR which are situated in the territory of the Republic.

Deputies to territorial or regional Soviets, Soviets of autonomous regions or national areas and district, city, urban-district, community or village Soviets shall be entitled to address inquiries concerning matters within the competence of the Soviet to the executive committee and the directors of its sections or offices and also to the directors of enterprises, institutions and organizations situated in the territory of the Soviet.

Inquiries may be submitted by one deputy or by a group of deputies, in writing or orally. Inquiries submitted in writing shall be announced at sessions of the Soviet. The State organ or official to whom the inquiry is addressed must reply to the inquiry within the time and in the manner prescribed by the laws of the USSR, the Union Republic or the Autonomous Republic.

Article 15. Procedures for considering proposals and comments made by deputies at sessions of Soviets

Proposals and comments made by deputies at sessions of Soviets or submitted in writing to the presiding officer of the session shall be considered by the Soviet or referred by it to the appropriate State or social organs and officials for consideration.

State and social organs and officials to whom deputies' proposals and comments made at sessions of Soviets are referred must consider the proposals and comments within a fixed period of time and communicate the results of their consideration directly to the deputies and also to the Presidium of the Supreme Soviet, the Council of Ministers or the executive committee of the Soviet, as appropriate.

Responsibility for ensuring consideration and implementation of proposals and comments made by deputies shall rest with the Presidium of the Supreme Soviet, the Council of Ministers or the executive committee of the Soviet, as appropriate.

Article 16. Participation by deputies in the work of organs of the Soviet

Deputies elected to the Presidium of the Supreme Soviet, the executive committee, the standing committees or other organs of the

Soviet shall be entitled to submit questions for consideration by the above-mentioned organs and shall participate in preparing questions for consideration, in discussing them and taking decisions on them and also in organizing and supervising the implementation of decisions taken by the Soviet and its organs.

Article 17. Inspections by deputies of the work of State organs, institutions, establishments and organizations

On instructions from the Soviet or its organs deputies may inspect the work of State organs, enterprises, institutions and organizations in connexion with matters within the competence of the Soviet and shall have access to any documents required. Deputies shall inform the appropriate State organs, enterprises, institutions and organizations of the outcome of the inspection and shall, where necessary, submit proposals on how to improve the work, to eliminate any defects which have appeared, and to call to account persons responsible for violating State discipline and legality.

Deputies shall be entitled to raise in the Soviet and its organs questions relating to the need for inspecting the work of State organs, enterprises, institutions and organizations.

III. Responsibilities of deputies in their electoral districts

Article 18. Work of the deputies among the people in their electoral districts

Active work by deputies in their electoral districts is a necessary pre-condition for the effective functioning of the Soviet and for strengthening its links with the people.

Constantly maintaining contact with the voters, deputies shall inform them of the work of the Soviet, the implementation of the plans of economic and socio-cultural construction, the Soviet's decisions and the mandate of the voters; they shall participate in organizing the application of laws and decisions adopted by the Soviet and its organs; they shall acquaint themselves with public opinion; they shall inform the Soviet and its organs of, and take steps to meet, the needs and requirements of the people; and they shall submit for consideration by the appropriate organs and officials proposals on matters arising in connexion with their duties as deputies.

In their work in the electoral districts, deputies shall rely on the assistance and support of the staff of the Soviet, social organizations, bodies organizing the activities of the people, and collectives of enterprises, institutions and organizations.

Article 19. Consideration by deputies of voters' proposals, petitions and complaints

Deputies shall consider proposals, petitions and complaints submitted to them, take measures to deal with them correctly and promptly, receive citizens, investigate the reasons giving rise to the

complaints and make their own proposals in the Soviet, other State organs, enterprises, institutions or organizations.

Deputies shall be entitled to supervise the consideration of proposals, petitions and complaints submitted by them in State organs, enterprises, institutions or organizations situated in the territory of the Soviet and to participate personally in the consideration of the above-mentioned proposals, petitions and complaints.

Article 20. Reports by deputies to the voters

Deputies to the Supreme Soviet of the USSR, Supreme Soviets of the Union Republics and Supreme Soviets of the Autonomous Republics shall report to the voters on their work and on the work of the Soviet periodically, but not less than once a year, and deputies to territorial and regional Soviets, Soviets of autonomous regions or national areas and district, city, urban-district, community and village Soviets shall make such reports not less than twice a year.

Deputies may make reports at any time at the request of groups of workers and social organizations who supported their candidature for election as deputy or at the request of meetings of voters convened for their places of residence.

Deputies shall inform the Soviet of the reports they have made and the proposals made by the voters.

Article 21. Assistance to deputies in reporting to and meeting with the voters

Deputies shall be guaranteed the necessary conditions for reporting to and meeting with the voters in their electoral districts. To that end, the executive committee of the Soviet concerned and the administration and social organizations of enterprises, institutions and organizations shall provide premises and inform voters of the time and place of meetings at which the deputies are to make their reports and meet with or receive the voters and shall also take other steps for assistance to the deputies in their work in their electoral districts.

At the request of a deputy, any reference or informational material he may need for making his report to and meeting with the voters shall be provided by the Presidium of the Supreme Soviet or the executive committee of the Soviet of which he is a deputy, as appropriate, and also by the executive committees of the Soviets in the territory of his electoral district.

Article 22. Participation by deputies in the work of sessions of subordinate Soviets and meetings of working people

Deputies shall, within the territory of the Soviet to which they have been elected, be entitled to participate with a voice but no vote in the work of sessions of subordinate Soviets.

In their electoral districts deputies may participate in meeting of economic groups or collectives of working people or citizens convened for their places of residence.

Article 23. Obligation of State and social organs and officials to consider requests from deputies

Deputies shall be entitled, in matters related to their work as deputies, to address requests to State and social organs, enterprises, institutions and organizations and to officials, and the latter must consider the matter and give the deputies an answer within the time-limit prescribed by law.

Proposals from deputies in matters of the highest importance shall be subject to consideration by executive committees of Soviets, boards of ministries or departments, Councils of Ministers or Presidiums of Supreme Soviets, as appropriate. Deputies may participate in the discussion in such bodies of the matter they have raised. Deputies shall be given advance notice of the date when the matter will be discussed.

Article 24. The right of deputies to immediate access to officials

In connexion with matters related to their work as deputies, deputies shall be entitled to be received without delay by directors or other officials of State organs, enterprises, institutions and organizations subordinate or accountable to the Soviet.

Article 25. The right of deputies to call for the removal of violations of law

Deputies must be watchful to safeguard the observance of Soviet laws and participate actively in the struggle against violations of law and in the inculcation in working people of a high awareness of their obligation to fulfil their duties as citizens and unswervingly observe socialist legality.

On discovering any violation of the rights or statutorily protected interests of citizens or any other violation of legality, deputies shall, in their capacity as representatives of State authority, be entitled to call for the removal of such violations and, where necessary, to call on the appropriate organs and officials to halt such violations.

Officials of State and social organs, the administration of enterprises, institutions and organizations and also members of the militia to whom deputies have addressed such requests must immediately take steps to remove the violation and, where necessary, to initiate proceedings against the guilty persons.

IV. Fundamental guarantees for the work of deputies

Article 26. Assistance to deputies in carrying out their work

State organs, enterprises, institutions, organizations and their officials must assist deputies in carrying out their work. In cases where officials do not fulfil their obligations by assisting deputies to carry out their work, the Soviet or its organs may, in accordance with the established

procedure, take disciplinary action against such officials or make representations to the appropriate organs for disciplinary action, up to and including dismissal, against such persons.

Article 27. Exemption of a deputy from his production or service obligations in order that he may carry out his work as a deputy

A deputy may, during a session of the Soviet, and also on other occasions prescribed by law, in order to enable him to carry out his work as a deputy, be exempted from his production or service obligations and continue to receive his average earnings (wages) at his place of permanent employment.

Article 28. Provision of publications of the Soviet to a deputy. Provision of legal assistance to a deputy

The Presidium of the Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of a Union Republic, the Presidium of the Supreme Soviet of an Autonomous Republic or the executive committee of a Soviet, as appropriate, shall provide deputies of the Soviet with the official publications and informational material of the Soviet.

Executive committees of Soviets, administrations of enterprises and organizations, and legal institutions shall provide a deputy with assistance in legal matters which arise in the course of his work as a deputy.

Article 29. Obligation of directors of enterprises, institutions and organizations to provide a deputy with required information

Directors of enterprises, institutions or organizations situated in a deputy's electoral district shall, at his request, provide him with reference material and other information required by him to do his work as a deputy.

Article 30. Reimbursement of expenses incurred by a deputy in carrying out his work

In such cases, and according to such procedures, as are provided for in the legislation, a deputy shall be reimbursed for expenses incurred in carrying out his mandate.

Article 31. Right of deputies to free travel

A deputy to the Supreme Soviet of the USSR shall be entitled within the territory of the Union of Soviet Socialist Republics, and a deputy to the Supreme Soviet of a Union Republic or a deputy to the Supreme Soviet of an Autonomous Republic shall be entitled within the territory of the Republic concerned, to free travel by all domestic rail, road, water and air routes and by all forms of urban passenger transport (with the exception of taxis).

A deputy to a territorial or regional Soviet, a Soviet of an autonomous region or national area, or a district, city, urban-district, community or village Soviet shall be entitled, within the territory

of the territory, region, area, district, city, community or village Soviet, to free travel by any road and water transport under the Republic's authority and by all forms of urban passenger transport (with the exception of taxis), and a deputy to a territorial or regional Soviet, a Soviet of an autonomous region or national area or a district Soviet shall also be entitled to free travel by rail transport.

The procedures and conditions for free travel by deputies to the Supreme Soviets of Union Republics or Autonomous Republics and local Soviets, and also the procedures for settling accounts with the transport organizations, shall be determined by the Council of Ministers of the USSR and the Councils of Ministers of the Union Republics.

Article 32. Protection of a deputy's right to work

A deputy may not be dismissed by the administration from his place of employment at an enterprise, institution or organization, not excluded from a collective farm, nor transferred as a disciplinary measure to less remunerative employment, without the prior consent of the Soviet, or, between sessions, without the prior consent of the executive committee of the Soviet or the Presidium of the Supreme Soviet concerned.

A deputy who is dismissed from his place of employment as a result of being chosen to an elective post in an organ of the Soviet shall, upon completing his term of elective service, be restored to his former post or, where the post has been filled, assigned to an equivalent post at the same, or if he consents, at a different, enterprise, institution or organization.

The period of time spent by a deputy on his elective duties in an organ of the Soviet shall be included in his work record at the post at which he worked before being chosen to an elective post in an organ of the Soviet.

Article 33. Immunity of deputies to Supreme Soviets

A deputy to the Supreme Soviet of the USSR or a deputy to the Supreme Soviet of a Union Republic may not be tried on criminal charges, arrested or subjected to judicially imposed administrative measures without the consent of the Supreme Soviet of the USSR or the Supreme Soviet of the Union Republic concerned, or, between sessions, without the consent of the Presidium of the Supreme Soviet.

A deputy to the Supreme Soviet of an Autonomous Republic may not, within the territory

of the Autonomous Republic, nor anywhere in the territory of the Union Republic in which the Autonomous Republic is situated, be tried on criminal charges, arrested or subjected to judicially imposed administrative measures without the consent of the Supreme Soviet of the Autonomous Republic, or, between sessions, without the consent of the Presidium of the Supreme Soviet of the Autonomous Republic.

Article 34. Immunity of deputies to local Soviets

A deputy to a territorial or regional Soviet, to a Soviet of an autonomous region or national area, or to a district, city, urban-district, community or village Soviet of Working People's Deputies may not within the territory of the Soviet be tried on criminal charges, arrested or subjected to judicially imposed administrative measures without the consent of the Soviet concerned, or, between sessions, without the consent of its executive committee.

A decision by a Soviet or its executive committee on the question referred to in the first paragraph of this article may be nullified by a higher Soviet or by its executive committee, the matter then being referred back to the subordinate Soviet for reconsideration. If the subordinate Soviet confirms its original decision, the substance of the matter may be settled by the regional or territorial Soviet of Working People's Deputies or the Presidium of the Supreme Soviet of an Autonomous Republic or Union Republic upon presentation of the matter by a public prosecutor of the region, territory or Republic.

Article 35. Deputy's identification cards and badges

A deputy shall have an identification card and a badge which he shall use during his term of service.

The form of the deputy's identification card and badge and the regulations relating to deputy's badges shall be approved:

By the Presidium of the Supreme Soviet of the USSR in the case of deputies to the Supreme Soviet of the USSR;

By the Presidiums of the Supreme Soviets of the appropriate Union Republics and Autonomous Republics in the case of deputies to the Supreme Soviets of Union Republics and Autonomous Republics and Deputies to local Soviets.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE ¹

A. Article 2 of the Universal Declaration

1. NORTHERN IRELAND: FUTURE ADMINISTRATIVE STRUCTURES

A paper for discussion on the future of Northern Ireland was published in October 1972. The paper reviewed the background, set out the proposals made up to that time by the Northern Ireland political parties and other interests (together with the wide range of theoretical options), established the basic facts—political, economic and security—which would have to be taken into account in moving towards a settlement, and stated the criteria which firm proposals for the future would have to meet. Exceptional measures were taken to see that the paper was as widely circulated and read as possible; full parliamentary debates were held in both Houses of Parliament; and the Secretary of State for Northern Ireland engaged in intensive discussions, both before and after the publication of the paper, with Northern Ireland political parties (which included the holding of a special round table conference at Darlington in September 1972) and with leaders of the churches in Northern Ireland, and other bodies and individuals in the province. Although these consultations did not produce any single agreed set of proposals for a constitutional settlement, they showed that there were important aspects of such a settlement that could be based upon the views and proposals of Northern Ireland parties and people.

2. EXTENSION OF RACE RELATIONS LEGISLATION

From 26 November, the employment provisions of the Race Relations Act 1968 which hitherto applied only to employers with more than ten workers were extended to all employers in Great Britain. This part of the Act makes it unlawful for an employer to discriminate against a person on grounds of colour, race or ethnic or national origins by refusing to employ him for work which is available and for which he is qualified. It is also unlawful to refuse him the same terms and conditions which are available to other employees with the same qualifications. In addition, an employer must give him the same opportunities for training and promotion that are given to others, and he must not dismiss someone on discriminatory grounds.

3. REPORT OF THE RACE RELATIONS BOARD

The annual report of the Race Relations Board, whose statutory function is to secure compliance with the Race Relations Act 1968, was published in June. The report recorded a continuing decline in the year ended March 1972 in the number of complaints registered under the Act which makes it unlawful to discriminate on grounds of colour, race or ethnic or national origins in the provision of goods, facilities or services and in advertising, employment and housing. In the year under review 917 cases were registered compared with 1,024 during the previous year. The Board disposed of 791 cases, and in 444 cases they formed the opinion that no discrimination had occurred, while in 151 cases they were of the opinion that it had. The remaining 196 complaints proved to be outside the scope of the Act, or were withdrawn by the complainant or terminated for a variety of reasons before any opinion had been formed. It was the Board's view that the year had demonstrated the increasing effectiveness of the Act in establishing the existence of unlawful discrimination, securing remedies and taking measures to prevent future discrimination. In addition, it considered that there were strong reasons for supposing that discrimination in services and places of public resort had greatly diminished, that discriminatory advertisements had virtually disappeared and that both of these circumstances could be attributed in a major part to the existence of the act. But although the Act was thought to have been beneficial in the "crucial fields" of employment and housing, it appeared that discrimination remained widespread, especially in promotion opportunities, in the white collar sector of employment and in private housing. The Board recommended that research should be carried out into the extent and nature of discrimination in all key areas but especially in housing and employment.

4. REPORT OF THE COMMUNITY RELATIONS COMMISSION

The annual report of the Community Relations Commission, whose main function is to encourage the establishment of harmonious community relations was published in July. It describes developments in many fields of activity and gives details of the very wide range of measures undertaken by local community relations councils. It notes in particular a further increase in summer projects for immigrants' children and the greater support given to them by local authorities. It also records expansion in the establishment of housing aid centres and developments in

¹ Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

immigrant education, including work with student teachers in colleges of education and a growing interest in the reform of the curriculum to make it more relevant to a multiracial society. The Commission's expenditure in 1971/72 was £450,853; the government approved estimated expenditure of £623,000 for the financial year 1972/73.

B. Article 3 of the Universal Declaration

NORTHERN IRELAND: DETENTION OF TERRORISTS

An Order in Council providing new machinery for dealing with suspected terrorists, which eliminates the power of detention and internment by the executive alone and revokes the relevant regulations under the Special Powers Acts, came into force in November. Under this order the Secretary of State for Northern Ireland may order the detention of anyone suspected of being concerned with terrorism for a period of only up to 28 days. During this period the Chief Constable of the Royal Ulster Constabulary may refer the suspect to an independent commissioner (of whom three were appointed), who enquires into the case to decide whether the person concerned has been involved in terrorism and should be detained; otherwise he will order his release. Where he is satisfied on these two points, the Commissioner may order the person concerned to be detained; otherwise he will order his release. Where a case is not referred to a commissioner, the individual concerned cannot be held for more than 28 days. This procedure is used only where the ordinary processes of law are found to be inadequate, and is enforced with complete impartiality against whatever persons or organizations are found to be engaged in violence and terrorism.

C. Article 5 of the Universal Declaration

NORTHERN IRELAND: INTERROGATION PROCEDURES

Following the publication in March of a report (Cmd. 4901) by a committee of Privy Counsellors on the authorized procedures for the interrogation of persons suspected of terrorism—namely the hooding of detainees, subjecting them to noise, requiring them to stand against a wall with both hands raised, depriving them of sleep and restricting their diet—the Government made it clear that while these techniques had been used in a total of 14 cases spread over two occasions in Northern Ireland they would not in future be used as an aid to interrogation.

D. Article 6 of the Universal Declaration

EXTENDED MATRIMONIAL RELIEF

The Matrimonial Proceedings (Polygamous Marriages) Act 1972 enables United Kingdom courts to grant matrimonial relief, or make a

declaration concerning the validity of a marriage, even though the marriage in question has been entered into under a system of law which permits polygamy.

E. Articles 6 and 7 of the Universal Declaration

THE CRIMINAL LAW AND MENTALLY ABNORMAL OFFENDERS

The Home Secretary announced in June that an independent committee was being appointed to examine to what extent and on what criteria the law should recognize mental disorder or abnormality as a factor affecting the liability to trial or conviction of a person accused of a criminal offence, and his subsequent disposal. The committee is also to consider whether changes are desirable in the powers, procedure and facilities for enabling appropriate treatment to be given to such offenders.

F. Article 7 of the Universal Declaration

1. LEGAL REPRESENTATION

Section 37 of the Criminal Justice Act 1972 (which becomes effective on 1 January 1973) prohibits a court from passing a custodial sentence on an offender who has not previously served that particular form of sentence (whether it is imprisonment, Borstal training or at a detention centre) unless he (or she) has been legally represented, or has applied for legal aid and been refused on the grounds that his means are adequate, or he has refused or failed to apply for legal aid after being informed that it is open to him to do so. This provision applies equally if the person has been sentenced to a suspended sentence of imprisonment which has not taken effect.

2. LEGAL ADVICE AND ASSISTANCE

The Legal Advice and Assistance Act 1972 makes legal advice and assistance more readily available to members of the public in England, Wales and Scotland. Part I provides that the two Law Societies (of England and Wales and of Scotland respectively) may, within the terms of approved schemes under the relevant statutes, employ salaried solicitors for the purpose of giving advice and assistance under the existing legal aid system. Part II which has not yet been brought into operation, makes provision for an advisory liaison service to legal organizations concerned in the giving of advice or guidance, and for the establishment of legal centres.

The Legal Aid (Extension of Proceedings) Regulations 1972 extend legal aid to proceedings before the Commons Commissioners. The Legal Aid (Financial Conditions) Regulations 1972 and the Legal Aid (Scotland) (Financial Conditions) Regulations 1972 raise the amount of disposable capital a person may have in order to qualify for free legal aid in civil cases from £125 to

£250; and the amount of disposable capital he may have to qualify for contributory legal aid from £500 to £1,200.

G. Article 8 of the Universal Declaration

1. COMPLAINTS SYSTEM FOR LOCAL GOVERNMENT

In 1972 the Government drew up proposals for a complaints system for local government in England (similar arrangements are envisaged for Wales) involving the establishment of an independent statutory commission for local administration, comprising a number of local commissioners, each responsible in a particular area of the country for investigating citizens' complaints of maladministration by local authorities. The commissioners would help local authority councillors to protect the rights and interests of their constituents. Complaints about policy matters would not fall within the scheme. It is anticipated that these proposals will be given effect at the same time as local government itself is reorganized (1 April 1974).

2. HEALTH SERVICE COMMISSIONER

In February the Government announced that an independent health service commissioner was to be established in England, Scotland and Wales. It recommended that, subject to parliamentary approval, the United Kingdom Parliamentary Commissioner for Administration should be appointed to this post in each of the three countries. The new commissioner's function would be to provide a means of appeal in the relatively few cases where citizens remained dissatisfied with action taken by National Health Service authorities after a complaint had been made. He would be responsible for investigating health service authorities' actions where it was claimed that an individual had suffered injustice or hardship through maladministration or a failure to provide necessary care and treatment. He would not investigate complaints about staff pay or conditions of service, about contracts or other commercial transactions, or about the actions of members of the medical profession (complaints against whom are investigated under an existing statutory procedure). Action taken in the course of diagnosis, treatment or clinical care of an individual patient would fall outside the commissioner's jurisdiction if, in his opinion, it was taken solely in the exercise of clinical jurisdiction.

3. NORTHERN IRELAND: APPEALS AGAINST DETENTION

A Detention Appeals Tribunal, to which an individual may appeal against the decision of a commissioner that he be detained, was also established under the Detention of Terrorists (Northern Ireland) Order in November.

H. Article 12 of the Universal Declaration

UNLAWFUL EVICTION OR HARASSMENT

Section 30 of the Criminal Justice Act 1972 (which became effective on 1 January 1973)

increases the penalties under the Rent Act 1965 for offences of unlawful eviction or harassment of residential occupiers. People found guilty of such offences will be liable on summary conviction to a fine not exceeding £400 or up to six months imprisonment or both and on indictment to a fine or imprisonment of a term of up to two years or both.

I. Article 15 of the Universal Declaration

ADMISSION OF UGANDA ASIANS TO BRITAIN

The British Government accepted responsibility for Uganda Asians holding United Kingdom passports and their dependants following the announcement by President Amin of Uganda in August that Ugandan residents of Asian origin who did not have Ugandan citizenship had been ordered to leave the country by 7 November. The Uganda Resettlement Board was set up in August to plan their orderly reception and resettlement and the first of a total of over 28,000 Asians arrived by air in Britain in September—27,194 entering the country between 18 September and 9 November. Sixteen temporary resettlement centres were opened by the Board and towards the end of the airlift over 90 per cent of those arriving chose to enter these centres. Special reception teams comprising civil servants and members of voluntary organizations were set up at the airports and many other volunteers working under the auspices of the Co-ordinating Committee for the Welfare of Evacuees from Uganda helped with reception, with transit arrangements and at the resettlement centres. Immediate financial help was given by the Supplementary Benefits Commission to those refugees needing it and assistance was provided by government departments and voluntary agencies in finding accommodation and employment, many offers of accommodation being received from local authorities and from private individuals and of employment from private employers. Local education authorities in the areas of the Resettlement Centres provided classes for children and adults, especially for teaching the English language, and towns where families settled were responsible for providing educational facilities for the children and young people needing them. The Government made extra money available to local authorities through the Uganda Resettlement Board to help with costs arising from the resettlement of families in their areas and a charitable fund, the Uganda Asian Relief Trust, was set up to help refugees establish themselves in Britain.

J. Article 17 (2) of the Universal Declaration

REPARATION BY THE OFFENDER

Section 1 of the Criminal Justice Act 1972 (which became effective on 1 January 1973) empowers the courts to order a defendant to pay compensation in respect of personal injury or loss of, or damage to, property resulting from the offence of which he (or she) was convicted or from an offence taken into consideration by the court in determining the sentence. The exercise of

this power does not depend upon an application being made by, or on behalf of, the victim, nor upon the nature of the offence, the sentence passed or the level of the court—except that there is a limit of £400 on compensation ordered by a magistrates' court in respect of each offence proved. When making a compensation order the court must have regard to the means of the offender.

K. Article 19 of the Universal Declaration

EXTENSIONS TO BROADCASTING SERVICES

In July the Sound Broadcasting Act 1972 became law. Under the Act up to 60 local commercial radio stations are being set up by the Independent Broadcasting Authority (IBA). The IBA is empowered to grant contracts to companies willing to provide the service which will be financed by advertising; however, no sponsorship of programmes by advertisers will be permitted. The main purpose of the stations is to provide a service relevant to the needs of the local community, they will also be competing with the present network of 20 local radio stations run by the British Broadcasting Corporation (BBC) and will provide an alternate source of news and information to that of the BBC. It is expected that the first two stations (in London) will begin transmissions in late 1973.

In January the Government announced its decision to license Greenwich Cablevision Ltd. to provide a service of local community television programmes in the Greenwich area of London and to authorize a few other similar experiments without advertising. In July Greenwich Cablevision Ltd. who provide broadcast services to some 14,000 to 15,000 subscribers, began distributing their local community television service. Four more experiments—at Bristol, Swindon, Sheffield and Wellingborough—were authorized in principle in August. The Bristol and Swindon services were planned to start in 1973.

Restrictions on the hours of television and radio broadcasting were lifted by the Government in 1972. Both the BBC and IBA are now transmitting extra programmes.

L. Article 21 (2) of the Universal Declaration

ELIGIBILITY FOR JURY SERVICE (WITH CERTAIN LIMITED EXCEPTIONS)

The Criminal Justice Act 1972 abolishes the existing property qualification for jury service in England and Wales, and substitutes as a basic qualification citizenship as evidenced by inclusion in the electoral register. Anyone between the ages of 18 and 65 registered as an elector who has lived in the country for five years or more since the age of 13 will (in 1974) become eligible for jury service. Persons who have been convicted of serious criminal offences are disqualified and certain people are ineligible for jury service because of the nature of their employment.

M. Article 21 (3) of the Universal Declaration

NORTHERN IRELAND

An Order in Council providing, among other things, for the conduct of local government elections held on 30 May 1973 under the system of proportional representation by means of the single transferable vote, received Parliamentary approval in August. The adoption of this system, which was used in the 1920s for both parliamentary and local elections in Northern Ireland, is designed to encourage candidates to develop "multi-issue", rather than "single-issue" policies for presentation to the electorate.

N. Article 22 of the Universal Declaration

1. DEVELOPMENTS IN THE SOCIAL SERVICES

During 1972 the Government continued its policies of increasing the allocation of resources to social security and social services, of filling in certain gaps in the provision and of reviewing needs and the organization to meet them.

The Secretary of State for Social Services announced in February that the Government planned to spend about £13,000 million (valued at current prices) on the National Health Service and personal social services in the five years to the end of March 1976, that is about £2,000 million more in real terms than in the previous five years. During this time the hospital service will be reconstructed on a nationwide scale, while great emphasis will be placed on extending and improving personal social services for the disabled, the elderly and the mentally ill.

Towards the end of 1972 the Government launched the Social Security Bill which is scheduled for introduction in 1975. Its main objective is to foster the development of both State and occupational schemes so that, working in partnership, they improve the provision that employees can make for their old age and their widows. Other important effects of the bill will be that employees' contributions will be wholly earnings-related and collected through the taxation system and that provision will be made for annual reviews of both benefits and contributions.

Earlier in the year a further linking of the tax and social security systems was proposed in the green paper on a tax credit system designed to simplify and improve both taxation and social security in this country.

At the beginning of October social security benefits were raised substantially. The total cost of the increase was estimated at about £480 million in the financial year 1973/74. The increase not only restored the purchasing power of pensions and related benefits, but gave a substantial improvement.

A new benefit for severely disabled people was extended during 1972. From December 1971 very severely disabled people in need of frequent attention from another person both by day and by night became entitled to a special attendance

allowance. As planned the scope of the allowance is now to be extended to those who need attention either by day or by night, the allowance payable being two thirds of the "day and night" rate.

Throughout 1972 the plans for the reorganization of the health services were under review and discussion. The enabling act for Scotland was passed in August, and the NHS Reorganization Bill covering England and Wales was introduced in November 1972. The essential point of the reform, which is to take effect from 1 April 1974 is to replace the existing tripartite structure under which the hospital service, the local practitioner services and local authority services are separately administered, by a unified health service operated by area health authorities

2. NORTHERN IRELAND

A number of Orders in Council—on, for instance, health and social welfare, education and libraries, and town and country planning—were approved by Parliament during 1972. These Orders arose from the recommendations of a review body which reported in 1970 on the reorganization of local government in Northern Ireland, to the effect, among other things, that certain local services should be transferred to the central government.

O. Article 23 (1) of the Universal Declaration

EMPLOYMENT

During 1972 the passage of one act (the Industrial Relations Act 1971) confirmed and strengthened the right to freedom of employment, while another (the European Communities Act 1972) widened in practice the employment opportunities available.

The Industrial Relations Act 1971, whose main provisions came into force by the end of February 1972, prevents any court, including the National Industrial Relations Court, from granting an order requiring any person to do any work or to attend at any place for the purpose of doing any work. Similarly, no court may compel an employee to take part in a strike or any industrial action short of a strike.

The signing of the Treaty of Accession to the European Communities in January 1972, and the passing of the European Communities Act during the year, paved the way for Britain becoming a full member of the European Communities from 1 January 1973 with the consequent extension of rights and duties towards other Community countries and their nationals. The Act provided that from January 1973 British nationals, like nationals of other member countries of the Community, would have the right to move freely between member countries to seek work or to take up employment previously arranged, and from April 1973 would be entitled to social security benefits. These mutual rights would include equality of treatment as regards the facilities of the national employment services, pay and working conditions, trade union rights,

vocational training and retraining facilities, social security and access to housing and property.

P. Article 23 (2) of the Universal Declaration

EQUAL PAY FOR EQUAL WORK

The Equal Pay Act 1970 comes into force on 29 December 1975. Its object is to eliminate discrimination between men and women in regard to pay and other terms and conditions of employment. The Office on Manpower Economics, an independent non-statutory body set up in January 1971 to provide a secretariat for the review bodies of certain sectors of public service pay and to carry out research into pay and manpower problems, published its first report in August 1972 on the implementation of the Equal Pay Act, and the degree of progress that had been made in moving towards the requirements of the Act. The report showed that at industry level most national agreements and wages council orders had included some movement towards the removal of discrimination in rates of pay to a greater or lesser extent. Of the companies examined, about a fifth had introduced equal pay for manual or white-collar workers and a further quarter had specific plans for doing so. In a separate survey of small companies, however, widespread ignorance of the Act was found. The report recommended the use of job evaluation wherever possible to help progress towards equal pay, and suggested that the Department of Employment should undertake an intensive campaign to publicize the Act and provide guidance on its application. Plans for such a campaign were put in hand.

Concurrently with the progress towards equal pay, steps were taken to remove some of the barriers and difficulties to equality of work opportunity. New arrangements to help women civil servants were announced by the Minister of State at the Home Office in March. Government departments, he said, were being asked to provide more flexible leave arrangements, to identify more jobs that could be done on a part-time basis, to provide increases in maternity leave, to allow more flexible working hours and to offer guidance on retraining facilities for civil servants returning to work after a long absence. In June, the Secretary of State for Social Services announced details of a scheme to be introduced in September to help women doctors to combine medical practice with their domestic commitments.

Q. Article 23 (4) of the Universal Declaration

FREEDOM TO JOIN TRADE UNIONS

The Industrial Relations Act 1971, whose main provisions came into operation by the end of February 1972, established the statutory right of an employee to belong to a registered trade union, and also the right not to belong to a registered trade union, or other organization of workers.

Consequently, pre-entry closed shop agreements, which may prevent an individual from taking a job unless he is already a member of a (particular) trade union, became void, although in certain closely defined circumstances, a post-entry closed shop agreement may be established. This provision is intended to help industries with special problems, such as the entertainment industry and the shipping industry.

However, the Act provides for agency shop agreements, under which an employee would, as a condition of employment, agree to be or become a member of a union, or else pay to it appropriate contributions in lieu of membership (if he had a conscientious objection to this, the contributions could be made to an agreed charity instead). If voluntary agreement cannot be reached, the Act lays down a procedure by which either a registered trade union or an employer may ask the Industrial Court to arrange for a ballot of the employees concerned. If the ballot is in favour it becomes the duty of the employer to conclude such an agreement. If the ballot is not in favour, the Court will make an order preventing the conclusion of an agency shop agreement.

There is a similar balloting provision, for use where a substantial number of employees wishes an existing closed shop to be discontinued. It is an unfair industrial practice for an employer to seek to prevent an employee from exercising his right to belong to a trade union, or not to belong to a trade union or other organization of workers, or to discuss or otherwise discriminate against him for exercising these rights.

A system of expert and informal industrial civil courts has been set up under the Act in order to maintain standards and rights in industrial relations practice. At the highest level there is a new National Industrial Relations Court (NIRC), while at the lower level the previously existing industrial tribunals have new functions. The Court hears complaints about certain unfair practices and breaches of duty under the Act, including those relating to collective agreements, and making orders, and awards compensation where appropriate, subject to certain limits. It also hears appeals against decisions of the industrial tribunals. In general, the industrial tribunals hear cases relating to individuals.

R. Article 25 (1) of the Universal Declaration

NORTHERN IRELAND: FINANCE ASSISTANCE

An Order in Council establishing a Northern Ireland Finance Corporation as a means of mak-

ing money available for the support of industrial and other undertakings was approved by Parliament in June. Other government measures designed to support existing economic activity in Northern Ireland during 1972 included the revision of rates of capital grant for plants and buildings, the expansion of schemes of industrial training, a six-months' extension of the rate relief scheme for certain city centre businesses, and the encouragement of the activities of Northern Ireland's Local Enterprise Development Unit, the main function of which is to promote jobs in towns and villages too small to sustain large-scale industry and in which it is most difficult to promote industrial development.

S. Article 26 of the Universal Declaration

1. EDUCATIONAL EXPANSION

A government white paper on education was published in December. It contains a ten-year programme for development at all levels of education in England and Wales. Proposals will involve substantially increased expenditure in five sectors: a new programme of nursery education to provide within 10 years nursery education without charge to those children of three and four whose parents wish them to have it; a larger building programme for the renewal of secondary schools and special schools for handicapped pupils as well as primary schools; a larger teaching force further to improve staffing standards in schools; new measures to improve the pre-service and in-service training of teachers; and the development in higher education of a wider range of opportunities for both students and institutions. According to the paper, total annual expenditure on the programmes under review could rise by some £960 million over the decade 1971/72 to 1981/82 from £2,162 million to some £3,120 million. Similar proposals have been made for Scotland.

2. RAISING THE SCHOOL-LEAVING AGE

An Order in Council making provision for raising the minimum school-leaving age from 15 to 16 in England and Wales in September 1972 and regulations to make similar provision for Scotland were approved by Parliament during the year.

UNITED REPUBLIC OF CAMEROON

1. Constitution of the United Republic of Cameroon¹

PREAMBLE

The People of Cameroon,

Proud of its cultural and linguistic diversity, a feature of its national personality which it is helping to enrich but profoundly aware of the imperative need to achieve complete unity, solemnly declares that it constitutes one and the same Nation, committed to the same destiny, and affirms its unshakeable determination to construct the Cameroonian Fatherland on the basis of the ideal of fraternity, justice and progress;

Convinced that the salvation of Africa depends on the realization of an ever more closely-knit solidarity between the African States, affirms its desire to achieve in the independence of the Cameroonian Fatherland the creation of a united and free Africa, at the same time maintaining peaceful and brotherly relations with the other Peoples of the world in accordance with the principles laid down by the United Nations Charter;

Resolved to exploit its natural wealth in order to ensure the well-being of every citizen by the raising of living standards, proclaims its right to development as well as its determination to devote all its efforts to that end and declares that it is ready to co-operate with all States, desirous of participating in this national enterprise in respect for its sovereignty and the independence of the Cameroonian State.

The People of Cameroon,

Declares that the human being, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights.

Affirms its attachment to the fundamental freedoms embodied in the Universal Declaration of Human Rights and the United Nations Charter and in particular to the following principles:

Everyone has equal rights and obligations. The State endeavours to assure for all its citizens the conditions necessary for their development.

Freedom and security are guaranteed to each individual subject to respect for the rights of others and the higher interests of the State.

No one may be compelled to do what the law does not prescribe

Everyone has the right to settle in any place and to move about freely, subject to the statutory provisions concerning public order, security and tranquillity.

The home is inviolate. No search may take place except by virtue of the law.

The privacy of all correspondence is inviolate. No interference shall be allowed except by virtue of decisions emanating from the judicial authorities.

No one shall be subjected to prosecution, arrest or detention except in the cases and according to the manner determined by the law.

The law may not have retrospective effect.

No one shall be judged or punished except by virtue of a law promulgated and published before the offence was committed.

The law ensures the right of everyone to a fair hearing before the courts.

No one shall be harassed because of his origin, opinions or beliefs in religious, philosophical or political matters, subject to respect for public order.

Freedom of religion and freedom to practise a religion are guaranteed.

The State is secular. The neutrality and independence of the State in respect of all religions are guaranteed.

The freedom of expression, the freedom of the press, the freedom of assembly, the freedom of association, and the freedom of trade-unions are guaranteed under the conditions fixed by the law.

The Nation protects and promotes the family, the natural basis of human society.

The State ensures the child's right to education. The organization and control of education at all levels are bounden duties of the State.

Ownership is the right guaranteed to everyone by the law to use, enjoy, and dispose of property. No one shall be deprived thereof, save for public purposes and subject to the payment of compensation to be determined by the law.

The right of ownership may not be exercised in violation of the public interests or in such a way as to be prejudicial to the security, freedom, existence or property of other persons.

Everyone has the right and duty to work.

Everyone must share in the burden of public expenditure according to his means.

The State guarantees to all citizens of either sex the rights and freedoms set out in the preamble of the Constitution.

PART I

Sovereignty

Article 1. (1) The Federal Republic of Cameroon, constituted from the State of East Cameroon and the State of West Cameroon, shall

¹ Official Gazette of the United Republic of Cameroon, No. 4 (Supplementary), 2 June 1972.

become a unitary State to be styled the United Republic of Cameroon with effect from the date of entry into force of this Constitution.

(2) The United Republic of Cameroon shall be one and indivisible.

(3) It shall be democratic, secular and dedicated to social service. It shall ensure the equality before the law of all its citizens.

(4) The official languages of the United Republic of Cameroon shall be French and English.

(5) The motto shall be: "Peace—Work—Fatherland".

(6) The flag shall be of three equal vertical stripes of green, red and yellow, charged with two gold stars on the green stripe.

(7) The national anthem shall be "O Cameroon, cradle of our forefathers".

(8) The seal of the United Republic of Cameroon shall be a circular medallion in bas-relief, forty-six millimetres in diameter, bearing on the reverse and in the centre the head of a girl in profile turned to the dexter towards a coffee branch and flanked on the sinister by five cocoa pods, encircled beneath the upper edge by the words "United Republic of Cameroon" and above the lower edge by the national motto "Peace—Work—Fatherland".

(9) The capital shall be Yaoundé.

Article 2. (1) National sovereignty shall be vested in the people of Cameroon who shall exercise it either through the President of the Republic and the members returned by it to the National Assembly or by way of referendum; nor may any section of the people or any individual arrogate to itself or to himself the exercise thereof.

(2) The vote shall be equal and secret, and every citizen aged twenty-one years or over shall be entitled to it.

(3) The authorities responsible for the direction of the State shall hold their powers of the people by way of election by universal suffrage, direct or indirect.

Article 3. (1) Political parties and groups may take part in elections. They shall be formed and shall exercise their activities in accordance with the law.

(2) Such parties shall be bound to respect the principles of democracy and of national sovereignty and unity.

Article 4. (1) State authority shall be exercised by:

The President of the Republic, and
The National Assembly.

PART II

The President of the Republic

Article 5. The President of the Republic, as Head of State and Head of the Government, shall ensure respect for the Constitution and the unity of the State, and shall be responsible for the conduct of the affairs of the Republic.

Article 6. (1) The President of the Republic shall be elected by universal suffrage and direct and secret ballot.

(2) Candidates for the office of President of the Republic must be in possession of their civic and political rights and have attained the age of thirty-five years by the date of the election.

(3) The nomination of candidates, the supervision of elections and the proclamations of results shall be regulated by law.

(4) The office of President of the Republic may not be held together with any other elective public office or professional activity.

Article 7. (1) The President of the Republic shall be elected for five years and may be re-elected. Election shall be by a majority of votes cast, and shall be held not less than twenty nor more than fifty days before the expiry of the term of the President in office.

(a) In case of temporary prevention, the President of the Republic may appoint a member of the Government to exercise his duties within the framework of a delegation of powers.

(b) In the event of vacancy of the Presidency as a result of death or permanent physical incapacity, duly ascertained by the Supreme Court, the powers of the President of the Republic shall without more devolve upon the President of the National Assembly until election of a new President.

The interim President of the Republic may not amend the Constitution or modify the composition of the Government.

(c) In the event of vacancy of the Presidency as a result of resignation, such resignation shall only take effect as from the day on which the newly elected President shall take the oath.

(2) Voting to elect a new President shall take place not less than twenty nor more than fifty days after the vacancy.

(3) The President of the Republic shall take the oath in the manner laid down by the law.

Article 8. (1) Ministers and Vice-Ministers shall be appointed by the President of the Republic. They shall be responsible to him and liable to be dismissed by him. He may delegate certain of his powers to them by Decree.

(2) The office of Ministers or Vice-Minister may not be held together with parliamentary office, office as member of a body representing nationally any occupation or any public post or gainful activity.

Article 9. The President of the Republic shall:

(1) Represent the State in all public activity and be head of the armed forces;

(2) Accredite ambassadors and envoys extraordinary to foreign powers;

(3) Receive letters of credence of ambassadors and envoys extraordinary from foreign powers;

(4) Negotiate and ratify agreements and treaties; Provided that treaties dealing with the sphere reserved by article 20 to the legislature shall be submitted before ratification for approval in the form of law by the National Assembly;

- (5) Exercise the prerogative of clemency after consultation with the Higher Judicial Council;
- (6) Confer the decorations of the Republic;
- (7) Promulgate laws as provided by article 29;
- (8) Be responsible for the enforcement of laws;
- (9) Have the power to issue statutory rules and orders;
- (10) Appoint to civil and military posts;
- (11) Ensure the internal and external security of the Republic;
- (12) Set up, regulate and direct all administrative services necessary for the fulfilment of his task.

Article 10. The President of the Republic shall refer to the Supreme Court under the conditions prescribed by the law provided for in article 32 any law which he considers to be contrary to this Constitution.

Article 11. (1) The President of the Republic may where circumstances require proclaim by Decree a state of emergency, which will confer upon him such special powers as may be provided by law.

(2) In the event of grave peril threatening the nation's territorial integrity or its existence, independence or institutions, the President of the Republic may proclaim by Decree a state of siege and take all measures as he may deem necessary.

(3) He shall inform the nation by message of his decision.

PART III

The National Assembly

Article 12. (a) The National Assembly shall be renewed every five years, and shall be composed of one hundred and twenty members elected by universal suffrage and direct and secret ballot.

(b) The National Assembly may, at the instance of the President of the Republic, decide by law to extend or shorten its term of office.

Article 13. Laws shall be passed by a simple majority of the members present.

Article 14. Before promulgating any bill, the President of the Republic may request a second reading. In this case, laws shall only be passed by the National Assembly by a majority of its membership.

Article 15. (1) The National Assembly shall meet twice a year, the duration of each session being limited to thirty days.

(2) The opening date of each session shall be fixed by the Assembly's steering committee after consultation with the President of the Republic. In the course of one such session the Assembly shall approve the Budget: Provided that in the event of the budget not being approved before the end of the current financial year, the President of the Republic shall have power to act according to the old budget at the rate of one twelfth for each month until the new budget is approved.

(3) On request of the President of the Re-

public or of two thirds of its membership the Assembly shall be recalled to an extraordinary session, limited to fifteen days, to consider a specific programme of business.

Article 16. (1) The National Assembly shall adopt its own rules of organization and functioning in the form of a law to establish its standing orders.

(2) At the opening of the first session of each year it shall elect its President and steering committee.

(3) The sittings of the National Assembly shall be open to the public; provided that in exceptional circumstances and on the request of the Government or of a majority of its members strangers may be excluded.

Article 17. Elections shall be regulated by law.

Article 18. Parliamentary immunity, disqualification of candidates or of sitting members and the allowances and privileges of members shall be governed by law.

PART IV

Relations between the Executive and the Legislature

Article 19. Bills may be introduced either by the President of the Republic or by any member of the National Assembly.

Article 20. The following shall be reserved to the legislature:

(1) The fundamental rights and duties of the citizen, including:

Protection of the liberty of the subject;
Human rights;

Labour and trade union law;

The overriding duties and obligations of the citizen in respect of national defence.

(2) The law of persons and property, including:

Nationality and personal status;

Law of moveable and immoveable property;

Law of civil and commercial obligations.

(3) The political, administrative and judicial system in respect of:

Elections to the National Assembly;

General regulation of national defence;

The definition of criminal offences not triable summarily and the authorization of penalties of any kind, criminal procedure, civil procedure, execution procedure; amnesty, the creation of new classes of Courts;

The organization of the local authorities.

(4) The following matters of finance and public property:

Currency;

Budget;

Imposition, assessment and rate of all dues and taxes;

Legislation on public property.

(5) Long-term commitments to economic and social policy, together with the general aims of such policy.

(6) The educational system.

Article 21. (1) Provided that with regard to the subjects listed in article 20, the National Assembly may empower the President of the Republic to legislate by way of Ordinance for a limited period and for given purposes.

(2) Such Ordinances shall enter into force on the date of their publication. They shall be tabled before the National Assembly for purposes of ratification within the time limit fixed by the enabling law.

(3) They shall remain in force as long as the Assembly has not refused to ratify them.

Article 22. Matters not reserved for the legislature shall come under the jurisdiction of the authority empowered to issue statutory rules and orders.

Article 23. Bills laid on the table of the National Assembly shall be considered in the appropriate committee before debate on the floor of the house.

Article 24. The text laid before the Assembly shall be that proposed by the President of the Republic when the proposal comes from him, and otherwise the text as amended in committee, but in either case amendments may be moved in the course of the debate.

Article 25. The President of the Republic may at his request address the Assembly in person, and may send messages to it; but no such address or message may be debated in his presence.

Article 26. Ministers and Vice-Ministers shall have access to the Assembly and may take part in debates.

Article 27. (1) The programme of business in the Assembly shall be appointed by the chairmen's conference, composed of party leaders, chairmen of committees and members of the steering committee of the National Assembly, together with a Minister or Vice-Minister.

(2) The programme of business may not include bills beyond the jurisdiction of the Assembly as defined by article 20.

(3) Nor may any bill introduced by a member or any amendment be included which if passed would result in a burden on public funds or an increase in public charges without a corresponding reduction in other expenditure or the grant of equivalent new supply.

(4) Any doubt or dispute on the admissibility of a bill or amendment shall be referred for decision by the President of the Assembly or by the President of the Republic to the Supreme Court.

(5) The programme of business shall give priority and in the order decided by the Government, to bills introduced or accepted by it.

(6) Any business shall, on request by the Government, be treated as urgent.

Article 28. (1) The National Assembly may inquire about governmental activity by means of oral or written questions and by setting up committees of inquiry with specific terms of reference.

(2) The Government, subject to the imperatives of national defence and the security of the State,

shall furnish any explanation and information to the Assembly.

(3) The procedure of all committees of inquiry shall be laid down by law.

Article 29. (1) The President of the Republic shall promulgate laws passed by the National Assembly within fifteen days of their being forwarded to him unless he requests a second reading or refers the matter to the Supreme Court.

(2) On his failure to do so within such period, the President of the National Assembly may record the fact and himself promulgate.

(3) Laws shall be published in both official languages of the Republic.

Article 30. (1) The President of the Republic, after consultation with the President of the National Assembly, may submit to a referendum any reform bill which, although normally reserved for the legislature, could have profound repercussions on the future of the Nation and the national institutions.

(2) This shall apply in particular to:

(a) Bills concerning the organization of the public authorities or the amendment of the Constitution;

(b) Bills to ratify international agreements or treaties having particularly important consequences;

(c) Certain reform bills relating to the law of persons and property, etc.

(3) The bill shall be adopted by a majority of valid votes cast.

(4) The referendum procedure shall be determined by law.

PART V

The Judiciary

Article 31. (1) Justice shall be administered in the territory of the Republic in the name of the people of Cameroon.

(2) The President of the Republic shall ensure the independence of the judiciary, and shall appoint to the Bench and to the legal service.

(3) He shall be assisted in his task by the Higher Judicial Council, which shall give him its opinion on all proposed appointments to the Bench and on disciplinary sanctions concerning them.

(4) It shall be regulated as to procedure and otherwise by law.

PART VI

The Supreme Court

Article 32. (1) The Supreme Court, in addition to the powers and duties provided for by articles 7, 10 and 27 shall be responsible for the following matters:

(a) To give final judgment on such appeals as may be granted by law from the judgments of the Courts of Appeal wherever the application of the law is in issue;

(b) To decide complaints against administrative acts, whether claiming damages or on grounds of *ultra vires*.

(2) The composition of, the taking of cognizance by, and the procedure of the Supreme Court shall be laid down by law.

Article 33. Where the Supreme Court is called upon to give an opinion in the cases contemplated by articles 7, 10 and 27, its numbers shall be doubled by the addition of personalities nominated for one year by the President of the Republic in view of their special knowledge or experience.

PART VII

Impeachment

Article 34 (1) There shall be a Court of Impeachment which shall be regulated as to organization and taking of cognizance and in other respects by the law.

(2) The Court of Impeachment shall have jurisdiction, in respect of acts performed in the exercise of their offices, to try the President of the Republic for high treason and the Ministers and Vice-Ministers for conspiracy against the security of the State.

PART VIII

The Economic and Social Council

Article 35. There shall be an Economic and Social Council which shall be regulated as to powers and in other respects by the law.

PART IX

Amendment of the Constitution

Article 36. (1) Bills to amend this Constitution may be introduced either by the President of the Republic or the National Assembly.

(2) Provided that any bill introduced by a member of the Assembly shall bear the signature of at least one third of its membership.

(3) An amendment presented to the Assembly on the initiative of the members or of the President of the Republic shall be passed by a majority of the membership of the National Assembly.

(4) The President of the Republic may request a second reading, in which case the amendment shall be passed by a two-thirds majority of the membership of the National Assembly.

(5) The President of the Republic may decide to submit any amendment to the people by way of a referendum.

Article 37. No procedure to amend the Constitution may be accepted if it tends to impair the republican character, unity or territorial integrity of the State, or the democratic principles by which the Republic is governed.

PART X

Transitional provisions

Article 38. The President of the Federal Republic of Cameroon shall for the duration of his existing term be the President of the United Republic of Cameroon.

Article 39. (1) The National Federal Assembly shall be recessed fifteen days after the entry into force of this Constitution and until new Parliamentary elections take place.

(2) Provided that the Steering Committee of this Assembly at present in office shall assume responsibility for current business.

Article 40. The House of Assembly of East Cameroon and the House of Assembly and the House of Chiefs of West Cameroon shall cease to sit as from the entry into force of this Constitution. They shall be abolished within a maximum time-limit of six months.

Article 41. The President of the Republic shall determine the terms and conditions for the transfer of powers from the former Federated States to the United Republic of Cameroon.

Article 42. Within the twelve months running from the recessing of the National Federal Assembly, the fundamental laws provided for by this Constitution, as well as the legislative measures necessary for the setting up of constitutional organs, and, pending their setting up, for governmental procedure and the carrying on of the government shall be enacted by way of Ordinance having the force of law.

Article 43. The Legislation resulting from the laws and regulations applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force in all of their provisions which are not contrary to the stipulations of this Constitution, for as long as it is not amended by legislative or regulatory process.

Article 44. This Constitution shall be registered and published in the *Official Gazette* of the State in French and in English, the French text being authentic. It shall be implemented as the Constitution of the United Republic of Cameroon.

2. Ordinance No. 72-4 of 26 August 1972 on judicial organization ²

CHAPTER ONE. GENERAL PROVISIONS

Section 1. Justice shall be administered in the name of the people of Cameroon by:

(a) The Courts of First Instance (Tribunaux de première instance);

(b) The High Courts (tribunaux de grande instance);

(c) The Courts of Appeal;

(d) The Supreme Court.

Section 2. (1) The military judicial organization of the State shall be established by a special law.

² *Ibid.*, No. 9 (Supplementary), 1 November 1972.

(2) This shall also be the case for the composition, jurisdiction and procedure of the Supreme Court.

Section 3. The commencement of proceedings and the rules governing procedure of all the courts shall be laid down by the procedure laws.

Section 4. (1) Justice shall be administered in public and all judgments shall be pronounced in open court.

(2) Any breach of subsection (1) above shall render the whole proceedings null and void *ab initio*.

(3) Any Court, however:

(a) Shall, when it is expressly provided by law or procedure, remove certain matters for hearing in Chambers;

(b) May, of its own motion or on the application of any of the parties, order that all or any part of any case or matter shall be heard in camera on the grounds that a public hearing would be dangerous to the security of the State, public order or morality.

Section 5. (1) All judgments shall set out the reasons upon which they are based in fact and in law.

(2) Any breach of subsection (1) shall render the judgment null and void.

Section 6. (1) Justice shall be administered free of charge, subject only to the fiscal provisions concerning stamp duty and registration.

(2) Statutory fees and expenses shall be paid in the first place by the party who incurs them as all costs incurred in commencing and action and in execution of judgment, but such fees and expenses shall be borne finally by the party who fails in the action, subject only to the reasoned decision of the court.

(3) Legal Aid shall be granted in accordance with the rules laid down by decree.

Section 7. The seat of the Courts of First Instance shall be fixed by decree.

Section 8. Judicial decisions and orders of any Court shall be enforceable throughout the territory of the United Republic.

3. Ordinance No. 72-5 of 26 August 1972 to establish Military Judicial Organization³

(Extracts)

Part I. The organization and jurisdiction of Military Justice

CHAPTER I. ORGANIZATION

Article 1. (1) There shall be established a Military Court having jurisdiction over the whole of the territory of the Republic.

(2) The Military Court shall sit at Yaoundé provided that it may hold sessions in any other locality upon the decision of the President of the Republic or by special delegation of the Minister of Armed Forces.

Article 2. (1) Other Military Courts may be established, as the need arises, by Decrees which shall determine their number, seat and area of jurisdiction.

(2) The organization and jurisdiction together with the procedure followed before these Courts shall conform to the provisions laid down for the Military Court established under article 1, subject to the provisions set out below under part III.

Article 3. (1) The Military Court shall be composed of:

(a) A President, who may be a member of the Judicial and Legal Services or a member of the Military Justice or an Officer of the Armed Forces.

(b) Two substantive Assessors, and their alternates, with equal votes, who may be either members of the Judicial and Legal Services or Armed Forces Officers or Non-Commissioned Officers. Provided that one of the Substantive Assessors shall always be a member of the Armed Forces.

(c) A Government Commissioner and one or more Deputies, who shall be members of the Judicial and Legal Services or of the Military Justice or, as the case may be, Officers of the Armed Forces, charged with conducting the prosecution.

(d) One or more Judges charged with examining cases necessitating preliminary investigation.

(e) One or more civil or military Registrars.

(2) In case of inability to attend, the President's place shall be taken by the most senior member of the Judicial and Legal Department or Armed Forces Officer in the highest grade or rank.

Article 4. (1) The members of the Military Court shall be appointed by Decree.

(2) The Military Judges shall rank at least as high as the highest-ranking of the accused.

CHAPTER II. JURISDICTION

Article 5. The Military Court shall have exclusive jurisdiction to try the following types of cases involving persons of at least eighteen years of age:

(1) Purely military offences provided for in the Code of Military Justice;

(2) Offences of all kinds committed by servicemen with or without civilian co-offenders or accessories, whether within a military establishment or in service;

(3) Felonies and misdemeanours against the security of the State;

(4) Offences punishable by law with detention;

³ *Ibid.*, No. 7 (Supplementary), 1 October 1972.

(5) Offences provided for by Ordinance No. 62-OF-18 of 18 March 1962 to repress subversive activities;

(6) Any offence against the law relating to arms;

(7) Offences of all kinds involving a member of the armed forces or person ranking as such, committed in an area subject to a state of emergency or siege;

(8) Any offence which may be jointly with the above.

Article 6. Minors between fourteen and eighteen years of age who are offenders or accessories as regards the offences referred to under article 5 shall be tried by the ordinary law courts.

Article 7. Subject to International Convention providing for a special jurisdiction and subject to the rules of diplomatic immunity, any aliens who are offenders or accessories with regard to the offences referred to under article 5 shall be tried by the Military Court.

Part II. Military Criminal Procedure

CHAPTER I. TAKING OF COGNIZANCE BY THE MILITARY COURT

Article 8. (1) The *flagrante delicto* procedure shall not be applicable before the Military Court.

(2) Proceedings shall be brought before the Military Court either by way of a direct writ of summons at the request of the Minister of Armed Forces or through a committal for trial by the Examining Magistrate, or by a Judgment of the Court of Appeal.

(3) The procedure applicable before the Military Court shall be that of ordinary law, except where otherwise prescribed by the present ordinance.

CHAPTER II. JUDICIAL POLICE OFFICERS

Article 9. (1) The offences referred to under article 5 shall be recorded in the form of a report by Judicial Police Officers either civilian or military, who shall discharge their duties in accordance with the rules laid down under ordinary law.

(2) They shall forward the preliminary inquiry reports without delay to the Minister of Armed Forces, sending copies to the Government Commissioner and, for his information, to the Minister of Justice.

Article 10. (1) Judicial Police Officers may not carry out domiciliary visits, house searches and distrains by night without a written Order from the Minister of Armed Forces.

(2) They may detain suspects up to forty-eight hours after their arrest.

This period may be extended for a further five days upon the written authorization of the Government Commissioner; it shall be renewable only once.

...

CHAPTER V. PROCEDURE BEFORE THE TRIAL COURT

Article 15. (1) The Minister of Armed Forces shall fix the dates of the hearing after consultation with both the President of the Court and the Government Commissioner.

(2) The Government Commissioner shall communicate to the accused at least four days before the hearing the list of witnesses.

(3) The President of the Military Court shall convene the members of the Court at the date and time fixed. Alternate members shall, where necessary, take the place of substantive members who are absent or whose competence in the case has been successfully challenged.

(4) The President may of his own motion appoint counsel, where necessary, to conduct the defence of the accused.

Article 16. (1) The Military Court shall rule on all the pleas set down by the parties in a single statement of case before deliberations on the merits.

(2) Unless otherwise decided by the Court, pleas and points of law shall be joined with substantive issues and the Court shall deliver a single judgment, setting out reasons.

(3) Rulings on procedural pleas may only be challenged at the same time as judgment on the merits.

Article 17. Civil proceedings may be instituted during the preliminary hearings as well as before the trial Court.

Article 18. (1) Any member of the Military Court may be challenged:

(a) If he is a relative by blood or by marriage or a spouse of the accused;

(b) If he is subpoenaed as a witness in the case submitted to the Court;

(c) If there is evidence of hostility or friendly relations between him and the accused.

(2) Any member of the Military Court, knowing that grounds exist for challenging him, shall inform the Court to this effect which shall then decide whether he shall withdraw.

Article 19. (1) The accused shall appear in Court without handcuffs but accompanied by guards; he shall have the assistance of his counsel.

(2) If the accused refuses to appear, the President shall order him to be brought before the Court by force.

(3) Following the preliminary questions as to the prisoner's identity, the President shall order the Registrar to read out the order of committal or remand together with the list of witnesses. The latter shall then be conducted to the room reserved for them which they shall only leave when required to give evidence.

He shall take any measures needed to prevent witnesses from conferring among themselves.

(4) The President shall then proceed to interrogate the accused and hear the witnesses. The latter shall give evidence after swearing, as instructed by the President, to tell the whole truth and nothing but the truth.

Provided that ascendants, descendants, collaterals and relatives by marriage of the prisoner, the plaintiff and minors aged fourteen or less shall not take the oath but shall merely give information.

Article 24. Following the address by the Government Commissioner, the hearing of the plaintiff and the accused or their counsel, the President shall declare the hearing adjourned.

Provided that, before a hearing is adjourned, the plaintiff and the Government Commissioner shall have the right to reply, but the accused or his counsel shall always have the last word.

Article 25. (1) The Court shall retire to Chambers, where it shall deliberate in camera, in the absence of the Government Commissioner and the Registrar.

(2) During the deliberations, the members of the Court may not communicate with any other persons or leave one another's presence before judgment has been delivered.

Article 26. (1) If the deliberations show that the legal definition of the offence does not correspond to that mentioned in the committal order, the President shall have this matter settled by vote.

(2) The same procedure shall be followed if the proceedings bring to light one or more aggravating or mitigating circumstances not mentioned in the committal order.

(3) The Court shall deliberate, then reach its judgment on a majority of votes. It may apply any penal provisions set forth in the Penal Code.

Article 27. (1) The President shall read out the judgment in open court, together with the applicable enactments; he shall inform the accused of the time allowed for appeal, namely, ten days as from the pronouncement of judgment. The judgment shall mention these formalities.

(2) The record of the judgment shall be signed by the members of the Court and the Registrar.

The judgment must mention the presence of the Government Commissioner.

The record of the judgment shall be lodged at the Court Registry; a copy may be issued to each of the parties at their request.

Article 28. (1) Where the accused, being duly subpoenaed, fails to appear before the Court, a judgment by default shall be delivered. The Court shall issue a warrant for his arrest.

(2) Judgment by default may be objected to for up to five days as from the date of personal service by the bailiff, or of notification by the Police or Gendarmerie.

(3) The notice or the report of service shall mention any objection made by the convicted person.

Article 29. (1) The judgments of the Military Court shall be subject to appeal before the Yaounde Court of Appeal or, where several Military Courts exist, before any other competent Court of Appeal.

(2) Provided that no judgments in matters of attempts against the security of the State, sub-

version or arms legislation shall be subject to appeal.

Article 30. For all persons who are tried by the Military Court, proceedings before the Court as well as before the Court of Appeal and the Supreme Court shall be free of charge. All writs, judgments and decisions shall be exempt from all charges and from registration formalities.

Part III. Military Judicial organization in time of war and in exceptional circumstances

Article 31. In time of war, or where a state of siege or emergency is declared:

(1) Members of the Judicial and Legal Services who are members of the military courts shall be replaced by senior Armed Forces Officers.

(2) The Military Court shall meet upon a simple summons issued by the Government Commissioner forty-eight hours before the hearing.

(3) The accused shall have twenty-four hours in which to choose an advocate.

(4) Civil proceedings may not be instituted.

(5) The Military Court shall pronounce the confiscations provided for by the enactments in force.

Article 32. Prefects and Inspectors of Administration may, upon the proposal of the Minister of Armed Forces, be empowered to issue orders to conduct an investigation.

Part IV. Transitional provisions

Article 33. All provisions set forth in previous enactments which are not repugnant to the Constitution or to the present Ordinance shall continue to remain in force.

Article 34. (1) Prefects and Inspectors of Administration shall retain the powers granted to them by Decree No. 67-DF-184 of 26 April 1967 to determine the functions of Heads of Administrative Areas.

(2) Provided that, within forty-eight hours from the time the facts are recorded, they shall forward the reports to the Minister of Armed Forces, plus a copy to the Government Commissioner at the Military Court.

Article 35. (1) The Military Court shall automatically take cognizance of cases within its jurisdiction which are pending before any other criminal courts or the date of promulgation of this Ordinance together with those forming the subject of a judgment in cassation.

(2) The Examining Magistrates of other Courts shall also automatically relinquish jurisdiction in favour of the Examining Magistrate of the Military Court in all matters falling within the jurisdiction of the latter.

Part V. Final provisions

Article 36. All previous provisions repugnant to this Ordinance are repealed.

Article 37. This Ordinance shall be registered and published according to the procedure of urgency and then in the *Official Gazette*.

4. Ordinance No. 72-6 of 26 August 1972 to fix the organization of the Supreme Court ⁴

(Extract)

CHAPTER I. HEADQUARTERS, TERRITORIAL JURISDICTION, COMPOSITION

Article 1. (1) The Supreme Court shall sit at Yaoundé.

(2) Its area of jurisdiction shall comprise the whole territory of the Republic.

Article 2. (1) The Supreme Court shall comprise:

- A President;
- Substantive or Alternate Puisne Judges;
- A Procureur General;
- An Advocate General;
- Deputies to the Procureur General;
- A Chief Registrar and Registrars.

(2) Subject to the provisions relating to the composition of the said Court in administrative matters, any case submitted to the Court shall be tried by five Judges, members of the Court.

(3) Provided that, depending on the needs of the service, three Judges of the Court may, in the name of the said Court, give judgment on appeals brought before it.

(4) Notwithstanding the above paragraphs, the President of the Supreme Court or his delegate shall rule alone on matters concerning urgent orders and orders on an *ex parte* petition.

Article 3. Whenever the Court shall sit as a body, the presidency shall be entrusted to the most senior Judge of the Court in the highest scale.

Article 4. (1) Where the Supreme Court is called upon to give a ruling in the cases contemplated by articles 7, 10 and 27 of the Constitution, its numbers shall be increased by

five personalities nominated for one year by the President of the Republic in view of their special knowledge or experience.

(2) No member of the Government or Parliament, serving officer or official having authority may be nominated under the foregoing paragraph.

(3) The appointment of persons so nominated shall without more extend up to the appointment of their successors.

(4) Against absence or impediment of any person substantively appointed, the President of the Republic shall in like manner appoint an alternate for each of such personalities.

CHAPTER II. JURISDICTION

Article 5. The Supreme Court, in addition to the powers and duties provided for by articles 7, 10 and 27 of the Constitution shall be responsible for the following matters:

(1) To give judgment on appeals from the judgments of the Courts of Appeal wherever the application of the law is in issue.

(2) To decide all administrative cases.

Article 6. Any judicial act emanating from a Court of Appeal which is contrary to law may be referred to the Supreme Court by its Procureur General:

(a) In the sole interest of the law on the initiative of the Procureur General. The parties may not in that case take advantage of the appeal.

(b) On the orders of the Minister of Justice. The appeal shall then operate in favour of all the parties. However, in criminal cases, the appeal may only be granted in favour of the party who has been definitively convicted.

⁴ *Ibid.*

5. Ordinance No. 72-16 of 28 September 1972 to amend certain provisions of the Penal Code ⁵

(Extracts)

Article 1. Sections 52, 88, 247, 248, 253, 294, 318, 320, 321, 324, 343, 344, 346 and 347 of the Penal Code ⁶ shall be repealed and replaced by the following provisions:

Section 52 (new). (1) Sentences to loss of liberty shall be enforced in the chronological order in which the imprisonment warrants were notified to the offender.

(2) Accessory penalties and confinement under section 43 of this Code shall run from the date when the sentence becomes final, while other preventive measures shall commence from the expiry or suspension of the principal sentence.

(3) Several consecutive preventive measures shall be enforced in the following order:

(a) Confinement in a health institution;

(b) Preventive confinement;

(c) Postpenal supervision and assistance.

(4) Where during the currency of any such measure, the offender is sentenced to loss of liberty for another felony or misdemeanour,

⁵ *Ibid.*

⁶ Certain sections of the Cameroonian Penal Code of 1966 are contained in the *Yearbook on Human Rights for 1967*, pp. 39-45.

the preventive measure shall be suspended until the new sentence shall have been served out.

Section 88 (new). *Previous convictions*

(a) Wherever a new offence defined as a felony or misdemeanour, is committed within a period of time running from the date of the final conviction and expiring within five years of release from or prescription against a sentence for felony or misdemeanour, the maximum penalty provided, if of limited duration, shall be doubled.

(b) Wherever a new simple offence is committed within a period of time running from the date of the final conviction and expiry within twelve months of release from or prescription against a sentence for a simple offence—the maximum penalty provided, if of limited duration, shall be doubled.

Section 247 (new). *Vagrancy*

(1) Whoever is found in a public place being of no fixed abode and with no means of support shall be guilty of vagrancy and shall be punished with imprisonment for from six months to two years.

(2) The punishment prescribed above shall be doubled:

(a) Where the vagrant is found in possession of any weapon or any instrument with which an offence may be committed;

(b) Where the vagrant has committed (or attempted to commit) any act of violence against an individual or individuals.

(3) In addition, the measures prescribed under section 42(1), (2) and (3) shall be pronounced.

...

Section 294 (new). *Immoral earnings*

(1) Whoever procures, aids or facilitates, another person's prostitution, or shares in the proceeds of another's prostitution, whether habitual or otherwise, or who is subsidised by any person engaging in prostitution shall be punished with imprisonment for from six months to five years and with fine of from 20,000 to 1,000,000 francs.

(2) Whoever lives with a person engaging in prostitution shall be presumed to be subsidised by her, unless he shows that his own resources are sufficient to enable him to support himself.

(3) The punishment shall be doubled where:

(a) The offence is accompanied by coercion or by fraud, or where the offender is armed; or where he is the owner, manager or otherwise in charge of an establishment where prostitution is habitually practised;

(b) Where the offence has been committed to the detriment of any person under the age of twenty-one;

(c) Where the offender is the father or mother, guardian or person with customary responsibility.

(4) In the cases referred to under sub-section 3, the provisions of section 48 shall be applied.

(5) The Court may impose the forfeitures described by section 30 of this Code and disqualify the offender for the same period

from being guardian or curator of any person and from having custody, customary or otherwise, of any person under the age of twenty-one.

(6) Upon conviction under subsection 3(a) of this section, the Court shall order closure of the establishment, to whatever other use it may be put.

(7) The prostitute herself shall not be treated as accessory to any offence under this section.

...

Section 343 (new) *Prostitution*

(1) Any person of either sex who engages habitually, against remuneration, in sexual acts with another person, shall be punished with imprisonment for from six months to five years and with fine of from 20,000 to 500,000 francs.

(2) Whoever by gesture, word, writing or any other means publicly solicits for prostitution or immorality any person of either sex, shall be punished with the same penalties.

Section 344 (new). *Corruption of youth*

(1) Whoever excites, encourages or facilitates the debauch or corruption of any person under twenty-one years of age shall be punished with imprisonment for from one to five years and with fine of from 20,000 to 1,000,000 francs.

(2) The penalties shall be doubled where the victim is under sixteen years of age.

(3) Upon conviction, the Court may order the forfeitures described in section 30 of this Code and deprive the offender for the same period of parental power and disqualify him from being guardian or curator of any minor.

Section 346 (new). *Indecency to child under sixteen*

(1) Whoever commits an indecent act in the presence of a child under the age of sixteen shall be punished with imprisonment for from two to five years and with fine of from 20,000 to 200,000 francs.

(2) The penalty shall be doubled where the offence is accompanied by assault or where the offender is one of the persons described in section 298.

(3) The penalty shall be imprisonment for from ten to fifteen years where the offender has sexual intercourse with the victim, notwithstanding his or her consent.

(4) In case of rape, the imprisonment shall be from fifteen to twenty-five years, or for life where the offender is one of the persons described in section 298.

(5) Upon conviction under this section, the Court may deprive the offender of parental power and disqualify him from being guardian or curator of any minor for the time prescribed by section 31(4) of this Code.

Section 347 (new). *Indecency to minor between sixteen and twenty-one*

(1) For any offence under sections 295, 296 and 347a of this Code committed against a person over sixteen and under twenty-one years of age, the penalty shall be doubled.

(2) Upon conviction under this section, the Court may deprive the offender of parental power and disqualify him from being guardian or curator of any minor for the time prescribed by section 31(4) of this Code.

Article 2. A further section 347a shall be added to the Penal Code as follows:

Section 347a. Homosexuality

Whoever has sexual relations with a person of the same sex shall be punished with imprison-

ment for from six months to five years and with fine of from 20,000 to 200,000 francs.

Article 3. The provisions of this Ordinance shall apply to offences in respect of which judgment has not been delivered on the date of its publication.

Article 4. This Ordinance shall be published according to the procedure of urgency, registered and published in French and English in the *Official Gazette* of the United Republic of Cameroon.

UNITED STATES OF AMERICA

A selective summary of principal developments in 1972 relating to the protection and advancement of human rights¹

I. New legislation

1. CONSTITUTIONAL AMENDMENT

In March 1972 the Congress completed action on the proposed Twenty-seventh Amendment to the Constitution of the United States. The Amendment, which must be ratified by 38 of the 50 states before it becomes effective, reads:

"Article --

"Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"Section 2 The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"Section 3. This amendment shall take effect two years after the date of ratification."

2. EQUAL EMPLOYMENT OPPORTUNITY

The Civil Rights Act of 1964 included among its many provisions new standards to prevent discrimination in employment and new machinery—the Equal Employment Opportunity Commission (EEOC)—to investigate complaints of such discrimination. The Equal Employment Opportunity Act of 1972 (Public Law 92-261) extended the provisions of the Civil Rights Act in several major respects. Most importantly, the EEOC was given authority to compel compliance with anti-discrimination laws through court action. An office of general counsel was established for this purpose. The provisions of the 1964 Act were extended to businesses and labour organizations with 15 or more employees or members (the previous minimum having been 25) and to "governments, governmental agencies, and political subdivisions". In the latter category, court enforcement is the responsibility of the Attorney General rather than the EEOC.

II. Executive action—enforcement of civil rights

Major responsibility for the enforcement of Federal laws and executive orders concerning civil rights lies with the Civil Rights Division of the Department of Justice. During fiscal year 1972 the Division initiated or participated in

important litigation in all areas of its responsibility, filing a total of 162 new cases, including 38 cases alleging criminal interference with federally-protected rights. Following is an illustrative survey of the Division's activities in 1972 in the areas of employment, housing, education, and public institutions.

1. EMPLOYMENT.

Focusing on problems of nationwide significance, the Division participated in a number of cases involving an alleged "pattern or practice" of employment discrimination. A particularly important consent decree was obtained settling a Division suit charging that a glass company and the unions representing its employees had discriminated against both women and blacks by assigning them to lower-paying jobs, with less advancement opportunity, than those occupied by white males. The decree granted blacks and women transfer rights to the better-paying jobs on a seniority basis and awarded back pay to a number of those who had suffered from discrimination. A suit brought by the Division against a major union resulted in a court decision that the union's segregated locals violated the Civil Rights Act of 1964, which prohibits discrimination in all aspects of employment.

The Division also appeared, as *amicus curiae*, in three important cases involving alleged discrimination by public agencies. In one case, a district court found that the hiring policies of a state department of public safety showed a "blatant and continuous pattern and practice of discrimination" on the basis of race. The court therefore ordered the department to hire blacks on a one-for-one basis until they constituted approximately 25 per cent of the department's force. The second case concerned the allegedly discriminatory effect of the civil service tests used by the Boston, Massachusetts, police department. The court, finding that the tests had a disproportionate exclusionary effect on blacks and persons of Spanish or Latin American descent, ordered that the tests be redesigned. In the third case, the court ruled that the setting of numerical hiring requirements for qualified minority persons was an appropriate means of overcoming the effects of a public employer's previous discriminatory practices. The results of these cases set important precedents for future Department of Justice action, authorized by the Equal Employment Opportunity Act of 1972, against public agencies charged with discrimination.

¹ Note furnished by the government of the United States of America.

2. HOUSING

In 1972 the Civil Rights Division filed its first suit charging discrimination in lending practices. The consent decree negotiated with the defendant—the nation's largest lending firm—required an end to all discriminatory lending (as well as hiring) policies, including the practice of subjecting non-white applications to a more thorough screening than that given to white applications. Consent decrees were also obtained in a number of suits charging real estate companies with "steering" black customers to predominately black areas and white customers to largely white areas; the decrees required the companies to change their practices in order to provide all their customers with as free and informed a choice as possible in all areas they served.

The Division also participated in several housing cases that resulted in important new decisions. In one, the court found that a group of realtors had engaged in a "group pattern or practice" of discrimination, even though no individual pattern was found and no conspiracy was shown. In a suit involving the largest realty firm in Atlanta, Georgia, which had sold 3,000 houses since the Fair Housing Act became effective without ever making a sale to a black person, the court held that the Act prohibited sophisticated as well as obvious forms of discrimination. In another case, the court found that a large housing development's policy of automatically excluding recipients of public assistance was discriminatory, since the great majority of those so excluded were black or Puerto Rican.

3. EDUCATION

The Civil Rights Division's efforts in the area of education focused on correcting violations of school desegregation plans and enforcement of the rights of minorities to equal educational opportunity. Attention was also given to the rights of minority teachers in hiring, assignment, and dismissal policies. In a case involving the dismissal of 60 black teachers in a Texas school district, the court found the action illegal and ordered the reinstatement of 29 of the teachers with awards of back pay exceeding \$300,000. Other Division activities included assisting a newly consolidated school district in Texas to develop a programme of bilingual instruction for Spanish-speaking students. In a California case, the Division supported the right of Chinese-speaking students to adequate English instruction as a fundamental prerequisite to the achievement of equal educational opportunity.

4. INSTITUTIONS AND FACILITIES

The Civil Rights Division's newest area of responsibility, exercised since late 1971, is the protection of the civil rights of those involuntarily confined in public institutions such as prisons, jails, juvenile detention homes, mental hospitals, and mental retardation treatment facilities. During the period under review the Division appeared as *amicus curiae* in three ground-breaking cases in this area. In one, concerning the mentally ill and mentally retarded inmates of a state mental

health system, the court found, for the first time, a constitutional right to adequate care and treatment. It established detailed standards that such state hospitals are required to meet. The second major case raised, also for the first time, the question of whether the Constitution requires that juvenile delinquents committed to state facilities be rehabilitated. The third case sought to define the standards of medical care to which inmates in a state prison are entitled under the Constitution.

III. Judicial decisions—selected leading cases

Decisions announced by the Supreme Court in 1972 involved a wide range of the basic rights protected by the first eight Amendments and the Fourteenth Amendment to the United States Constitution. The following reports on selected leading cases reflect the variety of issues dealt with by the nation's highest court during the year.

1. FREEDOM OF SPEECH, PRESS, AND ASSOCIATION

These rights, protected by the First Amendment, were the subjects of several 1972 cases.

In *Lloyd Corporation, Ltd., v. Tanner* (407 U.S. 551) the Court upheld the right of the private owner of a shopping centre to prohibit the distribution of handbills on that property. A lower court had held that the shopping center, though privately owned, was the "functional equivalent of a public place" in which the hand-billing, as an exercise of the right of free speech, was protected. The Supreme Court disagreed, finding that despite its extensive use by the public, there had been no dedication of the privately owned and operated shopping center to public use so as to justify the distribution of handbills unrelated to the centre's operation.

Another case, *Laird v. Tatum* (408 U.S. 1), concerned the alleged "chilling effect" on freedom of speech of an Army programme to gather information about domestic political activity with a potential for civil disturbance. The programme had been established following enactment of legislation in 1968 giving the Army certain responsibilities in times of domestic turmoil. The Court found that the mere existence of such a programme when no specific injury or threat of injury had been shown, was not a justiciable controversy.

Gooding v. Wilson (405 U.S. 518) concerned a state law that made a misdemeanor of the use of "opprobrious words or abusive language, tending to cause a breach of the peace". The Court found the law unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments.

An aspect of freedom of the press—the asserted right of reporters to protect a confidential source of information—was at issue in *Branzburg v. Hayes* (408 U.S. 665) and two similar cases decided with it. Branzburg, a newspaper reporter, had refused to reveal to a grand jury the names of two individuals, whom he had interviewed, engaged in the illegal manufacture of drugs. Arguing that the promise of confidentiality

was often essential to gaining information, the reporter claimed that compelling revelation of confidential sources would have a detrimental effect on the free flow of information and on freedom of the press. The Court, however, found "no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on newsgathering which is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial."

Freedom of association was tested in *Healy v. James* (408 U.S. 169). College students seeking to form a local chapter of Students for a Democratic Society (SDS) were denied recognition as a campus organization on the basis of their presumed affiliation with the national SDS organization, which college authorities deemed to espouse a philosophy of violence and disruption. The Court held that the college's denial of recognition, insofar as it was based on the student group's presumed affiliation with the national SDS, disagreement with the group's philosophy, or fear of disruption, unsupported by specific evidence, violated the students' right of association. The Court further suggested that non-recognition might be justified if the students refused to abide by reasonable campus regulations.

2. FREEDOM OF RELIGION

The First Amendment also protects the right of all citizens to the free exercise of religious beliefs, which was the subject of an important 1972 case, *Wisconsin v. Yoder* (406 U.S. 205). A group of Amish parents, members of a religious sect that stresses self-reliance, simplicity, and isolation from modern society, refused to send their children to school beyond the eighth grade, in violation of a state law making school attendance compulsory. The parents claimed that secondary education emphasized "worldly" values that posed a grave threat to their religion and way of life. The Supreme Court ruled in favour of the parents, holding that their First Amendment right, as well as the traditional interests of parents with respect to the religious upbringing of their children, outweighed the state's interest in ensuring universal education. The Court noted several additional factors, including the long traditions of the Amish as a religious group and the fact that Amish children continue to receive informal vocational training after leaving school. One Justice, in a partial dissent, warned that the rights of the children should not be overlooked and that their desires should be taken into account.

3. SEARCH AND SEIZURE

The Fourth Amendment's prohibition of searches and seizures without a court warrant was the fundamental constitutional issue in *United States v. United States District Court* (407 U.S. 297), one of a number of recent cases involving wiretapping and other forms of elec-

tronic surveillance. In the case, the Supreme Court rejected a claim by the Executive Branch of the Government that it had broad discretion to conduct electronic surveillance, without a court warrant, in cases involving alleged domestic threats to national security. The Court found no grounds justifying the exception of such cases from the Fourth Amendment protection.

4. RIGHT TO COUNSEL AND TO A SPEEDY TRIAL

The guarantees under the Sixth Amendment of the right to counsel and to a speedy trial were the subjects of two major cases in 1972.

In 1963, in the landmark case *Gideon v. Wainwright* (372 U.S. 335), the Supreme Court had held that the Sixth Amendment guaranteed the right of an indigent defendant in a felony case to court-appointed counsel if he could not afford counsel himself. *Argersinger v. Hamlin* (407 U.S. 25), decided in 1972, extended this right to include defendants in any case, including misdemeanors, that could result in the defendant's imprisonment upon conviction.

Faced with defining the meaning of the Sixth Amendment guarantee of a "speedy trial" in *Barker v. Wingo* (407 U.S. 514), the Court decided that there were no fixed and rigid standards for determining whether a delay in holding a trial was unconstitutional. Rather, such a determination must be made on an *ad hoc* basis weighing such factors as the length of and the reasons for the delay, the prejudice of the delay to the defendant, and whether or in what manner the defendant had requested a speedy trial.

5. CAPITAL PUNISHMENT

The applicability of the Eighth Amendment's protection against cruel and unusual punishment to the death penalty was tested in *Furman v. Georgia* (408 U.S. 238) and two similar cases decided with it. Each of the three petitioners in the cases had been convicted—one for murder and two for rape—and sentenced to death under statutes that made their crimes punishable either by death or a prison term. In its brief decision, based on a 5-to-4 majority, the Court held that "the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." The decision did not ban capital punishment in all circumstances.

6. EQUAL PROTECTION

The provision of the Fourteenth Amendment prohibiting states from denying any person the equal protection of the laws has been applied to a wide range of problems involving civil and political rights, including voting and discrimination.

An important 1972 voting rights case, *Dunn v. Blumstein* (405 U.S. 330), questioned the constitutionality of durational residency requirements for voter registration. The Court held invalid a state's requirement that a citizen live in the state for one year and in a county for three

months before becoming eligible to vote, finding that such a requirement infringed upon the fundamental political right of voting and in violation of the equal protection clause penalized those who had exercised their right to travel. The Court suggested that a 30-day residency requirement was sufficient to safeguard the state's interest in preventing fraud and protecting the purity of the ballot.

Bullock v. Carter (405 U.S. 134) challenged a state law requiring candidates in primary elections for local office to pay a filing fee ranging up to \$8,900, based on an estimate of the election's cost. The Court found that the sizable fees had a "patently exclusionary character", infringing the right of potential candidates with limited resources to run for office and thereby indirectly

depriving some voters of the opportunity to vote for the candidate of their choice.

Discrimination on the basis of race or sex continued to be an important issue before the Court. In *Moose Lodge No. 107 v. Irvis* (407 U.S. 163), the Court decided by a 5-to-4 vote that a private club's refusal to serve black guests was not illegal. The Court, noting that the Fourteenth Amendment prohibits discrimination by states, not private individuals or organizations, found that the state's involvement (by virtue of having granted the club a license to serve alcoholic beverages) was not sufficient to constitute state action within the meaning of the Fourteenth Amendment. In *Reed v. Reed* (404 U.S. 71), the Court struck down a state law giving preference to males over females as administrators of estates.

YUGOSLAVIA

NOTE ¹

The year 1972 was characterized in the Socialist Federal Republic of Yugoslavia by efforts to implement the constitutional amendments adopted in 1971 ² and by preparations for the second phase of constitutional change, namely, the adoption of the new Constitution. The draft of the new Constitution (published early in June 1973) contains a brief summary of the results obtained following the implementation of the constitutional amendments concerning the development of socio-economic organization and presents for public discussion the significant changes which have been made in the structure of federal organs. Since it is scheduled for adoption at the end of 1973, the new Constitution, particularly the part concerning the freedoms, rights, duties and responsibilities of the individual and the citizen, will probably be dealt with in the *Yearbook on Human Rights for 1973-1974*.

A. Legislation

In 1972, the most important legislative instruments relating to human rights that were adopted concerned pension insurance and disability insurance. In July 1972 a new Law on the Use and Protection of the Sign and Name of the Red Cross (*Official Gazette of the SFRY*, No. 39/1972) was also adopted. However, this Law differs from the Law bearing the same title ³ of 9 December 1966 only in that it provides for essential changes in the names of organs and organizations and in the amount of fines. This report will also refer to a number of judgments of the Constitutional Court of Yugoslavia concerning human rights which were published in 1972 and will list the international agreements relating to human rights which were ratified in 1972.

On 28 June 1972 the Federal Assembly adopted the Law on Basic Rights deriving from Pension Insurance and Disability Insurance. All relevant federal regulations which had been in force up to 1 January 1973 became invalid on that date, and the rights continued to be exercised as stipulated in the new Law (arts. 81 and 82). Portions of this are reproduced below, providing a selection indicative of the most important principles of the new Yugoslav legislation.

In addition to this Law, three federal instruments were adopted concerning special categories of persons: the Law on Pension Insurance and Disability Insurance for Insured Military Personnel (*Official Gazette of the SFRY*, No. 67/1972); the Law on Disabled Military Personnel (*Official Gazette of the SFRY*, No. 67/1972) and the Regulations concerning the Procedures for the Exercise of Rights deriving from Health Insurance for Insured Military Personnel and Members of their Families (*Official Gazette of the SFRY*, No. 56/1972).

LAW ON BASIC RIGHTS DERIVING FROM PENSION INSURANCE AND DISABILITY INSURANCE ⁴

(Extracts)

I. BASIC RIGHTS

Article 1

1. Workers (hereinafter called "the insured") as well as members of their families shall be covered by social security insurance in the form of compulsory pension insurance and disability insurance.

2. The rights deriving from pension insurance and disability insurance shall be determined on the basis of the principles of reciprocity and solidarity governing the self-managed pension insurance and disability insurance communities concerned (hereinafter called "the communities").

Article 2

The basic rights deriving from pension insurance and disability insurance under this Law are as follows:

(1) Entitlement to an old-age pension in the event of old age;

(2) Entitlement to a disability pension and to vocational rehabilitation and employment, including the corresponding cash payments, in the event of a reduction in or loss of the capacity to work (disability).

(3) Entitlement to a cash payment in the event of bodily injury;

(4) Entitlement to a survivors' pension in the event of the death of the insured.

Article 3

1. The basic rights deriving from pension insurance and disability insurance shall be determined

¹ Note prepared by Mr. Budislav Vukas, government-appointed correspondent for the *Yearbook on Human Rights*.

² See *Yearbook on Human Rights for 1971*, pp. 290-294.

³ See *Yearbook on Human Rights for 1966*, p. 400.

⁴ *Official Gazette of the SFRY*, No. 35/1972.

on the basis of the worker's contribution paid by the insured for the entire duration of his current and previous employment.

2. The worker's contribution paid in respect of previous employment shall exert a particular influence on the manner in which the pension basis and the amount of the pension are determined, on the adjustment of the pension to reflect economic trends and on the resources required for pension insurance and disability insurance.

Article 4

1. The resources required for the exercise of the rights deriving from pension insurance and disability insurance shall be provided by:

(1) The insured, through contributions from their personal income;

(2) Self-employed persons and other persons, in respect of the workers they employ (hereinafter called "employers"), from their own resources;

(3) Basic organizations and other organizations of associated labour, State organs, co-operatives, social and other organizations (hereinafter called "organizations"), for the purposes prescribed by law.

2. Socio-political communities shall also participate in providing the necessary resources required for pension insurance and disability insurance in accordance with the law.

Article 5

1. Insured persons and recipients of pensions shall autonomously administer within the framework of their communities the rights deriving from pension insurance and disability insurance.

2. Common interests relating to the administration of rights and the implementation of insurance shall be the subject of self-management agreements concluded between the communities and their associations.

Article 6

1. Certain matters relating to the acquisition and determination of entitlements provided under this Law may be governed by a social agreement. This social agreement shall be binding on all parties.

2. Except where this Law provides otherwise with respect to certain matters, the social agreement envisaged in paragraph 1 of this article shall be concluded by the communities and the Confederation of Trade Unions.

II. INSURED PERSONS

Article 7

In accordance with this Law, insurance shall be compulsory for the following:

(1) Workers employed at least one half the normal working time;

(2) Members of representative bodies and of their subsidiary organs exercising permanent functions, as well as persons elected to permanent posts receiving a fixed monthly salary in social organizations, co-operatives, chambers and other bodies, provided that such employment is their sole or main occupation;

(3) Members of craft co-operatives and fishermen's co-operatives whose work in the co-operatives constitutes their sole or main occupation;

(4) Disabled workers and disabled military personnel, provided that they are employed to the extent that their remaining capacity to work permits;

(5) Yugoslav nationals in employment relationships abroad, provided that they are not compulsorily insured during this period by a foreign insurer.

Article 8

Foreign nationals in employment relationships on Yugoslav territory shall be insured under this Law:

(1) If they are employed in Yugoslav organizations or by Yugoslav employers;

(2) If they are in the service of international organizations or foreign diplomatic or consular offices or if they are in the personal service of foreign nationals enjoying diplomatic immunity, in which case they shall be insured under this Law only if such insurance is provided for by an international agreement.

III. ACQUISITION, DETERMINATION AND EXERCISE OF RIGHTS DERIVING FROM PENSION INSURANCE AND DISABILITY INSURANCE

1. OLD-AGE PENSIONS

Article 9

1. Persons who have worked for a pension period of 20 years shall be entitled to an old-age pension at the age of 60 years, in the case of men, and 55 years, in the case of women.

2. Men who have attained the age of 65 years and women who have attained the age of 60 years and who have not completed a pension period of 20 years shall be entitled to an old-age pension if they have completed a pension period of at least 15 years, provided that part of this period has been completed within a determined period of time. The part of the insurance period and the period within which it must be completed as a condition for entitlement to a pension (density of the insurance period) shall be determined by social agreement.

3. Men who have completed a pension period (period of service conferring entitlement to a pension) of 40 years and women who have completed a pension period of 35 years shall be entitled to an old-age pension irrespective of their age.

Article 10

1. The old-age pension shall be calculated in accordance with the pension basis.

2. The pension basis is the average monthly personal income received by the insured in his current and previous employment during the last 10 years during which he was insured before becoming entitled to a pension or during any 10 consecutive years during which he was insured, whichever the insured person elects. A different

period in respect of which personal income may be taken into consideration to determine the pension basis may also be established by social agreement.

3. The insurance year in respect of which personal income is taken into account to determine the pension basis (para. 2) shall be the calendar year during which the insured received personal income or compensation in lieu of personal income for at least six months of the insurance period.

4. Personal income in respect of the preceding insurance years shall be valorized on the basis of trends in average personal income in the territory of the community in which the pension entitlement is exercised. The calendar year in respect of which the average personal income is used to valorize the personal income of preceding years shall be determined by social agreement.

Article 11

1. For the purposes of determining the pension basis, account shall be taken of the principles of social consultation and self-management agreements governing the distribution of income and personal income.

2. For the purposes of determining the pension basis, it may be prescribed that personal income up to a determined amount or earned over a period determined in accordance with prescribed criteria shall be taken into account, or minimum and maximum amounts for pensions may be prescribed.

Article 12

1. The old-age pension shall be calculated in terms of percentages of the pension basis determined in accordance with the pension period.

2. The amount of the pension covering 15 years of the insurance period may not be less than 35 per cent (men) or 40 per cent (women) of the pension basis.

2. DISABILITY PENSIONS

Article 13

1. The following persons shall be entitled to a disability pension:

(1) An insured person who is entirely incapable of performing his work or related work and who cannot be trained through vocational rehabilitation to perform other related work;

(2) An insured person who became disabled after reaching the established age at which he would have been entitled to vocational rehabilitation or to employment;

(3) A war-disabled person in the I to VI categories who is able to work only one half the total working time, irrespective of whether he meets the requirements for vocational rehabilitation or employment.

2. The insured person covered by paragraph 1 (3) of this article shall, at his request, and in lieu of a disability pension, be entitled to vocational rehabilitation or employment if meets the requirements prescribed for other insured disabled workers.

Article 14

1. Disability shall exist within the meaning of this Law if the insured person suffers a loss of or reduction in his capacity to work which cannot be remedied by treatment or medical rehabilitation.

2. Within the meaning of this Law, a disabled worker is an insured person who has become entitled to disability insurance on the basis of his state of disablement.

Article 15

1. An insured person shall be entitled to a disability pension if his disability is caused by a disease or injury contracted outside of his employment:

(1) If the pension period completed prior to the onset of the disability covers at least three fourths of the person's working life after the age of 20 years;

(2) If the pension period completed covers less than three fourths but at least one third of the person's working life, provided that the density of the insurance period determined by social agreement was completed prior to the onset of the disability (art. 9, para. 2).

2. An insured person who becomes disabled before attaining the age of 30 years shall be entitled to a disability pension on more favourable terms than those prescribed in paragraph 1 (2) of this article.

Article 16

If the disability is caused by an occupational accident or disease, entitlement to a disability pension shall be acquired irrespective of the duration of the pension period.

...

Article 19

1. The disability pension shall be calculated in accordance with the pension basis, which shall be fixed in the same manner as for old-age pensions (arts. 10 and 11).

2. If a disability pension is acquired by a person who has completed an insurance period which is shorter than the period in respect of which personal income is taken into account in order to establish the pension basis (art. 10, para. 2), the pension basis shall be determined on the basis of the personal income received throughout the whole duration of the insurance periods.

Article 20

1. In the event of disability caused by illness or injury contracted outside of employment, the disability pension shall be calculated as a percentage of the pension basis. The percentages used to calculate the disability pension shall be established in such a manner that an insured person who is the same age as another person but has completed a longer pension period shall receive a higher pension.

2. The amount of the disability pension envisaged in paragraph 1 of this article may not be less than 45 per cent of the pension basis in the case of a man who became disabled before attaining the age of 60 years, or 55 per cent

of the pension basis in the case of a woman who became disabled before attaining the age of 55 years. If the disability occurred after they attained 60 or 55 years of age, the amount of the disability pension may not be less than 35 per cent of the pension basis in the case of a man or 40 per cent in the case of a woman. The amount of the disability pension may not be less than the amount of the old-age pension covering the same pension period.

Article 21

In the event of disability caused by an occupational accident or disease, the disability pension shall be calculated in accordance with the pension basis in the same manner as an old-age pension covering a pension period of 40 years (men) or 35 years (women).

...

3. EMPLOYMENT AND VOCATIONAL REHABILITATION

Article 23

1. An insured person who, depending on his remaining capacity to work following the onset of the disability, and taking into account the established age, is able to perform his duties or other appropriate duties, shall be entitled to employment and to vocational rehabilitation, if needed, and to a cash payment in connexion with the exercise of these rights if he fulfils the requirements.

2. In the event of disability caused by an occupational accident or disease, acquisition of the rights envisaged in paragraph 1 of this article shall not depend on the duration of the pension period.

4. CASH PAYMENTS IN THE EVENT OF BODILY INJURY

Article 24

1. An insured person shall be entitled to a cash payment after sustaining a bodily injury during the insurance period:

(1) On the same conditions, with respect to the pension period, as those required for entitlement to a disability pension, if the bodily injury is caused by a disease or injury contracted outside of employment;

(2) Irrespective of the duration of the pension period, if the bodily injury is caused by an occupational accident or disease.

2. Bodily injury shall exist within the meaning of this Law if the insured has sustained the loss of, significant injury to, or substantial incapacity of certain body organs or parts, thus making it difficult for the body to function normally and requiring greater efforts to perform vital functions.

3. The list of bodily injuries constituting the basis for the acquisition of entitlement to a cash payment in respect of a bodily injury and the percentages of bodily injuries shall be established by social agreement.

...

5. SURVIVORS' PENSIONS

Article 26

In the event of the death of the insured, the following shall be entitled to a survivors' pension:

(1) The spouse;

(2) The insured's dependent children (children born in and out of wedlock, adopted children or stepchildren) and orphaned grandchildren;

(3) The insured's dependent parents (father and mother, father-in-law and mother-in-law and adoptive parents).

Article 27

1. Members of the family shall be entitled to a survivors' pension:

(1) If the insured had completed at least five years of the insurance period or at least ten years of the pension period, provided that the density of the insurance period established by social agreement has been completed (art. 9, para. 2);

(2) If the insured had completed a pension period of 20 years or longer;

(3) If the insured had fulfilled the requirements relating to the pension period and age necessary for acquisition of the right to a pension or disability pension or if he had been receiving a retirement pension, a disability pension or a cash payment in respect of the right to vocational rehabilitation or employment.

2. If the death of the insured was caused by an occupational accident or disease, the members of the family shall be entitled to a survivors' pension irrespective of the duration of the pension period completed by the insured.

Article 28

1. A widow shall be entitled to a survivors' pension:

(1) If she has attained the age of 45 years at the time of the death of the spouse from whom she derives her entitlement; or

(2) If, at the time of the death of her spouse, she is totally incapable of work or if she becomes totally incapable of work within one year following the death of her spouse; or

(3) If, following the death of her spouse, there remain one or several children who are entitled to a pension as survivors of this spouse and if the widow discharges parental responsibilities in respect of these children. A widow who becomes totally incapable of work while exercising her right on this basis shall remain entitled to a survivors' pension as long as her disability persists.

2. A widow who has attained the age of 40 years but not 45 years on the date of her spouse's death shall be entitled to a survivors' pension once she has attained the age of 45 years.

3. A widow who attains the age of 45 while exercising her right to a survivors' pension which she became entitled pursuant to paragraph 1 (3) of this article shall remain entitled to a survivors' pension indefinitely; if she loses this entitlement before attaining the age of 45 years but after attaining the age of 40 years, she may reassert her claim to this entitlement after she has attained the age of 45 years.

Article 29

1. A widower shall be entitled to a survivors' pension:

(1) If he has attained the age of 60 years at the time of the death of the spouse from whom he derives his entitlement; or

(2) If he is less than 60 years old and was totally incapable of work prior to the death of his spouse, or if he became totally incapable of work within one year following the date of the death of his spouse; or

(3) If, following the death of his spouse, there remain one or several children who are entitled to a pension as survivors of this spouse and if the widower discharges parental responsibilities in respect of these children. A widower who becomes totally incapable of work while exercising his right on this basis shall remain entitled to a survivors' pension as long as his disability persists.

2. A widower who attains the age of 60 years while exercising his right to a survivors' pension to which he became entitled pursuant to paragraphs 1 (2) and (3) of this article shall retain this entitlement indefinitely.

Article 30

Subject to articles 28 and 29 of this Law, a spouse whose marriage has been dissolved, through no fault of his or her own, and has been awarded alimony by a judicial decision shall also be entitled to a survivors' pension.

Article 31

1. A child shall be entitled to a survivors' pension and may exercise that right before and after attaining the age of 15 years if a law or general act of the community so provides:

2. A child who becomes totally and permanently incapable of work before reaching the age at which children are guaranteed the right to a survivors' pension shall be entitled to a survivors' pension as long as the disability persists.

3. A child who becomes totally and permanently incapable of work after the age at which the right to a survivors' pension is guaranteed and before the death of the insured or the beneficiary of the insured shall be entitled to a survivors' pension if he had been a dependant of the insured or of the legal beneficiary of the insured until that person's death.

Article 32

The dependent mother or father of the insured or of the legal beneficiary of the insured shall be entitled to a survivors' pension:

(1) If, at the time of the death of the insured or the legal beneficiary of the insured the mother has attained the age of 45 years and the father has attained the age of 60 years; or

(2) If one of the parents was less than 45 or 60 years of age but was totally incapable of work at the time of the death of the insured or the legal beneficiary of the insured.

Article 33

1. The survivors' pension shall be calculated on the basis of the old-age pension or disability pension to which the insured would have been

entitled on the date of his death or by the pension to which the recipient of the pension was entitled at the time of death.

2. The amount of the survivors' pension shall be calculated in percentages on the basis of the number of family members who are entitled to the pension (para. 1). In the case of a family member who is a surviving spouse or a child with no parents, the percentage of the survivors' pension to be calculated may not be less than 70 per cent of the basis, and a maximum survivors' pension may be prescribed.

IV. READJUSTMENT OF PENSIONS

Article 34

1. Pensions shall be compulsorily readjusted to reflect economic trends in the territory of the community:

(1) In order to maintain the real value of pensions, having regard to movements in the cost of living;

(2) In order to augment pensions to reflect increased productivity in respect of previous work performed by the insured and on the basis of increased personal income.

2. The compulsory readjustment of pensions established for previous and subsequent periods shall be required in the light of variations in the level of pensions received during different periods. The readjustment of pensions on this basis may apply to all pensions or to pensions received during certain periods by all insured persons or by certain categories of insured persons.

3. The criteria established by social consultations and self-management agreements governing the distribution of income and personal income shall be taken into account in the readjustment of pensions.

...

1. INSURANCE PERIODS EVALUATED ON A REAL-TIME BASIS

Article 49

Insurance periods shall cover the time which the insured person as defined in articles 7 and 8 of this Law has spent after attaining the age of 15 years in working with an organization of associated labour or with an employer.

Article 50

1. Insurance periods shall cover all time spent in full-time employment.

2. Time spent in full-time employment shall also mean time spent at less than full-time employment by:

(1) Insured disabled workers and disabled military personnel, provided that they are employed for a working period which corresponds to their capacity to work;

(2) Insured military personnel receiving disability pensions who work one half the prescribed amount of time;

(3) Insured women who are nursing mothers and must care for their children, in accordance with special regulations;

(4) Mentally deficient persons and disabled persons, provided that they are employed for a working period which corresponds to their capacity to work.

3. Except in the cases envisaged in paragraph 2 of this article, and provided that the insured person has worked for a least one half the prescribed working period, periods of part-time work shall be included in insurance periods, and shall consist of the total number of hours spent at such work during each of the years which are taken into account when calculating the duration of regular employment.

4. The provisions of paragraphs 1 to 3 of this article shall also apply when the required working time was spent in two or several organizations or with two or several employers.

5. In the case of an insured person with a disability which entitles him to a disability pension (arts. 13 and 15), only the time spent at work prior to the onset of the disability shall be included in the insurance periods.

Article 51

Insurance periods shall also include the time spent by the insured person:

(1) On sick leave, after ceasing the employment in respect of which he was insured, provided that during this time he was receiving compensation in lieu of personal income in accordance with the health insurance regulations;

(2) During vocational rehabilitation ordered by the competent organization or agency by virtue of his being a disabled worker, a disabled member of the armed forces, blind, afflicted with dystrophy or other muscular or neuromuscular diseases, or a civilian casualty of war whether he is insured or not.

2. INSURANCE PERIODS EVALUATED AT A HIGHER-THAN-REAL-TIME RATE

Article 56

1. Insurance periods completed in employment which is particularly strenuous or injurious to health or in which insured persons who have reached the age limit are no longer able successfully to perform certain professional tasks, shall be validated at a higher rate. The rate of increase for insurance periods shall depend on the strenuous or injurious conditions of work, i.e., the nature of the work, and may be as high as 50 per cent.

2. In the case of insured persons whose insurance periods are calculated at a higher rate, the age limit conferring entitlement to a pension shall be lowered in accordance with the degree of increase applicable to the period.

3. The work places for which insurance periods are validated at a higher rate, the rate of increase applicable to the insurance periods spent at these work places and the appropriate rate of decrease in the age limit shall be determined by the community in accordance with the legislation in force.

Article 57

1. Work places for which insurance periods are validated at a higher rate owing to the fact

that employment at such work places is particularly strenuous and injurious to health are those in which the following circumstances apply:

(1) If, while a worker is employed at a work place, harmful effects are observed to exert a greater impact on the state of his health and working capacity, even if all the general and special protection measures envisaged in the regulations and other measures designed to eliminate and reduce such harmful effects are applied;

(2) If workers perform their duties on a continuous basis at their work places in conditions which are strenuous and injurious to their health in direct proximity to the sources of the harmful effects;

(3) If the duties envisaged in subparagraphs (1) and (2) of this paragraph are performed by the same person working on the full-time basis established for the particular job, full-time work being considered as covering fewer than 42 hours per week in the case of certain jobs owing to special working conditions.

2. Work places for which insurance periods are validated at a higher rate because the period of professional activity is limited once the worker reaches a certain age may be considered work places in professions in which, owing to the nature and difficulty of the work, the body's physiological functions weaken to an extent which prevents the worker from continuing successfully to perform the same professional activity.

B. Decisions of the Constitutional Court of the Socialist Federal Republic of Yugoslavia

1. By a decision of 16 December 1971, the Constitutional Court annulled, i.e., abolished, the provisions of the Statutes of a work community and its regulations concerning employment relations. In proceedings opened at the initiative of a worker who was a member of the community, the Court found that those provisions were contrary to the provisions of the Constitution of the Socialist Federal Republic of Yugoslavia and of the Basic Law on Labour Relations. The Court, in annulling and abolishing those provisions as being contrary to the constitutional and legal provisions governing employment relations, asserted that:

A worker occupying a supervisory position who is not re-elected in accordance with a regular procedure or a supervisor who has been relieved of his duties because he has not been re-elected may have his employment relations terminated if he does not agree to work at another workplace to which the work community assigned him in accordance with his abilities or to the post which it has offered him. In workplaces in which, owing to the nature and organization of the work, the working hours include, in addition to hours of actual work, time during which the presence of the worker at the workplace is compulsory because of certain tasks, the working hours may be longer than those prescribed for full-time work. The work community must establish by a general

act what these workplaces are, the time during which presence at these workplaces is compulsory and the criteria in accordance with which the tasks performed by workers when their presence is required are calculated as hours of actual work.

The work community must establish in advance, by a statute or a general act, the working hours and the schedule, i.e., the beginning and end of the working day or of a longer period, in keeping with the conditions of work and the nature of its activities. (*Official Gazette of the SFRY*, No. 4/1972.)

2. On the initiative of a worker, the Constitutional Court of Yugoslavia issued a ruling on a provision of a 'decision of the workers' council to the effect that workers who had terminated their employment relations with the organization prior to the adoption of the decision were not entitled to adjustments based on periodic calculations. In its ruling of 16 December 1971, the Constitutional Court annulled this provision as being in violation of amendment XXI, paragraph 3, and article 79 of the Basic Law on Labour Relations. The Court stated the following:

Workers who have helped to create resources by their labour and their personal contribution to the success and development of the work organization cannot be excluded from the distribution of resources which are allocated for personal income on the basis of periodic calculations, even if, in the interim, for any reason whatsoever, they had ceased to work in that organization. (*Official Gazette of the SFRY*, No. 5/1972.)

3. On 29 February 1972, the Constitutional Court annulled certain provisions of the regulations of a labour organization concerning the utilization of the means of labour, on the grounds that they were contrary to constitutional and legislative provisions (constitutional amendments XV and XXI, para. 3; Basic Law on Labour Relations, arts. 81 and 83). The Court based its decision on the following principles relating to autonomous decision-making by workers:

The participation of workers in the distribution of resources allocated for personal income is determined on the basis of the difficulty of the work performed and on other requirements of the workers' workplace and is in proportion to the results of his work and of his personal contribution to the success and development of the organization. The results of all his work, current and previous, are taken into account, and are determined in accordance with the norms and criteria governing the distribution of personal income established directly and in complete independence by a general act adopted by working men in the basic organization of associated labour.

Only elected management organs (workers' councils, the council) or the work community, acting directly through the basic organizations of associated labour, may take decisions concerning the exercise of the rights and fulfilment of the duties and obligations of workers deriving from their employment relations. The business committee, the commission on cadres,

and other similar collegial organs—which are established automatically to discharge supervisory functions or are appointed and not elected by the work community or the relevant management organ—may not take decisions on matters falling within the competence of the work community or its self-management organs by virtue of their inalienable right to self-management. (*Official Gazette of the SFRY*, No. 21/1972.)

C. International agreements

Listed below are the bilateral and multilateral agreements relating to human rights notice of whose ratification by Yugoslavia was published in 1972 in the *Official Gazette of the SFRY* and in its annexes: *International Treaties and Other Agreements* (hereinafter called *International Treaties*).

However, reference should be made to two agreements whose ratifications were published in 1971 but which were not mentioned in the *Yearbook on Human Rights for 1971*:

1. Agreement between Yugoslavia and India on the abolition of visas, signed at New Delhi on 16 April 1970; ratified on 8 July 1970 (*International Treaties*, No. 14/1971).

2. Agreement amending and supplementing the General Convention on Social Security between Yugoslavia and France, signed on 5 January 1950, supplemented and amended by the Amending Agreement of 8 February 1966 concerning the determination of entitlement to compensation for occupational diseases, signed at Belgrade on 13 February 1969; ratified on 11 November 1970 (*International Treaties*, No. 17/1971).

I. BILATERAL TREATIES

1. General Convention on Social Security between Yugoslavia and Luxembourg, signed on 13 October 1954, amended and supplemented at Belgrade on 28 May 1970; ratified on 13 January 1971 (*International Treaties*, No. 4/1972).

2. Convention between Yugoslavia and France on the recognition and enforcement of judicial decisions in civil and commercial matters, signed at Paris on 18 May 1971; ratified on 28 October 1971 (*International Treaties*, No. 7/1972).

3. Consular Convention between Yugoslavia and Turkey, signed at Ankara on 31 March 1968; ratified on 10 December 1969 (*International Treaties*, No. 9/1972).

4. Agreement between Yugoslavia and Iraq on the reciprocal abolition of visas, concluded at Belgrade on 13 October 1971; ratified on 27 January 1972 (*International Treaties*, No. 31/1972).

5. Record of the twenty-eighth regular session of the mixed Yugoslav-Italian committee provided for in article 8 of the special Statute on minorities (annex to the second aide-mémoire on the Agreement, dated 5 October 1954), signed at Belgrade on 26 October 1971; ratified on 15 March 1972 (*International Treaties*, No. 42/1972).

6. Administrative Arrangement modifying, supplementing, abolishing and replacing the basic provisions of the Administrative Arrangement of 23 January 1967 concerning the procedures for the implementation of the General Convention on Social Security between Yugoslavia and France of 5 January 1950, amended and supplemented by the Agreements amending the General Convention of 1966 and 1969, respectively, and the Administrative Arrangement on the implementation of the Franco-Yugoslav Agreement on seasonal workers of 5 March 1970, signed at Belgrade on 29 April 1971; ratified on 8 December 1971 (*International Treaties*, No. 59/1972).

7. Convention between Yugoslavia and the Federal Republic of Germany concerning mutual assistance in criminal matters, signed at Bonn on 1 October 1971; ratified on 29 June 1972 (*Official Gazette of the SFRY*, No. 33/1972).

8. Convention between Yugoslavia and France concerning competence and applicable law in respect of law of obligations and family law, signed at Paris on 18 May 1971; ratified on 6 October 1972 (*Official Gazette of the SFRY*, No. 55/1972).

9. Convention between Yugoslavia and Belgium concerning the issuance of extracts from civil registers and exemption from legalization, signed at Belgrade on 24 August 1971; ratified on 6 October 1972 (*Official Gazette of the SFRY*, No. 55/1972).

II. MULTILATERAL TREATIES

1. Convention establishing the World Intellectual Property Organization, signed at Stockholm on 14 July 1967; ratified on 16 July 1971 (*International Treaties*, No. 31/1972).

2. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Navigation, signed at Montreal on 23 September 1971; ratified on 29 June 1972 (*Official Gazette of the SFRY*, No. 33/1972).

3. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; ratified on 29 June 1972 (*Official Gazette of the SFRY*, No. 33/1972).

PART II

**TRUST AND NON-SELF-GOVERNING
TERRITORIES**

A. Trust Territories

TRUST TERRITORY OF NEW GUINEA

Under the administration of Australia

NOTE¹

I. Legislation

A. PROTECTION OF HUMAN RIGHTS IN GENERAL

The most important piece of legislation passed in the Territory during the year, from the human rights point of view, was the Human Rights Ordinance 1971.

The preamble to the Ordinance recites that every person in the Territory is entitled to the fundamental rights and freedoms of the individual, that is to say, he has the right, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following freedoms, namely:

(a) Life, liberty, security of the person, freedom of employment, the enjoyment of property and the protection of the law;

(b) Freedom of conscience, of expression and of peaceful assembly and association; and

(c) Respect for his private and family life.

The preamble recites further that the House of Assembly is solemnly resolved that it is necessary to give greater protection to those rights and freedoms by a basic law subject to which all other laws are to be read and administered, but with only such limitations of that protection as are necessary to ensure that the enjoyment of those rights and freedoms by one person does not prejudice the rights and freedoms of other persons or the public interest.

Section 4 of the Ordinance provides that, notwithstanding anything in any other law or rule of statutory construction of the Territory, in the interpretation and application of the Ordinance the provisions of the preamble are to be taken fully into account in all cases and each provision of the Ordinance is to be read and construed as being intended to effectuate (as far as may be) the provisions of the preamble.

Section 5 of the Ordinance provides, in subsection (1), that notwithstanding anything in the Ordinance, but subject to subsection (2), nothing in the Ordinance affects the operation of any law of the Territory in force at the commence-

ment of the Ordinance. Subsection (2) provides that, unless the contrary intention appears, whether by express reference or necessary implication, each law of the Territory, whether made before or after the commencement of the Ordinance, is to be read and construed as being subject to the provisions of the Ordinance.

Section 9 of the Ordinance declares the following rights and freedoms to be guaranteed to every person in the Territory:

(a) The right to life;

(b) The right to personal liberty;

(c) Freedom from slavery and forced labour;

(d) Protection from inhuman treatment;

(e) Freedom from unjust deprivation of property;

(f) Freedom of his person and property;

(g) The right to the protection of the law;

(h) Freedom of conscience, thought and religion;

(i) Freedom of expression and publication (including freedom of the press);

(j) Freedom of assembly and association; and

(k) Freedom of employment.

The sections of the Ordinance that follow spell out these rights and freedoms and provide for necessary exceptions.

Section 21 of the Ordinance provides that a right or freedom specified in the Ordinance is to be protected and to be enforceable by the Supreme Court on application by any person having an interest in the enforcement of that right or freedom, or, where any such person is in the opinion of the Court unable fully and freely to exercise his rights under this section, by a person acting on his behalf, whether or not by his authority.

B. FREEDOM FROM DISCRIMINATION

(Universal Declaration of Human Rights, articles 2, 7)

The Discriminatory Practices (Extension) Ordinance 1972 amends the Discriminatory Practices Ordinance 1963-1969.

The principal Ordinance prohibits the practice of discrimination by persons who have been granted licences to enable them to deal with the public, such as liquor licences, traders' licences and licences to keep a place of entertainment.

The amending Ordinance extends the prescribed licences to include motor omnibus, public motor

¹ Note furnished by Mr. J. O. Clark, government-appointed correspondent of the *Yearbook on Human Rights*.

vehicle, private hire car and taxi-cab licences as well as certain business licences obtained from local government councils.

II. Court decisions

FAIR TRIAL

(Universal Declaration, article 11)

Before the District Court, where the defendants were convicted, they were invited to address the

Magistrate on the question of conviction only and were not given an opportunity to address him on the question of sentence.

On appeal, *held* by the Supreme Court of Papua New Guinea that after a defendant has been convicted, failure to give him or his counsel an opportunity to address the court on the question of sentence is a denial of natural justice and renders any sentence pronounced a nullity.

Moses Aikaba and others v. Tami 1971-1972 P. and N.G.L.R. 155.

B. Non-Self-Governing Territories

TERRITORY OF PAPUA

Under the administration of Australia

NOTE ¹

The ordinances described above in the note relating to the Territory of New Guinea ² apply equally in the Territory of Papua, which is governed under an administrative union with the Territory of New Guinea under the name of Papua New Guinea.

¹ Note furnished by Mr. J. O. Clark, government-appointed correspondent of the *Yearbook on Human Rights*.

² See p. 295.

PART III

INTERNATIONAL INSTRUMENTS

UNITED NATIONS

Declaration of the United Nations Conference on the Human Environment¹

Adopted by the Conference at its 21st plenary meeting on 16 June 1972

The United Nations Conference on the Human Environment,

Having met at Stockholm from 5 to 16 June 1972,

Having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment,

I

Proclaims that:

1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself.

2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.

3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.

4. In the developing countries most of the environmental problems are caused by underdevelopment. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development.

5. The natural growth of population continuously presents problems for the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and, through their hard work, continuously transform the human environment. Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day.

6. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development.

7. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in

¹ *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International co-operation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest. The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.

II

Principles

States the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating *apartheid*, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

Principle 5

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Principle 8

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Principle 9

Environmental deficiencies generated by the conditions of under-development and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management since economic factors as well as ecological processes must be taken into account.

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Principle 12

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

Principle 13

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated

and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

Principle 14

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Principle 15

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect, projects which are designed for colonialist and racist domination must be abandoned.

Principle 16

Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment or development, or where low population density may prevent improvement of the human environment and impede development.

Principle 17

Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.

Principle 18

Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

Principle 19

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communication avoid contributing to the deterioration of the environment, but, on the contrary, disseminate information of an educational nature on the need to protect and improve the environment in order to enable man to develop in every respect.

Principle 20

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this

connexion, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

Principle 24

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

Principle 25

States shall ensure that international organizations play a co-ordinated, efficient and dynamic role for the protection and improvement of the environment.

Principle 26

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Convention concerning the protection of the world cultural and natural heritage

Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its seventeenth session, Paris, 16 November 1972¹

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session;

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a conven-

tion establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

Having decided, at its sixteenth session, that this question should be made the subject of an international convention,

Adopts this sixteenth day of November 1972 this Convention.

I. Definitions of the cultural and the natural heritage

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage":

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

Sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage":

Nature features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

Natural sites or precisely delineated natural areas of outstanding universal value from the

¹ Text furnished by UNESCO.

point of view of science, conservation or natural beauty.

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. National protection and international protection of the cultural and natural heritage

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to his end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- (a) To adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- (b) To set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- (c) To develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;
- (d) To take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) To foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such

heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

III. Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office, of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Educational, Scientific and Cultural Organization after the first election.

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.

3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List", a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing

in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.

Article 13

1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable for inclusion in the lists referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property.

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.

3. The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion,

on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which international assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee's documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

IV. Fund for the Protection of the World Cultural and Natural Heritage

Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding

Universal Value, called "the World Heritage Fund", is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of:

(a) Compulsory and voluntary contributions made by the States Parties to this Convention,

(b) Contributions, gifts or bequests which may be made by:

(i) other States;

(ii) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other inter-governmental organizations;

(iii) public or private bodies or individuals;

(c) Any interest due on the resources of the Fund;

(d) Funds raised by collections and receipts from events organized for the benefit of the Fund; and

(e) All other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee.

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund.

Article 16

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1 per cent of the contribution to the Regular Budget of the United Nations Educational, Scientific and Cultural Organization.

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to the Convention which has made the declaration referred to in paragraph 2

of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention.

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election.

The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.

Article 17

The States Parties to this Convention shall consider or encourage the establishment of national, public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

V. Conditions and arrangements for international assistance

Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision.

Article 20

Subject to the provisions of paragraph 2 of Article 13; sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural

heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11.

Article 21

1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow it to meet all the expenses. Such requests must be supported by experts' reports whenever possible.

2. Requests based upon disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary.

Article 22

Assistance granted by the World Heritage Committee may take the following forms:

(a) Studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention;

(b) Provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;

(c) Training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;

(d) Supply of equipment which the State concerned does not possess or is not in a position to acquire;

(e) Low-interest or interest-free loans which might be repayable on a long-term basis;

(f) The granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage.

Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be

consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25

As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26

The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the conditions laid down by the agreement.

VI. Educational programmes

Article 27

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.

2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of activities carried on in pursuance of this Convention.

Article 28

States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

VII. Reports

Article 29

1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

2. These reports shall be brought to the attention of the World Heritage Committee.

3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

VIII. Final clauses

Article 30

This Convention is drawn up in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative.

Article 31

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 32

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 33

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

(a) With regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) With regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 35

1. Each State Party to this Convention may denounce the Convention.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

Article 36

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.

Article 37

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 38

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris, this twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 31 and 32 as well as to the United Nations.

**Recommendation concerning the protection, at national level, of the cultural
and natural heritage**

Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its seventeenth session, Paris, 16 November 1972²

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris, at its seventeenth session, from 17 October to 21 November 1972,

Considering that, in a society where living conditions are changing at an accelerated pace, it is essential for man's equilibrium and development to preserve for him a fitting setting in which to live, where he will remain in contact with nature and the evidences of civilization bequeathed by past generations, and that, to this end, it is appropriate to give the cultural and natural heritage an active function in community life and to integrate into an over-all policy the achievements of our time, the values of the past and the beauty of nature,

Considering that such integration into social and economic life must be one of the fundamental aspects of regional development and national planning at every level,

Considering that particularly serious dangers engendered by new phenomena peculiar to our times are threatening the cultural and natural heritage which constitute an essential feature of mankind's heritage and a source of enrichment

and harmonious development for present and future civilization,

Considering that each item of the cultural and natural heritage is unique and that the disappearance of any one item constitutes a definite loss and an irreversible impoverishment of that heritage,

Considering that every country in whose territory there are components of the cultural and natural heritage has an obligation to safeguard this part of mankind's heritage and to ensure that it is handed down to future generations,

Considering that the study, knowledge and protection of the cultural and natural heritage in the various countries of the world are conducive to mutual understanding among the peoples,

Considering that the cultural and natural heritage forms an harmonious whole, the components of which are indissociable,

Considering that a policy for the protection of the cultural and natural heritage, thought out and formulated in common, is likely to bring about a continuing interaction among Member States and to have a decisive effect on the activities of the United Nations Educational, Scientific and Cultural Organization in this field,

² Text furnished by UNESCO.

Noting that the General Conference has already adopted international instruments for the protection of the cultural and natural heritage, such as the Recommendation on International Principles Applicable to Archaeological Excavations (1956), the Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (1962) and the Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968),

Desiring to supplement and extend the application of the standards and principles laid down in such recommendations,

Having before it proposals concerning the protection of the cultural and natural heritage, which question appears on the agenda of the session as item 23,

Having decided, at its sixteenth session, that this question should be made the subject of international regulations, to take the form of a recommendation to Member States.

Adopts this sixteenth day of November 1972, this Recommendation.

I. Definitions of the cultural and the natural heritage

1. For the purposes of this Recommendation, the following shall be considered as "cultural heritage":

Monuments: architectural works, works of monumental sculpture and painting, including cave dwellings and inscriptions, and elements, groups of elements or structures of special value from the point of view or archaeology, history, art or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of special value from the point of view of history, art or science;

Sites: topographical areas, the combined works of man and of nature, which are of special value by reason of their beauty or their interest from the archaeological, historical, ethnological or anthropological points of view.

2. For the purposes of this Recommendation, the following shall be considered as "natural heritage":

Natural features consisting of physical and biological formations or groups of such formations, which are of special value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of species of animals and plants, valuable or threatened, of special value from the point of view of science or conservation;

Natural sites or precisely delineated natural areas of special value from the point of view of science, conservation or natural beauty, or in their relation to the combined works of man and of nature.

II. National policy

3. In conformity with their jurisdictional and legislative requirements, each State should formulate, develop and apply as far as possible a policy whose principal aim should be to co-ordinate and make use of all scientific, technical, cultural and other resources available to secure the effective protection, conservation and presentation of the cultural and natural heritage.

III. General principles

4. The cultural and natural heritage represents wealth, the protection, conservation and presentation of which impose responsibilities on the States in whose territory it is situated, both vis-à-vis their own nationals and vis-à-vis the international community as a whole; Member States should take such action as may be necessary to meet these responsibilities.

5. The cultural or natural heritage should be considered in its entirety as a homogeneous whole, comprising not only works of great intrinsic value, but also more modest items that have, with the passage of time, acquired cultural or natural value.

6. None of these works and none of these items should, as a general rule, be dissociated from its environment.

7. As the ultimate purpose of protecting, conserving and presenting the cultural and natural heritage is the development of man, member States should, as far as possible, direct their work in this field in such a way that the cultural and natural heritage may no longer be regarded as a check on national development but as a determining factor in such development.

8. The protection, conservation and effective presentation of the cultural and natural heritage should be considered as one of the essential aspects of regional development plans, and planning in general, at the national, regional or local level.

9. An active policy for the conservation of the cultural and natural heritage and for giving it a place in community life should be developed. Member States should arrange for concerted action by all the public and private services concerned, with a view to drawing up and applying such a policy. Preventive and corrective measures relating to the cultural and natural heritage should be supplemented by others, designed to give each of the components of this heritage a function which will make it a part of the nation's social, economic, scientific and cultural life for the present and future, compatible with the cultural or natural character of the item in question. Action for the protection of the cultural and natural heritage should take advantage of scientific and technical advances in all branches of study involved in the protection, conservation and presentation of the cultural or natural heritage.

10. Increasingly significant financial resources should, as far as possible, be made available by

the public authorities for the safeguarding and presentation of the cultural and natural heritage.

11. The general public of the area should be associated with the measures to be taken for protection and conservation and should be called on for suggestions and help, with particular reference to regard for and surveillance of the cultural and natural heritage. Consideration might also be given to the possibility of financial support from the private sector.

IV. Organization of services

12. Although their diversity makes it impossible for all Member States to adopt a standard form of organization, certain common criteria should nevertheless be observed.

Specialized public services

13. With due regard for the conditions appropriate to each country, Member States should set up in their territory, wherever they do not already exist, one or more specialized public services to be responsible for the efficient discharge of the following functions:

(a) Developing and putting into effect measures of all kinds designed for the protection, conservation and presentation of the country's cultural and natural heritage and for making it an active factor in the life of the community; and primarily, compiling an inventory of the cultural and natural heritage and establishing appropriate documentation services;

(b) Training and recruiting scientific, technical and administrative staff as required, to be responsible for working out identification, protection, conservation and integration programmes and directing their execution;

(c) Organizing close co-operation among specialists of various disciplines to study the technical conservation problems of the cultural and natural heritage;

(d) Using or creating laboratories for the study of all the scientific problems arising in connexion with the conservation of the cultural and natural heritage;

(e) Ensuring that owners or tenants carry out the necessary restoration work and provide for the upkeep of the buildings in the best artistic and technical conditions.

Advisory bodies

14. The specialized services should work with bodies of experts responsible for giving advice on the preparation of measures relating to the cultural and natural heritage. Such bodies should include experts, representatives of the major preservation societies, and representatives of the administrations concerned.

Co-operation among the various bodies

15. The specialized services dealing with the protection, conservation and presentation of the cultural and natural heritage should carry out their work in liaison and on an equal footing with other public services, more particularly those responsible for regional development planning,

major public works, the environment, and economic and social planning. Tourist development programmes involving the cultural and natural heritage should be carefully drawn up so as not to impair the intrinsic character and importance of that heritage, and steps should be taken to establish appropriate liaison between the authorities concerned.

16. Continuing co-operation at all levels should be organized among the specialized services whenever large-scale projects are involved, and appropriate co-ordinating arrangements made so that decisions may be taken in concert, taking account of the various interests involved. Provision should be made for joint planning from the start of the studies and machinery developed for the settlement of conflicts.

Competence of central, federal, regional and local bodies

17. Considering the fact that the problems involved in the protection, conservation and presentation of the cultural and natural heritage are difficult to deal with, calling for special knowledge and sometimes entailing hard choices, and that there are not enough specialized staff available in this field, responsibilities in all matters concerning the devising and execution of protective measures in general should be divided among central or federal and regional or local authorities on the basis of a judicious balance adapted to the situation that exists in each State.

V. Protective measures

18. Member States should, as far as possible, take all necessary scientific, technical and administrative, legal and financial measures to ensure the protection of the cultural and natural heritage in their territories. Such measures should be determined in accordance with the legislation and organization of the State.

Scientific and technical measures

19. Member States should arrange for careful and constant maintenance of their cultural and natural heritage in order to avoid having to undertake the costly operations necessitated by its deterioration; for this purpose, they should provide for regular surveillance of the components of their heritage by means of periodic inspections. They should also draw up carefully planned programmes of conservation and presentation work, gradually taking in all the cultural and natural heritage, depending upon the scientific, technical and financial means at their disposal.

20. Any work required should be preceded and accompanied by such thorough studies as its importance may necessitate. Such studies should be carried out in co-operation with or by specialists in all related fields.

21. Member States should investigate effective methods of affording added protection to those components of the cultural and natural heritage that are threatened by unusually serious dangers. Such methods should take account of the inter-related scientific, technical and artistic problems

involved and make it possible to determine the treatment to be applied.

22. These components of the cultural and natural heritage should, in addition, be restored, wherever appropriate, to their former use or given a new and more suitable function, provided that their cultural value is not thereby diminished.

23. Any work done on the cultural heritage should aim at preserving its traditional appearance, and protecting it from any new construction or remodelling which might impair the relations of mass or colour between it and its surroundings.

24. The harmony established by time and man between a monument and its surroundings is of the greatest importance and should not, as a general rule, be disturbed or destroyed. The isolation of a monument by demolishing its surroundings should not, as a general rule, be authorized; nor should the moving of a monument be contemplated save as an exceptional means of dealing with a problem, justified by pressing considerations.

25. Member States should take measures to protect their cultural and natural heritage against the possible harmful effects of the technological developments characteristic of modern civilization. Such measures should be designed to counter the effects of shocks and vibrations caused by machines and vehicles. Measures should also be taken to prevent pollution and guard against natural disasters and calamities, and to provide for the repair of damage to the cultural and natural heritage.

26. Since the circumstances governing the rehabilitation of groups of buildings are not everywhere identical, Member States should provide for a social science inquiry in appropriate cases, in order to ascertain precisely what are the social and cultural needs of the community in which the group of buildings concerned is situated. Any rehabilitation operation should pay special attention to enabling man to work, to develop and to achieve fulfilment in the restored setting.

27. Member States should undertake studies and research on the geology and ecology of items of the natural heritage, such as park, wildlife, refuge or recreation areas, or other equivalent reserves, in order to appreciate their scientific value, to determine the impact of visitor use and to monitor interrelationships so as to avoid serious damage to the heritage and to provide adequate background for the management of the fauna and flora.

28. Member States should keep abreast of advances in transportation, communication, audio-visual techniques, automatic data-processing and other appropriate technology, and of cultural and recreational trends, so that the best possible facilities and services can be provided for scientific study and the enjoyment of the public, appropriate to the purpose of each area, without deterioration of the natural resources.

Administrative measures

29. Each member State should draw up, as soon as possible, an inventory for the protection

of its cultural and natural heritage, including items which, without being of outstanding importance, are inseparable from their environment and contribute to its character.

30. The information obtained by such surveys of the cultural and natural heritage should be collected in a suitable form and regularly brought up to date.

31. To ensure that the cultural and natural heritage is effectively recognized at all levels of planning, Member States should prepare maps and the fullest possible documentation covering the cultural and natural property in question.

32. Member States should give thought to finding suitable uses for groups of historic buildings no longer serving their original purpose.

33. A plan should be prepared for the protection, conservation, presentation and rehabilitation of groups of buildings of historic and artistic interest. It should include peripheral protection belts, lay down the conditions for land use, and specify the buildings to be preserved and the conditions for their preservation. This plan should be incorporated into the over-all town and country planning policy for the areas concerned.

34. Rehabilitation plans should specify the uses to which historic buildings are to be put, and the links there are to be between the rehabilitation area and the surrounding urban development. When the designation of a rehabilitation area is under consideration, the local authorities and representatives of the residents of the area should be consulted.

35. Any work that might result in changing the existing state of the buildings in a protected area should be subject to prior authorization by the town and country planning authorities, on the advice of the specialized services responsible for the protection of the cultural and natural heritage.

36. Internal alterations to groups of buildings and the installation of modern conveniences should be allowed if they are needed for the well-being of their occupants and provided they do not drastically alter the real characteristic features of ancient dwellings.

37. Member States should develop short- and long-range plans, based on inventories of their natural heritage, to achieve a system of conservation to meet the needs of their countries.

38. Member States should provide an advisory service to guide non-governmental organizations and owners of land on national conservation policies consistent with the productive use of the land.

39. Member States should develop policies and programmes for restoration of natural areas made derelict by industry, or otherwise despoiled by man's activities.

Legal measures

40. Depending upon their importance, the components of the cultural and natural heritage should be protected, individually or collectively, by legislation or regulations in conformity with

the competence and the legal procedures of each country.

41. Measures for protection should be supplemented to the extent necessary by new provisions to promote the conservation of the cultural or natural heritage and to facilitate the presentation of its components. To that end, enforcement of protection measures should apply to individual owners and to public authorities when they are owners of components of the cultural and natural heritage.

42. No new building should be erected, and no demolition, transformation, modification or deforestation carried out, on any property situated on or in the vicinity of a protected site, if it is likely to affect its appearance, without authorization by the specialized services.

43. Planning legislation to permit industrial development, or public and private works should take into account existing legislation on conservation. The authorities responsible for the protection of the cultural and natural heritage might take steps to expedite the necessary conservation work, either by making financial assistance available to the owner, or by acting in the owner's place and exercising their powers to have the work done, with the possibility of their obtaining reimbursement of that share of the costs which the owner would normally have paid.

44. Where required for the preservation of the property, the public authorities might be empowered to expropriate a protected building or natural site subject to the terms and conditions of domestic legislation.

45. Member States should establish regulations to control bill-posting, neon signs and other kinds of advertisement, commercial signs, camping, the erection of poles, pylons and electricity or telephone cables, the placing of television aerials, all types of vehicular traffic and parking, the placing of indicator panels, street furniture, etc., and, in general, everything connected with the equipment or occupation of property forming part of the cultural and natural heritage.

46. The effects of the measures taken to protect any element of the cultural or natural heritage should continue regardless of changes of ownership. If a protected building or natural site is sold, the purchaser should be informed that it is under protection.

47. Penalties or administrative sanctions should be applicable, in accordance with the laws and constitutional competence of each State, to anyone who wilfully destroys, mutilates or defaces a protected monument, group of buildings or site, or one which is of archaeological, historical or artistic interest. In addition, equipment used in illicit excavation might be subject to confiscation.

48. Penalties or administrative sanctions should be imposed upon those responsible for any other action detrimental to the protection, conservation or presentation of a protected component of the cultural or natural heritage, and should include provision for the restoration of an affected site to its original state in accordance with established scientific and technical standards.

Financial measures

49. central and local authorities should, as far as possible, appropriate, in their budgets, a certain percentage of funds, proportionate to the importance of the protected property forming part of their cultural or natural heritage, for the purposes of maintaining, conserving and presenting protected property of which they are the owners, and of contributing financially to such work carried out on other protected property by the owners, whether public bodies or private persons.

50. The expenditure incurred in protecting, conserving and presenting items of the privately-owned-cultural and natural heritage should, so far as possible, be borne by their owners or users.

51. Tax concessions on such expenditures, or grants or loans on favourable terms, could be granted to private owners of protected properties, on condition that they carry out work for the protection, conservation, presentation and rehabilitation of their properties in accordance with approved standards.

52. Consideration should be given to indemnifying, if necessary, owners of protected cultural and natural areas for losses they might suffer as a consequence of protective programmes.

53. The financial advantages accorded to private owners should, where appropriate, be dependent on their observance of certain conditions laid down for the benefit of the public, such as their allowing access to parks, gardens and sites, tours through all or parts of natural sites, monuments or groups of buildings, the taking of photographs, etc.

54. Special funds should be set aside in the budgets of public authorities for the protection of the cultural and natural heritage endangered by large-scale public or private works.

55. To increase the financial resources available to them, Member States may set up one or more "Cultural and Natural Heritage Funds", as legally established public agencies, entitled to receive private gifts, donations and bequests, particularly from industrial and commercial firms.

56. Tax concessions could also be granted to those making gifts, donations or bequests for the acquisition, restoration or maintenance of specific components of the cultural and natural heritage.

57. In order to facilitate operations for rehabilitation of the natural and cultural heritage, Member States might make special arrangements, particularly by way of loans for renovation and restoration work, and might also make the necessary regulations to avoid price rises caused by real-estate speculation in the areas under consideration.

58. To avoid hardship to the poorer inhabitants consequent on their having to move from rehabilitated buildings or groups of buildings, compensation for rises in rent might be contemplated so as to enable them to keep their accommodation. Such compensation should be temporary and determined on the basis of the income of the parties concerned, so as to enable

them to meet the increased costs occasioned by the work carried out.

59. Member States might facilitate the financing of work of any description for the benefit of the cultural and natural heritage, by instituting "Loan Funds", supported by public institutions and private credit establishments, which would be responsible for granting loans to owners at low interest rates and with repayment spread out over a long period.

VI. Educational and cultural action

60. Universities, educational establishments at all levels and life-long education establishments should organize regular courses, lectures, seminars, etc., on the history of art, architecture, the environment and town planning.

61. Member States should undertake educational campaigns to arouse widespread public interest in, and respect for, the cultural and natural heritage. Continuing efforts should be made to inform the public about what is being and can be done to protect the cultural or natural heritage and to inculcate appreciation and respect for the values it enshrines. For this purpose, all media of information should be employed as required.

62. Without overlooking the great economic and social value of the cultural and natural heritage, measures should be taken to promote and reinforce the eminent cultural and educational value of that heritage, furnishing as it does the fundamental motive for protecting, conserving and presenting it.

63. All efforts on behalf of components of the cultural and natural heritage should take account of the cultural and educational value inherent in them as representative of an environment, a form of architecture or urban design commensurate with man and on his scale.

64. Voluntary organizations should be set up to encourage national and local authorities to

make full use of their powers with regard to protection, to afford them support and, if necessary, to obtain funds for them; these bodies should keep in touch with local historical societies, amenity improvement societies, local development committees and agencies concerned with tourism, etc. and might also organize visits to, and guided tours of, different items of the cultural and natural heritage for their members.

65. Information centres, museums or exhibitions might be set up to explain the work being carried out on components of the cultural and natural heritage scheduled for rehabilitation.

VII. International co-operation

66. Member States should co-operate with regard to the protection, conservation and presentation of the cultural and natural heritage, seeking aid, if it seems desirable, from international organizations, both intergovernmental and non-governmental. Such multilateral or bilateral co-operation should be carefully co-ordinated and should take the form of measures such as the following:

(a) exchange of information and of scientific and technical publications;

(b) organization of seminars and working parties on particular subjects;

(c) provision of study and travel fellowships, and of scientific, technical and administrative staff, and equipment;

(d) provision of facilities for scientific and technical training abroad, by allowing young research workers and technicians to take part in architectural projects, archaeological excavations and the conservation of natural sites;

(e) co-ordination, within a group of Member States, of large-scale projects involving conservation, excavations, restoration and rehabilitation work, with the object of making the experience gained generally available.

COUNCIL OF EUROPE

European Convention on the Transfer of Proceedings in Criminal Matters

Done at Strasbourg on 15 May, 1972¹

(Extracts)

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members;

Desiring to supplement the work which they have already accomplished in the field of criminal law with a view to arriving at more just and efficient sanctions;

Considering it useful to this end to ensure, in a spirit of mutual confidence, the organisation of criminal proceedings on the international level, in particular, by avoiding the disadvantages resulting from conflicts of competence,

Have agreed as follows:

Part I. Definitions

Article 1

For the purposes of this Convention:

(a) "offence" comprises acts dealt with under the criminal law and those dealt with under the legal provisions listed in Appendix III to this Convention on condition that where an administrative authority is competent to deal with the offence it must be possible for the person concerned to have the case tried by a court;

(b) "sanction" means any punishment or other measure incurred or pronounced in respect of an offence or in respect of a violation of the legal provisions listed in Appendix III.

Part II. Competence

Article 2

1. For the purposes of applying this Convention, any Contracting State shall have competence to prosecute under its own criminal law any offence to which the law of another Contracting State is applicable.

2. The competence conferred on a Contracting State exclusively by virtue of paragraph 1 of this Article may be exercised only pursuant to a request for proceedings presented by another Contracting State.

Article 3

Any Contracting State having competence under its own law to prosecute an offence may, for the purposes of applying this Convention, waive or desist from proceedings against a suspected person who is being or will be prosecuted for the same offence by another Contracting State. Having regard to Article 21, paragraph 2, any such decision to waive or to desist from proceedings shall be provisional pending a final decision in the other Contracting State.

Article 4

The requested State shall discontinue proceedings exclusively grounded on Article 2 when to its knowledge the right of punishment is extinguished under the law of the requesting State for a reason other than time-limitation, to which Articles 10 (c), 11 (f) and (g), 22, 23 and 26 in particular apply.

Article 5

The provisions of Part III of this Convention do not limit the competence given to a requested State by its municipal law in regard to prosecutions.

Part III. Transfer of proceedings

SECTION 1: REQUEST FOR PROCEEDINGS

Article 6

1. When a person is suspected of having committed an offence under the law of a Contracting State, that State may request another Contracting State to take proceedings in the cases and under the conditions provided for in this Convention.

2. If under the provisions of this Convention a Contracting State may request another Contracting State to take proceedings, the competent authorities of the first State shall take that possibility into consideration.

Article 7

1. Proceedings may not be taken in the requested State unless the offence in respect of which the proceedings are requested would be an offence if committed in its territory and when, under these circumstances, the offender would be liable to sanction under its own law also.

2. If the offence was committed by a person of public status or against a person, an institution or any thing of public status in the requesting

¹ Text furnished by the Council of Europe. See *European Convention on the Transfer of Proceedings in Criminal Matters*, European Treaty Series, No. 73 (Strasbourg, Council of Europe, 1972).

State, it shall be considered in the requested State as having been committed by a person of public status or against such a person, an institution or any thing corresponding, in the latter State, to that against which it was actually committed.

Article 8

1. A Contracting State may request another Contracting State to take proceedings in any one or more of the following cases:

(a) if the suspected person is ordinarily resident in the requested State;

(b) if the suspected person is a national of the requested State or if that State is his State of origin;

(c) if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;

(d) if proceedings for the same or other offences are being taken against the suspected person in the requested State;

(e) if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;

(f) if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;

(g) if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;

(h) if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so.

2. Where the suspected person has been finally sentenced in a Contracting State, that State may request the transfer of proceedings in one or more of the cases referred to in paragraph 1 of this Article only if it cannot itself enforce the sentence, even by having recourse to extradition, and if the other Contracting State does not accept enforcement of a foreign judgment as a matter of principle or refuses to enforce such sentence.

Article 9

1. The competent authorities in the requested State shall examine the request for proceedings made in pursuance of the preceding Articles. They shall decide, in accordance with their own law, what action to take thereon.

2. Where the law of the requested State provides for the punishment of the offence by an administrative authority, that State shall, as soon as possible, so inform the requesting State unless the requested State has made a declaration under paragraph 3 of this Article.

3. Any Contracting State may at the time of signature, or when depositing its instrument of ratification, acceptance or accession, or at any later date indicate, by declaration addressed to the

Secretary General of the Council of Europe, the conditions under which its domestic law permits the punishment of certain offences by an administrative authority. Such a declaration shall replace the notification envisaged in paragraph 2 of this Article.

Article 10

The requested State shall not take action on the request:

(a) if the request does not comply with the provisions of Articles 6, paragraph 1, and 7, paragraph 1;

(b) if the institution of proceedings is contrary to the provisions of Article 35;

(c) if, at the date on the request, the time-limit for criminal proceedings has already expired in the requesting State under the legislation of that State.

Article 11

Save as provided for in Article 10 the requested State may not refuse acceptance of the request in whole or in part, except in any one or more of the following cases:

(a) if it considers that the grounds on which the request is based under Article 8 are not justified;

(b) if the suspected person is not ordinarily resident in the requested State;

(c) if the suspected person is not a national of the requested State and was not ordinarily resident in the territory of that State at the time of the offence;

(d) if it considers that the offence for which proceedings are requested is an offence of a political nature or a purely military or fiscal one;

(e) if it considers that there are substantial grounds for believing that the request for proceedings was motivated by considerations of race, religion, nationality or political opinion;

(f) if its own law is already applicable to the offence and if at the time of the receipt of the request proceedings were precluded by lapse of time according to that law; Article 26, paragraph 2, shall not apply in such a case;

(g) if its competence is exclusively grounded on Article 2 and if at the time of the receipt of the request proceedings would be precluded by lapse of time according to its law, the prolongation of the time-limit by six months under the terms of Article 23 being taken into consideration;

(h) if the offence was committed outside the territory of the requesting State;

(i) if proceedings would be contrary to the international undertakings of the requested State;

(j) if proceeding would be contrary to the fundamental principles of the legal system of the requested State;

(k) if the requesting State has violated a rule of procedure laid down in this Convention.

Article 12

1. The requested State shall withdraw its acceptance of the request if, subsequent to this acceptance, a ground mentioned in Article 10

of this Convention for not taking action on the request becomes apparent.

2. The requested State may withdraw its acceptance of the request:

(a) if it becomes apparent that the presence in person of the suspected person cannot be ensured at the hearing of proceedings in that State or that any sentence, which might be passed, could not be enforced in that State;

(b) if one of the grounds for refusal mentioned in Article 11 becomes apparent before the case is brought before a court; or

(c) in other cases, if the requesting State agrees.

SECTION 2: TRANSFER PROCEDURE

Article 13

1. All requests specified in this Convention shall be made in writing. They, and all communications necessary for the application of this Convention, shall be sent either by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State or, by virtue of special mutual arrangement, direct by the authorities of the requesting State to those of the requested State; they shall be returned by the same channel.

2. In urgent cases, requests and communications may be sent through the International Criminal Police Organization (INTERPOL).

3. Any Contracting State may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt insofar as it itself is concerned rules of transmission other than those laid down in paragraph 1 of this Article.

Article 14

If a Contracting State considers that the information supplied by another Contracting State is not adequate to enable it to apply this Convention, it shall ask for the necessary additional information. It may prescribe a date for the receipt of such information.

...

SECTION 3: EFFECTS IN THE REQUESTING STATE OF A REQUEST FOR PROCEEDINGS

Article 21

1. When the requesting State has requested proceedings, it can no longer prosecute the suspected person for the offence in respect of which the proceedings have been requested or enforce a judgment which has been pronounced previously in that State against him for that offence. Until the requested State's decision on the request for proceedings has been received, the requesting State shall, however, retain its right to take all steps in respect of prosecution, short of bringing the case to trial, or, as the case may be, allowing the competent administrative authority to decide on the case.

2. The right of prosecution and of enforcement shall revert to the requesting State:

(a) if the requested State informs it of a decision in accordance with Article 10 not to take action on the request;

(b) if the requested State informs it of a decision in accordance with Article 11 to refuse acceptance of the request;

(c) if the requested State informs it of a decision in accordance with Article 12 to withdraw acceptance of the request;

(d) if the requested State informs it of a decision not to institute proceedings or discontinue them;

(e) if it withdraws its request before the requested State has informed it of a decision to take action on the request.

Article 22

A request for proceedings, made in accordance with the provisions of this Part, shall have the effect in the requesting State of prolonging the time-limit for proceedings by six months.

SECTION 4: EFFECTS IN THE REQUESTED STATE OF A REQUEST FOR PROCEEDINGS

Article 23

If the competence of the requested State is exclusively grounded on Article 2 the time-limit for proceedings in that State shall be prolonged by six months.

Article 24

1. If proceedings are dependent on a complaint in both States the complaint brought in the requesting State shall have equal validity with that brought in the requested State.

2. If a complaint is necessary only in the requested State, that State may take proceedings even in the absence of a complaint if the person who is empowered to bring the complaint has not objected within a period of one month from the date of receipt by him of notice from the competent authority informing him of his right to object.

Article 25

In the requested State the sanction applicable to the offence shall be that prescribed by its own law unless that law provides otherwise. Where the competence of the requested State is exclusively grounded on Article 2, the sanction pronounced in that State shall not be more severe than that provided for in the law of the requesting State.

Article 26

1. Any act with a view to proceedings, taken in the requesting State in accordance with its law and regulations, shall have the same validity in the requested State as if it had been taken by the authorities of that State, provided that assimilation does not give such act a greater evidential weight than it has in the requesting State.

2. Any act which interrupts time-limitation and which has been validly performed in the requesting State shall have the same effects in the requested State and vice versa.

SECTION 5: PROVISIONAL MEASURES
IN THE REQUESTED STATE

Article 27

1. When the requesting State announces its intention to transmit a request for proceedings, and if the competence of the requested State would be exclusively grounded on Article 2, the requested State may, on application by the requesting State and by virtue of this Convention, provisionally arrest the suspected person:

(a) if the law of the requested State authorises remand in custody for the offence, and

(b) if there are reasons to fear that the suspected person will abscond or that he will cause evidence to be suppressed.

2. The application for provisional arrest shall state that there exists a warrant of arrest or other order having the same effect, issued in accordance with the procedure laid down in the law of the requesting State; it shall also state for what offence proceedings will be requested and when and where such offence was committed and it shall contain as accurate a description of the suspected person as possible. It shall also contain a brief statement of the circumstances of the case.

3. An application for provisional arrest shall be sent direct by the authorities in the requesting State mentioned in Article 13 to the corresponding authorities in the requested State, by post or telegram or by any other means affording evidence in writing or accepted by the requested State. The requesting State shall be informed without delay of the result of its application.

...

Part IV. Plurality of criminal proceedings

Article 30

1. Any Contracting State which, before the institution or in the course of proceedings for an offence which it considers to be neither of a political nature nor a purely military one, is aware of proceedings pending in another Contracting State against the same person in respect of the same offence shall consider whether it can either waive or suspend its own proceedings, or transfer them to the other State.

2. If it deems it advisable in the circumstances not to waive or suspend its own proceedings it shall so notify the other State in good time and in any event before judgment is given on the merits.

...

Part V. *Ne bis in idem*

Article 35

1. A person in respect of whom a final and enforceable criminal judgment has been rendered may for the same act neither be prosecuted nor sentenced nor subjected to enforcement of a sanction in another Contracting State:

(a) if he was acquitted;

(b) if the sanction imposed:

(i) has been completely enforced or is being enforced, or

(ii) has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty, or

(iii) can no longer be enforced because of lapse of time;

(c) if the court convicted the offender without imposing a sanction.

2. Nevertheless, a Contracting State shall not, unless it has itself requested the proceedings, be obliged to recognise the effect of *ne bis in idem* if the act which gave rise to the judgment was directed against either a person or an institution or any thing having public status in that State, or if the subject of the judgment had himself a public status in that State.

3. Furthermore, a Contracting State where the act was committed or considered as such according to the law of that State shall not be obliged to recognise the effect of *ne bis in idem* unless that State has itself requested the proceedings.

Article 36

If new proceedings are instituted against a person who in another Contracting State has been sentenced for the same act, then any period of deprivation of liberty arising from the sentence enforced shall be deducted from the sanction which may be imposed.

Article 37

This Part shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments.

Part VI. Final clauses

Article 38

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 39

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto provided that the resolution containing such invitation receives the unanimous agreement of the Members of the Council who have ratified the Convention.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall

take effect three months after the date of its deposit.

Article 40

1. Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

2. Any Contracting State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorized to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 45 of this Convention.

Article 41

1. Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in Appendix I or make a declaration provided for in Appendix II to this Convention.

2. Any Contracting State may wholly or partly withdraw a reservation or declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

3. A Contracting State which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Contracting State; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 42

1. Any Contracting State may at any time, by declaration addressed to the Secretary General of the Council of Europe, set out the legal provisions to be included in Appendix III to this Convention.

2. Any change of the national provisions listed in Appendix III shall be notified to the Secretary General of the Council of Europe if such a

change renders the information in this Appendix incorrect.

3. Any changes made in Appendix III in application of the preceding paragraphs shall take effect in each Contracting State one month after the date of their notification by the Secretary General of the Council of Europe.

Article 43

1. This Convention affects neither the rights and the undertakings derived from extradition treaties and international multilateral conventions concerning special matters, nor provisions concerning matters which are dealt with in the present Convention and which are contained in other existing conventions between Contracting States.

2. The Contracting States may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.

3. Should two or more Contracting States, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.

4. Contracting States ceasing to apply the terms of this Convention to their mutual relations in this matter in accordance with the provisions of the preceding paragraph shall notify the Secretary General of the Council of Europe to that effect.

Article 44

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 45

1. This Convention shall remain in force indefinitely.

2. Any Contracting State may, insofar as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

...

European Convention on Social Security

Done at Paris on 14 December 1972²*(Extracts)*

The member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its Members, in particular for the purpose of facilitating their social progress;

Considering that multilateral co-ordination of social security legislation is one of the means of achieving that aim;

Considering that the European Code of Social Security,³ opened for signature on 16 April 1964, provides, in Article 73, that the Contracting Parties to the Code shall endeavour to conclude a special instrument governing questions relating to social security for foreigners and migrants, particularly with regard to equality of treatment with their own nationals and to the maintenance of acquired rights and rights in course of acquisition;

Affirming the principle of equality of treatment for nationals of the Contracting Parties, refugees and stateless persons, under the social security legislation of each Contracting Party, and the principle that the benefits under social security legislation should be maintained despite any change of residence by the protected persons within the territories of the Contracting Parties, principles which underlie not only certain provisions of the European Social Charter but also several conventions of the International Labour Organisation,

Have agreed as follows:

Title I. General provisions

...

Article 2

1. This Convention applies to all legislation governing the following branches of social security:

- (a) sickness and maternity benefits;
- (b) invalidity benefits;
- (c) old-age benefits;
- (d) survivors' benefits;
- (e) benefits in respect of occupational injuries and diseases;
- (f) death grants;
- (g) unemployment benefits;
- (h) family benefits.

² Text furnished by the Council of Europe. See *European Convention on Social Security and Supplementary Agreement for the Application of the European Convention on Social Security*, European Treaty Series, No. 78 (Strasbourg, Council of Europe, 1972).

³ See *Yearbook on Human Rights for 1964*, pp. 331-334.

2. This Convention applies to all general social security schemes and special schemes, whether contributory or non-contributory, including employers' liability schemes in respect of the benefits referred to in the preceding paragraph. Bilateral or multilateral agreements between two or more Contracting Parties shall determine, as far as possible, the conditions in which this Convention shall apply to schemes established by means of collective agreements made compulsory by decision of the public authorities.

3. Where schemes relating to seafarers are concerned, the provisions of Title III of this Convention shall apply without prejudice to the legislation of any Contracting Party governing the liabilities of ship-owners, who shall be treated as the employers for the purposes of the application of this Convention.

4. This Convention does not apply to social or medical assistance schemes, to benefit schemes for victims of war or its consequences, or to special schemes for civil servants or persons treated as such.

5. This Convention does not apply to legislation designed to give effect to a social security convention concluded between a Contracting Party and one or more other States.

...

Article 4

1. The provisions of this Convention shall be applicable:

(a) to persons who are or have been subject to the legislation of one or more of the Contracting Parties and are nationals of a Contracting Party, or are refugees or stateless persons resident in the territory of a Contracting Party, as well as to the members of their families and their survivors;

(b) to the survivors of persons who were subject to the legislation of one of more of the Contracting Parties, irrespective of the nationality of such persons, where these survivors are nationals of a Contracting Party, or refugees or stateless persons resident in the territory of a Contracting Party;

(c) without prejudice to Article 2, paragraph 4, to civil servants and persons treated as such under the legislation of the Contracting Party concerned, in so far as they are subject to any legislation of that Contracting Party to which this Convention applies.

2. Notwithstanding the provisions of subparagraph (c) of the preceding paragraph, the categories of persons—other than members of the service staff of diplomatic missions or consular posts and persons employed in the private service of officials of such missions or posts—in respect of whom the Vienna Convention on

Diplomatic Relations and the Vienna Convention on Consular Relations provide for exemption from the social security provisions which are in force in the receiving State, shall not benefit from the provisions of this Convention.

Article 6

1. The provisions of this Convention shall not affect obligations under any convention adopted by the International Labour Conference.

2. This Convention shall not affect the provisions on social security in the Treaty of 25 March 1957 establishing the European Economic Community nor the association agreements envisaged under that Treaty nor the measures taken in application of those provisions.

3. Notwithstanding the provisions of Article 5, paragraph 1, two or more Contracting Parties may keep in force, by mutual agreement and in respect of themselves, the provisions of social security conventions by which they are bound by specifying them in Annex III or, in the case of provisions relating to the application of these conventions, by specifying them in an annex to the Supplementary Agreement for the application of this Convention.

4. However, this Convention shall apply in all cases requiring action on the part of an institution of a Contracting Party other than those which are bound by the provisions referred to in paragraph 2 or in paragraph 3 of this Article as well as in the case of persons who are entitled to benefits under this Convention and to whom the said provisions are not exclusively applicable.

5. Two or more Contracting Parties which are bound by the provisions specified in Annex III may, by mutual agreement and in respect of themselves, make appropriate amendments to this Annex by giving notice thereof in accordance with the provisions of Article 81, paragraph 1.

Article 8

1. Unless otherwise specified in this Convention, persons who are resident in the territory of a Contracting Party and to whom the Convention is applicable shall have the same rights and obligations under the legislation of every Contracting Party as the nationals of such Party

Title II. Provisions which determine the legislation applicable

Article 14

In respect of persons coming within the scope of this Convention, the legislation applicable shall be determined in accordance with the following provisions:

(a) employed persons who are employed in the territory of a Contracting Party shall be subject to the legislation of that Party, even if they are resident in the territory of another Contracting Party, or if the undertaking which employs them has its principal place of business, or their employer has his place of residence, in the territory of another Contracting Party;

(b) workers who follow their occupation on

board a ship flying the flag of a Contracting Party shall be subject to the legislation of that Party;

(c) self-employed persons who follow their occupation in the territory of a Contracting Party shall be subject to the legislation of that Party, even if they reside in the territory of another Contracting Party;

(d) civil servants and persons treated as such be subject to the legislation of the Contracting Party in whose administration they are employed.

Title III. Special provisions governing the various categories of benefits

CHAPTER 1. SICKNESS AND MATERNITY

Article 19

1. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of the entitlement to benefits conditional upon the completion of periods of insurance, the competent institution of that Party shall, to that end, for the purpose of adding periods together, take account, to the extent necessary, of periods of insurance completed under the legislation of any other Contracting Party and, where appropriate, of periods of residence completed after the age of sixteen under non-contributory schemes of any other Contracting Party, as if they were periods of insurance completed under the legislation of the first Party.

2. Where the legislation of a Contracting Party makes admission to compulsory insurance conditional upon the completion of periods of insurance, periods of insurance completed under the legislation of any other Contracting Party and, where appropriate, periods of residence completed after the age of sixteen under the non-contributory schemes of any other Contracting Party shall, to that end, for the purpose of adding periods together, be taken into account, to the extent necessary, as if they were periods of insurance completed under the legislation of the first Party.

CHAPTER 2. INVALIDITY, OLD AGE AND DEATH (PENSIONS)

SECTION 1. COMMON PROVISIONS

Article 27

Where a person has been subject successively or alternatively to the legislation of two or more Contracting Parties, the said person or his survivors shall be entitled to benefits in accordance with the provisions of this Chapter, even if such persons would be entitled to claim benefits under the legislation of one or more Contracting Parties without these provisions being applied.

SECTION 2. SPECIAL PROVISIONS CONCERNING INVALIDITY

Article 35

1. In the event of an aggravation of any invalidity for which a person is receiving benefits

under the legislation of one Contracting Party only, the following provisions shall apply:

(a) if the person concerned, since he began to receive benefits, has not been subject to the legislation of any other Contracting Party, the competent institution of the first Party shall be bound to award benefits, taking the aggravation into account, in accordance with the provisions of the legislation which that institution applies;

(b) if the person concerned, since he began to receive benefits, has been subject to the legislation of one or more other Contracting Parties, benefits shall be awarded, taking the aggravation into account, in accordance with the provisions of Articles 28 to 34;

(c) in the case referred to in the preceding sub-paragraph, the date on which the aggravation was established shall be regarded as the date on which the contingency arose;

(d) if in the case referred to in sub-paragraph (b) of this paragraph the person concerned is not entitled to benefits from the institution of another Contracting Party, the competent institution of the first Party shall be bound to award benefits, taking the aggravation into account, in accordance with the provisions of the legislation which that institution applies.

2. In the event of an aggravation of any invalidity for which a person is receiving benefits under the legislation of two or more Contracting Parties, benefits shall be awarded, taking the aggravation into account, in accordance with the provisions of Articles 28 to 34. The provisions of sub-paragraph (c) of the preceding paragraph shall apply, *mutatis mutandis*.

CHAPTER 3. OCCUPATIONAL INJURIES AND DISEASES

Article 38

1. Workers having sustained an occupational injury or contracted an occupational disease who reside in the territory of a Contracting Party other than the competent State shall be entitled to receive in the territory of the Contracting Party in which they are resident:

(a) benefits in kind, provided at the expense of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation which the latter institution applies, as if these workers were affiliated to it;

(b) cash benefits, paid by the competent institution in accordance with the provisions of the legislation which it applies, as if these workers were resident in the territory of the competent State. However, by agreement between the competent institution and the institution of the place of residence, cash benefits may also be paid through the latter institution, on behalf of the competent institution.

2. Benefits may also be paid to frontier workers by the competent institution in the territory of the competent State, in accordance with the provisions of the legislation of that State, as if they were resident in its territory.

3. Workers to whom this Article applies, other than frontier workers, who are temporarily resident in the territory of the competent State, shall be entitled to benefits in accordance with the provisions of the legislation of that State as if they were resident in its territory even if they were already receiving benefits before taking up their temporary residence.

4. Workers to whom this Article applies who transfer their residence to the territory of the competent State shall be entitled to benefits in accordance with the provisions of the legislation of that State even if they were already receiving benefits before transferring their residence.

CHAPTER 4. DEATH (GRANTS)

Article 49

1. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of entitlement to death grants conditional upon the completion of periods of insurance, the institution which applies that legislation shall, to that end, for the purpose of adding periods together, take account, to the extent necessary, of periods of insurance completed under the legislation of any other Contracting Party and, where appropriate, of periods of residence completed after the age of sixteen under non-contributory schemes of any other Contracting Party, as if they were periods of insurance completed under the legislation of the first Party.

2. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of entitlement to death grants conditional upon the completion of periods of residence, the institution which applies that legislation shall, to that end, for the purpose of adding periods together, take account, to the extent necessary, of periods of insurance completed under the legislation of any other Contracting Party and, where appropriate, of periods of residence completed after the age of sixteen under non-contributory schemes of any other Contracting Party, as if they were periods of residence completed under the legislation of the first Party.

Article 50

1. Where a person dies in the territory of a Contracting Party other than the competent State, the death shall be deemed to have occurred in the territory of the competent State.

2. The competent institution shall provide death grants due under the legislation which it applies, even if the beneficiary resides in the territory of a Contracting Party other than the competent State.

3. The provisions of the preceding paragraphs of this Article shall apply also where death results from an occupational injury or disease.

CHAPTER 5. UNEMPLOYMENT

Article 51

1. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of entitlement to benefits conditional upon the com-

pletion of periods of insurance, the institution which applies that legislation shall, to that end, for the purpose of adding periods together, take account, to the extent necessary, of periods of insurance, employment or occupational activity completed under the legislation of any other Contracting Party, as if they were periods of insurance completed under the legislation of the first Party, provided however that, in the case of periods of employment or occupational activity, these periods would have been considered as periods of insurance if they had been completed under the last mentioned legislation.

2. Where the legislation of a Contracting Party makes the entitlement to benefits conditional upon the completion of periods of employment, occupational activity or residence, the institution which applies that legislation shall, to that end, for the purpose of adding periods together, take account, to the extent necessary, of periods of insurance, employment or occupational activity completed under the legislation of any other Contracting Party, as if they were periods of employment, occupational activity or residence completed under the legislation of the first Party.

3. Where the legislation of a Contracting Party makes the provision of certain benefits conditional upon the completion of periods of insurance in an occupation covered by a special scheme, only periods completed under a corresponding scheme, or, failing that, in the same occupation under the legislation of other Contracting Parties, shall be taken into account for the provision of such benefits. If, notwithstanding periods completed in this way, the person concerned does not satisfy the conditions for entitlement to the said benefits, the periods concerned shall be taken into account for the provision of benefits under the general scheme.

4. The application of the provisions of the preceding paragraphs of this Article is subject to the condition that the person concerned was last subject to the legislation of the Contracting Party under which the benefits are claimed, except in the cases referred to in Article 53, paragraph 1, sub-paragraphs (a) (ii) and (b) (ii).

...

CHAPTER 6. FAMILY BENEFITS

Article 57

Where the legislation of a Contracting Party makes the entitlement to benefits conditional upon the completion of periods of employment, occupational activity or residence, the institution which applies that legislation shall, to that end, for the purpose of adding periods together, take account, to the extent necessary, of periods of employment, occupational activity or residence completed under the legislation of any other Contracting Party, as if they were periods of employment, occupational activity or residence completed under the legislation of the first Party.

...

SECTION 1. FAMILY ALLOWANCES

Article 59

1. For the purpose of the application of this Article and of Article 60, the term "children"

shall, within the limits prescribed in the legislation of the Contracting Party concerned, mean:

(a) legitimate children, legitimised children, acknowledged illegitimate children, adopted children and orphaned grandchildren of the beneficiary;

(b) legitimate children, legitimised children, acknowledged illegitimate children, adopted children and orphaned grandchildren of the beneficiary's spouse, on condition that they are living in the beneficiary's household in the territory of a Contracting Party.

2. Persons subject to the legislation of one Contracting Party, having children who are resident or are being brought up in the territory of another Contracting Party, shall be entitled in respect of such children to the family allowances provided for by the legislation of the first Party, as if these children were permanently resident or were being brought up in the territory of that Party.

3. However, in the case referred to in the preceding paragraph, the amount of the family allowances may be limited to the amount of family allowances provided for by the legislation of the Contracting Party in whose territory the children are resident or are being brought up.

4. For the purpose of applying the provisions of the preceding paragraph the comparison of the amounts of family allowances payable under the two legislations concerned shall be made on the basis of the total number of children of the same beneficiary. Where the legislation of the Contracting Party in whose territory the children are resident or are being brought up provides for different family allowances rates for different categories of beneficiaries, regard shall be had to the amounts that would be payable if the beneficiary were subject to that legislation.

5. The provisions of paragraphs 3 and 4 of this Article shall not be applicable to an employed person covered by Article 15, paragraph 1, sub-paragraph (a), in respect of such children as accompany him to the territory of the Contracting Party where he is sent to work.

6. Family allowances shall be paid in accordance with the provisions of the legislation of the Contracting Party to which the beneficiary is subject, even if the physical or legal person to whom the allowances are payable resides or is temporarily in the territory of another Contracting Party.

Article 60

1. Unemployed workers drawing unemployment benefits at the expense of the institution of one Contracting Party, and having children who are resident or are being brought up in the territory of another Contracting Party, shall be entitled, in respect of such children, to the family allowances payable in that contingency under the legislation of the first Party, as if they were resident or were being brought up in the territory of this Party.

2. In the case referred to in the preceding paragraph, the provisions of Article 59, paragraphs 1, 3, 4 and 6 shall apply, *mutatis mutandis*.

SECTION 2. FAMILY BENEFITS

Article 61

1. Persons who are subject to the legislation of a Contracting Party shall be entitled, in respect of members of their family resident in the territory of another Contracting Party, to the benefits provided under the legislation of the latter Party, as if those persons were subject to that Party's legislation. Such benefits shall be paid to the members of the family by the institution of their place of residence, in accordance with the provisions of the legislation which that institution applies, and the cost shall be borne by the competent institution.

2. Notwithstanding the provisions of the preceding paragraph, an employed person to whom Article 15, paragraph 1, sub-paragraph (a), refers shall be entitled, in respect of such members of his family as accompany him to the territory of the Contracting Party where he is sent to work, to the benefits provided under the legislation of the Contracting Party to which he remains subject. Such benefits shall be paid by the competent institution of the latter Party. However, by agreement between the competent institution and the institution of the place of residence, the benefits may also be paid through the latter institution, on behalf of the competent institution.

Article 62

Unemployed workers drawing unemployment benefits payable by an institution of a Contracting Party shall be entitled, in respect of members of their family resident in the territory of another Contracting Party, to the family benefits payable under the legislation of the latter Party provided that, under the legislation of the first Party, family benefits are payable in the event of unemployment. The family benefits shall be paid to the members of the family by the institution of their place of residence, in accordance with the provisions of the legislation which that institution applies, and the cost shall be borne by the competent institution of the first Party.

Article 63

1. In those cases where the provisions of this Section are applied between two or more Contracting Parties, the bilateral or multilateral agreements referred to in Article 58, paragraph 1, shall specify the arrangements for the refund of benefits provided by the institution of one Contracting Party where the cost is to be borne by the institution of another Contracting Party.

2. Two or more Contracting Parties may agree that there shall be no refunds between the institutions in their jurisdiction.

Title IV. Miscellaneous provisions*Article 64*

1. The competent authorities of the Contracting Parties shall communicate to each other:

(a) all information regarding measures taken by them for the application of this Convention; and

(b) all information regarding changes made in their legislation which may affect the application of this Convention.

2. For the purpose of applying this Convention the authorities and institutions of the Contracting Parties shall assist one another as if it were a matter of applying their own legislation. In principle the administrative assistance furnished by the said authorities and institutions to one another shall be free of charge. However, the competent authorities of the Contracting Parties may agree to reimburse certain expenses.

3. The authorities and institutions of the Contracting Parties may, for the purpose of applying this Convention, communicate directly with one another and with the individuals concerned or their representatives.

4. The authorities, institutions and jurisdictions of one Contracting Party may not reject claims or other documents submitted to them by reason of the fact that they are written in an official language of another Contracting Party.

Title V. Transitional and final provisions*Article 74*

1. This Convention shall confer no rights for any period before its entry into force in respect of the Contracting Party or Parties concerned.

2. All periods of insurance and, where appropriate, of employment, occupational activity or residence completed under the legislation of a Contracting Party before the date on which this Convention enters into force shall be taken into account for the purpose of determining rights arising from this Convention.

3. Subject to the provisions of paragraph 1 of this Article, rights may arise under this Convention even in respect of a contingency which arose before its entry into force.

4. Any benefit which has not been provided or which has been suspended on account of the nationality of the person concerned or of his residence in the territory of the Contracting Party other than that in which the institution liable to pay the benefits is situated shall, at the request of the person concerned, be provided or resumed with effect from the date on which this Convention enters into force, unless the rights previously extinguished have given rise to the payment of a lump sum.

5. The rights of persons concerned who have been awarded a pension before the entry into force of this Convention shall be revised at their request, regard being had to the provisions of this Convention. These rights may also be revised *ex officio*. In no circumstances shall such a revision operate to lessen the former rights of the person concerned.

6. Where the request referred to in paragraph 4 or in paragraph 5 of this Article is submitted within two years of the date on which this Convention enters into force, the rights arising in accordance with the provisions of the Convention shall be acquired as from that date, and those provisions of the legislation of any Contracting

Party which concern the loss of rights or the extinction of rights by lapse of time shall not be raised against the person concerned.

7. Where the request referred to in paragraph 4 or in paragraph 5 of this Article is submitted more than two years after the date on which this Convention enters into force, such rights as have not lapsed or have not been extinguished by lapse of time shall be acquired only with reference to the date on which the request was submitted, unless there are more favourable provisions in the legislation of the Contracting Party concerned.

Article 75

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force on the first day of the third month following that in which the third instrument of ratification or acceptance is deposited.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall enter into force three months after the date of deposit of its instrument of ratification or acceptance.

Article 76

From the date of entry into force of this Convention, the provisions of the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors and Protocol thereto, and European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors and Protocol thereto shall cease to be applicable in relations between Contracting Parties.

Article 77

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation receives the unanimous agreement of the member States of the Council who have ratified or accepted the Convention.

2. Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession which shall

take effect three months after the date of its deposit.

Article 78

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention after it has been in force for five years in respect of that Party, by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 79

1. In the event of denunciation of this Convention, all rights acquired under its provisions shall be maintained.

2. Rights in process of acquisition in respect of periods before the date on which the denunciation takes effect shall not lapse as a result of the denunciation; their subsequent continued recognition shall be determined by agreement, or, failing such agreement, by the legislation which the institution concerned applies.

Article 80

1. The application of this Convention shall be governed by a Supplementary Agreement which shall be open to signature by the member States of the Council of Europe.

2. The Contracting Parties or, in so far as the constitutional provisions of these Parties permit, their competent authorities, shall make all other arrangements necessary for the application of this Convention.

3. Any signatory State of this Convention which ratifies or accepts it must, at the same time, either ratify or accept the Supplementary Agreement or sign it without reservation in respect of ratification or acceptance, not later than the date of deposit of its instrument of ratification or acceptance of the Convention.

4. Any State which accedes to this Convention must at the same time accede to the Supplementary Agreement.

5. Any Contracting Party which denounces this Convention must at the same time denounce the Supplementary Agreement.

...

Judgments of the European Court of Human Rights

De Wilde, Ooms and Versyp Cases ("Vagrancy Cases")

Judgment given on 10 March 1972⁴

(Question of the application of Article 50
of the Convention)⁵

...

⁴ Text furnished by the Council of Europe.

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950 (see *Year-book on Human Rights for 1950*, pp. 418-426).

9. After having made final the closure of the hearings and deliberated in private, the Court gives the present judgment.

AS TO THE FACTS

10. The Court is called upon to rule only on the question of the application of Article 50 in the present cases. Thus, as regards the facts the Court will confine itself here to giving a brief outline and for the rest it refers to paragraphs 15 to 43 of its judgment of 18 June 1971.

11. That judgment concerned the detention of De Wilde, Ooms and Versyp ordered by decisions of the magistrates at Charleroi, Namur and Brussels on 19 April 1966, 21 December 1965 and 4 November 1965 respectively under Sections 13 (in the cases of De Wilde and Versyp) and 16 (in the case of Ooms) of the Act of 27 November 1891 for the suppression of vagrancy and begging. De Wilde regained his freedom after a little less than seven months (three of which he spent serving a prison sentence), Ooms after one year and Versyp after one year, nine months and six days.

12. In the course of the proceedings before the Commission, the applicants each claimed 500 Belgian francs (BF) damages per day of detention. Their counsel, Me. Magnée, now relies on the judgment of 18 June 1971 to claim, on behalf of each of them, damages of 300 BF per day of "unlawful detention".

With that object, Me. Magnée began by addressing to the Belgian Minister of Justice, on 22 and 30 June 1971, two letters of which the first related to Versyp and the second to Ooms. On 12 July, the Minister replied that the Government could only apply the law as it stood while waiting for the Bill on "social misfits" —which it had introduced even before the judgment of 18 June 1971—to be passed. Considering this reply to amount to a refusal contrary to the principle of the supremacy of international treaty law over national law, Me. Magnée informed the Minister, on 14 July, that he proposed to bring the matter before the "competent authorities" and to notify the Commission.

Counsel for the applicants did in fact write first to the Committee of Ministers—16 July—to inform them of the Minister of Justice's refusal which implied, he alleged, a violation of the Court's judgment; he later wrote, on 23 July, to the Commission referring to Articles 5 (5), 48 and 50 of the Convention and requested the Commission to bring before the Court the claim made by each of his three clients.

On 2 August, he addressed to the Minister of Justice a letter concerning De Wilde which was worded in the same terms as the letters of 22 and 30 June. The Minister acknowledged its receipt on 12 August, noting that along with the other two it had been communicated by Me. Magnée to the Commission.

13. In its memorial of 27 October 1971, the Government pointed out to the Court that on 17 June 1971 it had tabled in Parliament a Bill on "social misfits" intended to replace the 1891 Act. The Government added that, desiring to comply with the judgment of 18 June 1971 without awaiting the passage of this Bill, it had had voted by Parliament an Act of 6 August 1971 amending the 1891 Act and containing two sections. The first, which inserted a new section, numbered 16 *bis*, in the 1891 Act, provides that decisions taken under Sections 13 and 16 are henceforth made subject to the remedies available under the Code of Criminal Procedure, including appeal. Section 2 was a transitional provision: it specified that vagrants or beggars held in detention on the entry into force of the 1971 Act

(4 September 1971) in execution of a decision taken under Section 13 or Section 16 of the 1891 Act, could exercise for a period of one month the remedy provided for at Section 16 *bis*.

AS TO THE LAW

I. *As to the admissibility of the applicants' claims*

14. In its written observations of October 1971 and January 1972 and also at the oral hearings, the Government requested the Court to rule "that the applications for compensation lodged with the Commission on behalf of the applicants are not admissible since the domestic remedies have not been exhausted".

15. In support of this submission, the Government relied, in the first place, on Article 26 of the Convention contending that this provision applied not only to the original petition addressed by an individual to the Commission under Article 25 but also to a claim for compensation made by him after the Court has held that in his case there has been a violation of a right guaranteed by the Convention.

Article 26 reads: "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law..."; Article 27 (3) then provides that "the Commission shall reject any petition referred to it which it considers inadmissible under Article 26". This last provision therefore defines a condition to which the Commission's "dealing with" the case is subjected; it concerns "petitions" lodged with that organ. In other words, this provision relates to the institution of the proceedings which fall within Section III of the Convention. The present cases no longer relate to such proceedings but to the final phase of proceedings brought before the Court in accordance with Section IV on the conclusion of those to which the petitions of Jacques De Wilde, Franz Ooms and Edgard Versyp gave rise before the Commission. The claims made by the three applicants for compensation are not new petitions; they relate to the reparation to be decided by the Court in respect of a violation adjudged by the Court and they have nothing to do with the introduction of proceedings before the Commission under Articles 25, 26 and 27 of the Convention; while the Commission transmitted them to the Court, it did so without any accompanying report and solely with a view to giving the Court the assistance which, in a general way, it lends to the Court in accordance with Rule 71 of its Rules of Procedure.

The Court, like the delegates of the Commission, is therefore of the opinion that Article 26 is not applicable in the present matter.

16. In support of its plea of inadmissibility, the Government put forward a second argument based on Article 50: as they had not exhausted domestic remedies, the applicants had not established, according to the Government, that Belgian internal law "allows only partial reparation to be made for the consequences" of the violation found by the judgment of 18 June 1971; it followed that their claims for damages were inadmissible.

In the Court's opinion, the part of the sentence just quoted states merely a rule going to the merits. If the draftsmen of the Convention had meant to make the admissibility of claims for "just satisfaction" subordinate to the prior exercise of domestic remedies they would have taken care to specify this in Article 50 as they did in Article 26, combined with Article 27 (3), in respect of petitions addressed to the Commission. In the absence of such an explicit indication of their intention, the Court cannot take the view that Article 50 enunciates in substance the same rule as Article 26.

Moreover, Article 50 has its origin in certain clauses which appear in treaties of a classical type—such as, Article 10 of the German-Swiss Treaty on Arbitration and Conciliation, 1921, and Article 32 of the Geneva General Act for the Pacific Settlement of International Disputes, 1928—and have no connection with the rule of exhaustion of domestic remedies.

In addition, if the victim, after exhausting in vain the domestic remedies before complaining at Strasbourg of a violation of his rights, were obliged to do so a second time before being able to obtain from the Court just satisfaction, the total length of the procedure instituted by the Convention would scarcely be in keeping with the idea of the effective protection of Human Rights. Such a requirement would lead to a situation incompatible with the aim and object of the Convention.

17. The Court therefore sees no reason to declare the claims in question inadmissible and will proceed to examine into their merits.

II. As to the merits of the applicants' claims

18. The present stage of these cases revolves around Article 50 of the Convention which reads:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party".

19. In its written observations of October 1971 and January 1972 and at the oral hearings, the Government requested the Court to rule:

"that the conditions required for the application of Article 50 of the Convention have not been fulfilled in the present cases;

"that it is not necessary to afford satisfaction to the applicants".

At the hearing in the afternoon of 14 February, the Commission's final submission was "may it please the Court to grant the applicants appropriate satisfaction, bearing in mind that a new remedy has been introduced in Belgian law following the judgment given on 18 June 1971 by the European Court of Human Rights and has become available as a direct result of the applications lodged by MM. De Wilde, Ooms and Versyp with the Commission".

20. The Government submitted in particular that Belgian internal law enables the national courts to order the State to make reparation for damage caused by an illegal situation for which it is responsible whether this situation constitutes a breach of rules of internal law or of rules of international law. It would follow that the applicants have to take proceedings before the national courts; as they have not done so their claims for damages were not only inadmissible (see paragraph 16 above) but also without foundation.

The Court cannot accept this view.

No doubt, the treaties from which the text of Article 50 was borrowed had more particularly in view cases where the nature of the injury would make it possible to wipe out entirely the consequences of a violation but where the internal law of the State involved precludes this being done. Nevertheless, the provisions of Article 50 which recognize the Court's competence to grant to the injured party a just satisfaction also cover the case where the impossibility of *restitutio in integrum* follows from the very nature of the injury; indeed, common sense suggests that this must be so *a fortiori*. The Court sees no reason why, in the latter case just as in the former, it should not have the right to award to the injured persons the just satisfaction that they had not obtained from the Government of the respondent State.

This is clearly the position in the present cases. Neither the Belgian internal law, nor indeed any other conceivable system of law, can make it possible to wipe out the consequences of the fact that the three applicants did not have available to them the right, guaranteed by Article 5 (4), to take proceedings before a court in order to have the lawfulness of their detention decided. Furthermore, the Belgian Government has declined to give De Wilde, Ooms and Versyp the compensation which they claimed.

The mere fact that the applicants could have brought and could still bring their claims for damages before a Belgian court does not therefore require the Court to dismiss those claims as being ill-founded any more than it raises an obstacle to their admissibility (see paragraph 16 above).

21. Where the consequences of a violation are only capable of being wiped out partially, the affording of "just satisfaction" in application of Article 50 requires that:

- (i) the Court has found "a decision or measure taken" by an authority of a Contracting State to be "in conflict with the obligations arising from the ... Convention";
- (ii) there is an "injured party";
- (iii) the Court considers it "necessary" to afford just satisfaction.

According to the Government, none of these conditions has been fulfilled in the present cases.

22. First, the Court's judgment of 18 June 1971 was, it is alleged, directed only to a situation created by a "certain deficiency in legislation and in case-law" which did not amount to a "decision" or "measure".

The Court cannot accept this view. In the cases brought before it which had their origin in petitions lodged under Article 25, the Court was not called upon to give a decision on an abstract problem relating to the compatibility of provisions of Belgian law with the Convention but on the specific case of the application of the provisions in law to the applicants (see the De Becker judgment of 27 March 1962, Series A, page 26). In questions of liability arising from the failure to observe the Convention there is in any event no room to distinguish between acts and omissions.

23. Nor can the existence of an "injured party" be denied. In the context of Article 50 these two words must be considered as synonymous with the term "victim" as used in Article 25; they denote the person directly affected by the act or omission which is in issue. De Wilde, Ooms and Versyp, whom the Commission rightly found to be victims in declaring their petitions admissible, are thus also "injured parties".

24. On the other hand, the Government is correct in questioning the existence of damage. Each of the applicants claims, as just satisfaction, the sum of 300 BF per day of detention. For this claim to be successful, it would be necessary that their deprivation of liberty had been caused by the absence—found by the Court to be contrary to Article 5 (4) of the Convention—of any right to take proceedings before a court by which the lawfulness of their detention might be decided. But this is not the case here. In its judgment of 18 June 1971, the Court did not find "either irregularity or arbitrariness in the placing of the three applicants at the disposal of the Government" and it had "no reason to find the resulting detention incompatible with Article 5 (1) (e) of the Convention" (Series A, pp. 38-39, para. 70). The Court therefore does not see how the taking of proceedings to test merely the point of lawfulness dealt with in the requirements of Article 5 (4) could have enabled the applicants to obtain their release any sooner.

Moreover, the applicants had the benefit of free legal aid before the Commission, and later with the Commission's delegates, and they have not made any point concerning costs which they may have incurred without reimbursement.

Finally, the Court does not find that in the present cases any moral damage could have been caused by the lack of a remedy which met the requirements of Article 5 (4).

25. Although, for the reasons given above, the Court finds it has to refuse to grant the compensation claimed by the applicants, it notes that Belgium has taken, as the Committee of Ministers stated on 18 January 1972 in connection with Article 54 of the Convention, legislative measures with a view to ensuring in matters of vagrancy the application of the Convention in that State.

FOR THESE REASONS, THE COURT,

1. Declares unanimously that the applicants' claims for damages are admissible,

2. Declares by fourteen votes to one that the applicants' claims for damages are not well-founded.

Done in French and English, the French text being authentic, at the Human Rights Building, Strasbourg, this tenth day of March one thousand nine hundred and seventy-two.⁶

Ringeisen Case

Judgment given on 22 June 1972⁷

(Question of the application of Article 50 of the Convention)⁸

...

9. After having made final the closure of the hearings and deliberated in private, the Court gives the present judgment.

AS TO THE FACTS

10. The Court is called upon to rule only on the question of the application of Article 50 in the present case. Thus, as regards the facts the Court will confine itself here to giving a brief outline and for the rest it refers to paragraphs 12 to 80 of its judgment of 16 July 1971.

11. That judgment concerned, *inter alia*, the detention of Ringeisen while on remand from 5 August to 23 December 1963, that is four months and eighteen days, and from 15 March 1965 to 20 March 1967, that is two years and five days.

12. Ringeisen's lawyer wrote, on 23 July 1971, to the Austrian Federal Minister of Justice requesting him, with reference to the judgment of 16 July and to Articles 5, § 5 and 50 of the Convention, to make proposals for the reparation of the damage allegedly sustained by the applicant. It was claimed that the applicant had, "as a result of his unjustified detention", suffered over and above the loss of his fortune irremediable damage to his health which reduced his life expectancy and made constant medical care necessary. The applicant's lawyer therefore requested the Minister to advance on account the sum of 50,000 German marks (DM). In a reminder dated 2 August, he insisted that the matter should be dealt with promptly, having regard, in particular, to Ringeisen's state of health.

On 10 September 1971, the Minister replied that in view of his Ministry's competence under the Constitution it was not in a position to deal with the matter.

13. Meanwhile, Ringeisen had addressed his request to the Commission on 18 August 1971. He laid emphasis on the fact that he was still in very difficult circumstances due to his poor state of health and he asked the Commission "to apply to the ... Court ... on (his) behalf and to have a decision taken in accordance with Article 50 of the Convention ...".

The applicant has set out more particulars of his claims in letters which he and his wife sent

⁶ Four separate opinions were annexed to the judgment.

⁷ Text furnished by the Council of Europe.

⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950 (see *Yearbook on Human Rights for 1950*, pp. 418-426).

to the Commission on 24 November 1971, 10 December 1971, 21 January 1972 and 8 February 1972. He alleges that he has sustained considerable material damage resulting, *inter alia*, from interference with the conduct of his business and from loss of property and rents in Austria and for this he claims some 100 million Schillings. Furthermore, he states that he is entitled to compensation, in an amount which he leaves the Court to assess: for personal injury, for damage to his reputation and "for detention".

AS TO THE LAW

I. On the admissibility of the applicant's claim

14. In its written observations of February and May 1972 and also at the oral hearings, the Government contended that the Court was not duly seised of the matter of the award of compensation to Ringeisen for any damage which he had suffered by reason of the violation of the Convention found in the judgment of 16 July 1971. That judgment had, in the Government's view, finally closed the proceedings instituted by the Commission following Ringeisen's petition of 3 July 1965; and therefore the Court could entertain the claim for compensation only after it had been the subject of a fresh petition lodged under Article 25 of the Convention, investigated by the Commission and referred to the Court in accordance with the conditions laid down in Articles 47 and 48. The Government also relied on Article 52 which provides that "the judgment of the Court shall be final".

15. The Court cannot accept this line of argument.

In the first place, the Court notes that if it accepted this submission it would follow that even after the new proceedings, which the Government considers to be necessary, the Court could not deal in its present composition with any question of the application of Article 50 since each new case requires, under Article 43, the setting up of a new Chamber.

It is clearly to be preferred, however, in the interests of the proper administration of justice, that consideration of the reparation of damage flowing from a violation of the Convention should be entrusted to the judicial body which has found the violation in question.

16. This link between the two matters is, moreover, fundamental to Article 50, the purpose of which is to enable the Court to afford without further delay just satisfaction to the person who is a victim of a violation.

17. As to Article 52, its sole object is to make the Court's judgments not subject to any appeal to another authority.

18. It would be a formalistic attitude alien to international law to maintain that the Court may not apply Article 50 save on condition that it either rules on the matter by the same judgment which found a violation or that this judgment has expressly kept the case open.

The practice adopted so far by the Court in this matter has been clearly inspired by a desire to take account as far as possible of the wishes of respondent States: they may be reluctant to argue

the consequences of a violation the existence of which they dispute; and they may wish, in the event of a finding of a violation, to maintain the possibility of settling the issue of reparation directly with the injured party without the Court being further concerned.

19. Moreover, in the present case the Court's judgment of 16 July 1971 expressly reserved "for the applicant the right, should the occasion arise, to apply for just satisfaction as regards these violations" (point 7 of the operative part). The wording of this reservation shows clearly that its purpose was to draw the applicant's attention to the fact that there was a means of obtaining from the Court, if need be, the award of just satisfaction under Article 50.

It was therefore normal that the applicant, having no *locus standi* before the Court, should present his claims to the Commission. As the Court was duly seised of the Ringeisen case, the Commission acted within the scope of its functions in bringing Ringeisen's claim to the notice of the Court and thus the Court is also duly called upon to ascertain whether it is necessary to apply Article 50.

II. As to the fulfilment of the conditions for the application of Article 50

20. The Government submits that the conditions for the application of Article 50 are not fulfilled

- (1) since it was possible to make full reparation in internal law for the consequences of the violation of Article 5, § 3 and this was in fact done by the decision of the Linz Regional Court on 24 April 1968 to reckon the entire time spent in detention on remand as part of the prison sentence;
- (2) since, even assuming that that decision did not make *restitutio in integrum* to Ringeisen and the violation of Article 5, § 3 had caused him other damage, he could exercise several remedies.

21. The Court is unable to accept the first submission. The fact of deducting the time spent in detention on remand from the prison sentence imposed on a person must no doubt be taken into consideration in assessing the extent of the damage flowing from the excessive duration of that detention; but it does not in any way thus acquire the character of *restitutio in integrum*, for no freedom is given in place of the freedom unlawfully taken away.

The consequence of the Government's reasoning would be to deprive Article 5, § 3 of much of its effectiveness, at least in cases where the person detained on remand for more than a reasonable time is found guilty afterwards: in such cases it would suffice, in order to avoid the application of Article 50, that the time spent in detention on remand should be less than the term of the prison sentence pronounced later and should be deducted from it.

Furthermore, in the present case it appears that if Ringeisen's detention on remand had ended at the time of the adjudication in bankruptcy, that is 14 May 1965, and if he had been arrested after judgment to serve what remained of his

sentence, he would have stood a good chance of being released on probation for one-third of the prison term ordered, which would have reduced the duration of his deprivation of liberty to twenty-two months while his detention on remand lasted almost twenty-nine months.

22. In its second submission, the Government maintains that even if Ringeisen was entitled to claim other reparation for damage caused by his excessive detention on remand, Austrian law provided him with various means of obtaining it but he confined himself to writing to the Minister of Justice who had no competence to deal with the claim.

The Court refers on this point to paragraphs 15 and 16 of its judgment of 10 March 1972 on the question of the application of Article 50 in the De Wilde, Ooms and Versyp cases. It is true that the Government has declared that it is not seeking to rely on Article 26 nor insisting on the exhaustion of domestic remedies prior to any consideration by the Court of a request for just satisfaction. Partial exercise of domestic remedies would, however, serve no purpose and would lead to the same result of preventing the Court from speedily affording reparation for the damage caused by the violation it found.

There can be no doubt that for the Court to be able to give application to Article 50, there should be a need to do so (French: "*il y ait lieu*"; or, in the English text, "if necessary"); but this necessity exists once a respondent government refuses the applicant reparation to which he considers he is entitled. This is what happened in the present case.

The reason why the applicant wrote to the Minister of Justice rather than to any other authority is apparently because Section 4 of the Act of 18 August 1918 on compensation for detention on remand indicated this course for claims based upon that Act.

III. *As to the question of affording just satisfaction*

23. Ringeisen requested that the Court should award him full reparation for material and non-material damage allegedly suffered by reason of the excessive length of his detention on remand. The Commission, after transmitting that request, asked the Court to say "whether, to what extent, and in this case by what means, just satisfaction should be afforded to Mr. Michael Ringeisen for the violation of Article 5, § 3 of the Convention, of which he has been the victim, already found by the Court in its judgment of 16 July 1971".

24. In a letter of 10 December 1971 addressed to the Commission, the applicant submitted a series of claims relating to financial loss which he considered to be due to his detention. He has not, however, furnished any proof of this alleged damage; in any case, it does not appear that any of it is consequent upon his detention on remand.

25. Ringeisen also complains of a serious deterioration in his health brought about by his detention. Yet a report of 1 February 1967 from

the medical service at Linz Prison where Ringeisen was being detained states: "... his general condition is good. During his detention so far there has been no discernible decline in his state of health". Ringeisen was released the following month, on 20 March 1967. He has not furnished any expert opinion or other evidence to show that his detention caused a deterioration in his state of health. The Court furthermore recalls that as early as the proceedings before the Commission he claimed that during his detention he had not received the medical care he needed, and that by a partial decision of 2 June 1967 (appendix II to the report) the Commission declared this complaint to be inadmissible as manifestly ill-founded.

26. There remains the fact that Ringeisen's detention on remand exceeded by more than twenty-two months, as found by the Court in its judgment of 16 July 1971, the limits of a reasonable time referred to in Article 5, § 3.

The Court does not overlook that Ringeisen was found guilty and sentenced to a term of imprisonment longer than the time he had spent in detention on remand, that his time in detention was reckoned in full to his advantage as part of the sentence, and that he was subject in detention to a régime less severe than that which the prison sentence would have entailed.

These circumstances go some way to compensate the damage of which he complains.

However, the applicant protested his innocence and certainly felt such excessive detention on remand to be a great injustice. The detention must have been all the more hard to bear in that it inevitably made it much more difficult for him to conclude a composition for the termination of his bankruptcy.

Assessing these various factors, the Court considers that Ringeisen should be afforded just satisfaction and fixes at twenty thousand German marks (20,000 DM) the overall sum to be paid to him in this regard.

27. At the hearings before the Court the question was argued as to where the sum awarded to Ringeisen would go: could it be paid to him directly or could it be claimed by the trustee, on recommencement of the bankruptcy, for the purpose of making an additional payment to the creditors.

The Court considers that it can leave this point to the discretion of the Austrian authorities. The Court notes in this regard that under the terms of Section 2 of the Act of 18 August 1918 referred to above "no attachment or seizure may be made against a right to compensation except to secure payment of maintenance as provided for by law" and that a similar provision appears in Section 4 of the Federal Act of 8 July 1969 on compensation for detention and conviction by the criminal courts. It would seem to be a matter of course that the same exemption from seizure must be allowed in the case of compensation due under a decision of the Court to a person whose detention on remand has been prolonged beyond the reasonable time laid down in Article 5, § 3 of the Convention.

FOR THESE REASONS, THE COURT

thousand German marks to be paid by the Republic of Austria.⁹

Unanimously affords to the applicant Michael Ringeisen compensation in the sum of twenty

⁹ Declarations by four of the judges were attached to the judgment.

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS RELATING TO HUMAN RIGHTS¹

I. UNITED NATIONS²

1. *Convention on the Prevention and Punishment of the Crime of Genocide* (Paris, 1948; entered into force on 12 January 1951) (see *Yearbook on Human Rights for 1948*, pp. 484-486)

Tonga acceded to the Convention on 16 February 1972.

At the end of 1972, the following 75 States were parties to the Convention: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian SSR, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Jamaica, Jordan, Khmer Republic, Laos, Lebanon, Liberia, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Viet-Nam, Romania, Saudi Arabia, Spain, Sri Lanka, Sweden, Syrian Arab Republic, Tonga, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire.³

¹ Concerning the status of these agreements at the end of 1971, see *Yearbook on Human Rights for 1971*, pp. 325-330. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of UNESCO, the Organization of American States and the Council of Europe was furnished by the International Labour Office, UNESCO, the Organization of American States and the Secretariat-General of the Council of Europe. The information concerning the Geneva Conventions of 12 August 1949 was taken from the *Annual Report 1972* of the International Committee of the Red Cross.

² For more detailed information on the status of the instruments referred to, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions: List of Signatures, Ratifications, Accessions, etc. as at 31 December 1972* (United Nations publication, Sales No. E.73.V.7).

³ In addition, the Convention was ratified on behalf of the Republic of China on 19 July 1951.

It will be recalled that, by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided:

"... to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United

2. *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (New York, 1949; entered into force on 25 July 1951) (see *Yearbook on Human Rights for 1949*, pp. 388-391)

Finland ratified the Convention on 8 June 1972.

At the end of 1972, the following 40 States were parties to the Convention: Albania, Algeria, Argentina, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cuba, Czechoslovakia, Egypt, Finland, France, Guinea, Haiti, Hungary, India, Iraq, Israel, Japan, Kuwait, Libyan Arab Republic, Malawi, Mali, Mexico, Norway, Pakistan, Philippines, Poland, Republic of Korea, Romania, Singapore, South Africa, Spain, Sri Lanka, Syrian Arab Republic, Ukrainian SSR, Union of Soviet Socialist Republics, Upper Volta, Venezuela, Yugoslavia.

3. *Convention relating to the Status of Refugees* (Geneva, 1951; entered into force on 22 April 1954) (see *Yearbook on Human Rights for 1951*, pp. 581-588)

During 1972, Chile acceded to the Convention on 28 January, and Fiji succeeded to the Convention on 12 June.

At the end of 1972, the following 63 States were parties to the Convention: Algeria, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Burundi, Canada, Central African Republic, Chile, Colombia, Congo, Cyprus, Dahomey, Denmark, Ecuador, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy See, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malta, Monaco, Morocco, Netherlands, New Zealand, Niger, Nigeria, Norway, Paraguay, Peru, Portugal, Senegal, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Cameroon, United Republic of Tanzania, Uruguay, Yugoslavia, Zaire, Zambia.

Nations and in all the organizations related to it". By a note dated 25 September 1972, addressed to the Secretary-General, the Minister for Foreign Affairs of the People's Republic of China, stated *inter alia*:

"As from 1 October 1949, the day of the founding of the People's Republic of China, the Chiang Kai-shek clique has no right at all to represent China. Its signature and ratification of, or accession to, any multilateral treaties by usurping the name 'China' are all illegal and null and void. My Government will study these multilateral treaties before making a decision in the light of the circumstances as to whether or not they should be acceded to."

4. *Convention on the Political Rights of Women* (New York, 1952; entered into force on 7 July 1954) (see *Yearbook on Human Rights for 1952*, pp. 375-376)

During 1972, Fiji succeeded to the Convention on 12 June and Zambia acceded to the Convention on 4 February.

At the end of 1972, the following 70 States were parties to the Convention: Afghanistan, Albania, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian SSR, Canada, Central African Republic, Chile, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Fiji, Finland, France, Gabon, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Laos, Lebanon, Madagascar, Malawi, Malta, Mauritius, Mongolia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Philippines, Poland, Republic of Korea, Romania, Senegal, Sierra Leone, Swaziland, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, Yugoslavia, Zambia.⁴

5. *Convention on the International Right of Correction* (New York, 1952; entered into force on 24 August 1962) (see *Yearbook on Human Rights for 1952*, pp. 373-375)

Cyprus ratified the Convention on 13 November 1972.

At the end of 1972, the following 10 States were parties to the Convention: Cuba, Cyprus, Egypt, El Salvador, Ethiopia, France, Guatemala, Jamaica, Sierra Leone, Yugoslavia.

6. *Slavery Convention of 1926 as Amended by the Protocol of December 1953* (signed in New York; as amended entered into force on 7 July 1955) (see *Yearbook on Human Rights for 1953*, pp. 345-346)

Fiji succeeded to the Convention on 12 June 1972.

At the end of 1972, the following 66 States were parties to the Convention: Afghanistan, Albania, Algeria, Australia, Austria, Belgium, Brazil, Burma, Byelorussian SSR, Canada, Cuba, Denmark, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Greece, Guinea, Hungary, India, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Kuwait, Liberia, Libyan Arab Republic, Madagascar, Malawi, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Republic of Viet-Nam, Romania, Sierra Leone, South Africa, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Yugoslavia.

7. *Convention relating to the Status of Stateless Persons* (New York, 1954; entered into force

on 6 June 1960) (see *Yearbook on Human Rights for 1954*, pp. 359-375)

During 1972, the following States became parties to the Convention by the instruments and on the dates indicated: Argentina (accession, 1 June), Barbados (succession, 6 March), Fiji (succession, 12 June), Switzerland (ratification, 3 July).

At the end of 1972, the following 26 States were parties to the Convention: Algeria, Argentina, Barbados, Belgium, Botswana, Denmark, Ecuador, Fiji, Finland, France, Guinea, Ireland, Israel, Italy, Liberia, Luxembourg, Netherlands, Norway, Republic of Korea, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Uganda, United Kingdom, Yugoslavia.

8. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (Geneva, 1956; entered into force on 30 April 1957) (see *Yearbook on Human Rights for 1956*, pp. 289-291)

During 1972, the following States became parties to the Convention by the instruments and on the dates indicated: Barbados (succession, 9 August), Fiji (succession, 12 June), Greece (ratification, 13 December), Madagascar (accession, 29 February), Singapore (succession, 28 March).

At the end of 1972, the following 81 States were parties to the Convention: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Byelorussian SSR, Canada, Central African Republic, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Germany (Federal Republic of), Ghana, Greece, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Jordan, Khmer Republic, Kuwait, Laos, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, San Marino, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Yugoslavia.⁵

9. *Convention on the Nationality of Married Women* (New York, 1957; entered into force on 11 August 1958) (see *Yearbook on Human Rights for 1957*, pp. 301-302)

Fiji succeeded to the Convention on 12 June 1972.

At the end of 1972, the following 44 States were parties to the Convention: Albania, Argentina, Australia, Austria, Brazil, Bulgaria, Byelorussian SSR, Canada, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Fiji, Finland, Ghana, Guatemala, Hungary, Ire-

⁴ In addition, the Convention was ratified on behalf of the Republic of China on 21 December 1953. In this connexion, see foot-note 3 above.

⁵ In addition, the Convention was ratified on behalf of the Republic of China on 28 May 1959. In this connexion, see foot-note 3 above.

land, Israel, Jamaica, Malawa, Malaysia, Malta, Mauritius, Netherlands, New Zealand, Norway, Poland, Romania, Sierra Leone, Singapore, Sri Lanka, Swaziland, Sweden, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, Yugoslavia.⁶

10. *Convention on the Reduction of Statelessness* (New York, 1961; not yet in force) (see *Yearbook on Human Rights for 1961*, pp. 427-430)

Austria acceded to the Convention on 22 September 1972.

At the end of 1972, the following 4 States were parties to the Convention: Austria, Norway, Sweden, United Kingdom.

11. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (New York, 1962; entered into force on 9 December 1964) (see *Yearbook on Human Rights for 1962*, pp. 389-390)

During 1972, no States became parties to the Convention.

At the end of 1972, the following 26 States were parties to the Convention: Argentina, Austria, Brazil, Cuba, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Fiji, Finland, Germany (Federal Republic of), Mali, Netherlands, New Zealand, Niger, Norway, Philippines, Poland, Spain, Sweden, Trinidad and Tobago, Tunisia, United Kingdom, Upper Volta, Western Samoa, Yugoslavia.

12. *International Convention on the Elimination of All Forms of Racial Discrimination* (New York, 1965; entered into force on 4 January 1969) (see *Yearbook on Human Rights for 1965*, pp. 389-394)

During 1972, the following States became parties to the Convention by the instruments and on the dates indicated: Algeria (ratification, 14 February), Austria (ratification, 9 May), Barbados (accession, 8 November), Cuba (ratification, 15 February), Democratic Yemen (accession, 18 October), Haiti (ratification, 19 December), Mauritius (accession, 30 May), New Zealand (ratification, 22 November), Senegal (ratification, 19 April), Togo (accession, 1 September), Tonga (accession, 16 February), United Republic of Tanzania (accession, 27 October), Zambia (ratification, 4 February).

At the end of 1972, the following 71 States were parties to the Convention: Algeria, Argentina, Austria, Barbados, Bolivia, Brazil, Bulgaria, Byelorussian SSR, Canada, Central African Republic, Chile, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Democratic Yemen, Ecuador, Egypt, Finland, France, Germany (Federal Republic of), Ghana, Greece, Haiti, Holy See, Hungary, Iceland, India, Iran, Iraq, Jamaica, Kuwait, Lebanon, Lesotho, Libyan Arab Republic, Madagascar, Malta, Mauritius, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Peru, Phi-

lippines, Poland, Romania, Senegal, Sierra Leone, Spain, Swaziland, Sweden, Syrian Arab Republic, Togo, Tonga, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United Republic of Cameroon, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.⁷

13. *International Covenant on Economic, Social and Cultural Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 437-441)

During 1972, the following States became parties to the Covenant by the instruments and on the dates indicated: Chile (ratification, 10 February), Denmark (ratification, 6 January), Kenya (accession, 1 May), Lebanon (accession, 3 November), Norway (ratification, 13 September).

At the end of 1972, the following 18 States were parties to the Covenant: Bulgaria, Chile, Colombia, Costa Rica, Cyprus, Denmark, Ecuador, Iraq, Kenya, Lebanon, Libyan Arab Republic, Madagascar, Norway, Sweden, Syrian Arab Republic, Tunisia, Uruguay, Yugoslavia.

14. *International Covenant on Civil and Political Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 442-450)

During 1972, the following states became parties to the Covenant by the instruments and on the dates indicated: Chile (ratification, 10 February), Denmark (ratification, 6 January), Kenya (accession, 1 May), Lebanon (accession, 3 November), Norway (ratification, 13 September).

At the end of 1972, the following 18 States were parties to the Covenant: Bulgaria, Chile, Colombia, Costa Rica, Cyprus, Denmark, Ecuador, Iraq, Kenya, Lebanon, Libyan Arab Republic, Madagascar, Norway, Sweden, Syrian Arab Republic, Tunisia, Uruguay, Yugoslavia.

15. *Optional Protocol to the International Covenant on Civil and Political Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 450-452)

During 1972, Denmark and Norway ratified the Protocol on 6 January and 13 September, respectively.

At the end of 1972, the following 8 States were parties to the Protocol: Colombia, Costa Rica, Denmark, Ecuador, Madagascar, Norway, Sweden, Uruguay.

16. *Protocol relating to the Status of Refugees* (New York, 1966; entered into force on 4 October 1967) (see *Yearbook on Human Rights for 1966*, pp. 452-454)

During 1972, the following States became parties to the Convention by the instruments and on the dates indicated: Brazil (accession, 7 April), Chile (accession, 27 April), Fiji (succession, 12 June), Italy (accession, 26 January).

⁶ In addition, the Convention was ratified on behalf of the Republic of China on 22 September 1958. In this connexion, see foot-note 3 above.

⁷ In addition, the Convention was ratified on behalf of the Republic of China on 10 December 1970. In this connexion, see foot-note 3 above.

At the end of 1972, the following 52 States were parties to the Protocol: Algeria, Argentina, Belgium, Botswana, Brazil, Burundi, Canada, Central African Republic, Chile, Congo, Cyprus, Dahomey, Denmark, Ecuador, Ethiopia, Fiji, Finland, France, Gambia, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy See, Iceland, Ireland, Israel, Italy, Ivory Coast, Liechtenstein, Luxembourg, Malta, Morocco, Netherlands, Niger, Nigeria, Norway, Paraguay, Senegal, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Cameroon, United Republic of Tanzania, United States of America, Uruguay, Yugoslavia, Zambia.

17. *Convention on the Non-Applicability of*

Statutory Limitations to War Crimes and Crimes against Humanity (New York, 1968; entered into force on 11 November 1970) (see *Yearbook on Human Rights for 1968*, pp. 459-460)

During 1972, the following States acceded to the Convention on the dates indicated: Cuba (13 September), Kenya (1 May), Tunisia (15 June), United Republic of Cameroon (6 October).

At the end of 1972, the following 18 States were parties to the Convention: Albania, Bulgaria, Byelorussian SSR, Cuba, Czechoslovakia, Guinea, Hungary, India, Kenya, Mongolia, Nigeria, Poland, Romania, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Republic of Cameroon, Yugoslavia.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Forced Labour Convention, 1930* (Convention No. 29; entered into force on 1 May 1932)

Bangladesh ratified the Convention on 22 June 1972.

At the end of 1972, 106 States were parties to the Convention.

2. *Freedom of Association and Protection of the Right to Organise Convention, 1948* (Convention No. 87; entered into force on 4 July 1970) (see *Yearbook on Human Rights for 1948*, pp. 427-430)

During 1972, Bangladesh and Canada ratified the Convention on 22 June and 23 March respectively.

At the end of 1972, 79 States were parties to the Convention.

3. *Right to Organise and Collective Bargaining Convention, 1949* (Convention No. 98; entered into force on 18 July 1951) (see *Yearbook on Human Rights for 1949*, pp. 427-430)

During 1972, Bangladesh and Sri Lanka ratified the Convention on 22 June and 13 December respectively.

At the end of 1972, 92 States were parties to the Convention.

4. *Equal Remuneration Convention, 1951* (Convention No. 100; entered into force on 23 May 1953) (see *Yearbook on Human Rights for 1951*, pp. 469-470).

During 1972, the following States ratified the Convention on the dates indicated: Canada (16 November), Iran (10 June), Switzerland (25 October) and Zambia (20 June).

At the end of 1972, 78 States were parties to the Convention.

5. *Social Security (Minimum Standards) Convention, 1952* (Convention No. 102; entered into force on 27 April 1955) (see *Yearbook on Human Rights for 1952*, pp. 377-389)

During 1972, Barbados and Costa Rica ratified the Convention on 11 July and 16 March respectively.

At the end of 1972, 22 States were parties to the Convention.

6. *Abolition of Forced Labour Convention, 1957* (Convention No. 105; entered into force on 17 January 1959) (see *Yearbook on Human Rights for 1957*, pp. 303-304)

Bangladesh ratified the Convention on 22 June 1972.

At the end of 1972, 90 States were parties to the Convention.

7. *Discrimination (Employment and Occupation) Convention, 1958* (Convention No. 111; entered into force on 15 June 1960) (see *Yearbook on Human Rights for 1958*, pp. 307-308)

Bangladesh ratified the Convention on 22 June 1972.

At the end of 1972, 78 States were parties to the Convention.

8. *Social Policy (Basic Aims and Standards) Convention, 1962* (Convention No. 117; entered into force on 23 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 391-394)

No ratifications were registered in 1972.

At the end of 1972, 23 States were parties to the Convention.

9. *Equality of Treatment (Social Security) Convention, 1962* (Convention No. 118; entered into force on 25 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 394-397)

Bangladesh ratified the Convention on 22 June 1972.

At the end of 1972, 26 States were parties to the Convention.

10. *Employment Policy Convention, 1964* (Convention No. 122; entered into force on 15 September 1966) (see *Yearbook on Human Rights for 1964*, pp. 329-330)

During 1972, Austria, Ecuador and Iran ratified the Convention on 27 July, 13 November and 10 June respectively.

At the end of 1972, 48 States were parties to the Convention.

11. *Minimum Wage Fixing Convention, 1970* (Convention No. 131; entered into force on 29 April 1972) (see *Yearbook on Human Rights for 1970*, pp. 311-313)

During 1972, the following States ratified the Convention on the dates indicated: Cuba (5 January), France (28 December), Syrian Arab Republic (18 April) and Zambia (20 June).

At the end of 1972, 8 States were parties to the Convention.

12. *Holidays with Pay Convention (Revised), 1970* (Convention No. 132; not in force as of 31 December 1972) (see *Yearbook on Human Rights for 1970*, pp. 313-316)

During 1972, Madagascar and Spain ratified the Convention on 8 February and 30 June respectively.

At the end of 1972, 2 States were parties to the Convention.

13. *Workers' Representatives Convention, 1971* (Convention No. 135; not in force as of 31 December 1972) (see *Yearbook on Human Rights for 1971*, pp. 312-313)

During 1972, the following States ratified the Convention on the dates indicated: Cuba (17 November), France (30 June), Hungary (11 September), Iraq (27 July), Niger (5 April), Spain (21 December) and Sweden (11 August).

At the end of 1972, 7 States were parties to the Convention.

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; entered into force on 12 August 1954) (see *Yearbook on Human Rights for 1948*, pp. 431-433)

During 1972, Cyprus and Jordan acceded to the Agreement on 10 August and 7 July, respectively.

At the end of 1972, 27 States were parties to the Agreement.

2. *Agreement on the Importation of Educational, Scientific and Cultural Materials* (Lake Success, 1950; entered into force on 21 May 1952) (see *Yearbook on Human Rights for 1950*, pp. 411-415)

During 1972, Fiji succeeded to the Agreement on 31 October and Iraq accepted the Agreement on 11 August.

At the end of 1972, 66 States were parties to the Agreement.

3(a). *Universal Copyright Convention* (Geneva, 1952; entered into force on 16 September 1955) (see *Yearbook on Human Rights for 1952*, pp. 398-403)

During 1972, Morocco acceded to the Convention on 8 February.

At the end of 1972, 62 States were parties to the Convention.

3(b). *Protocol 1 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of stateless persons and refugees* (Geneva, 1952; entered into force on 16 September 1955) (see *Yearbook on Human Rights for 1952*, p. 402)

Morocco acceded to the Protocol on 8 February 1972.

At the end of 1972, 50 States were parties to the Protocol.

3(c). *Protocol 2 annexed to the Universal Copyright Convention concerning the application*

of that Convention to the works of certain international organizations (Geneva, 1952; entered into force on 16 September 1955) (see *Yearbook on Human Rights for 1952*, p. 403)

Morocco acceded to the Protocol on 8 February 1972.

At the end of 1972, 54 States were parties to the Protocol.

3(d). *Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of, or accession to that Convention* (Geneva, 1952; in force) (see *Yearbook on Human Rights for 1952*, p. 403)

Morocco acceded to the Protocol on 8 February 1972.

At the end of 1972, 45 States were parties to the Protocol.

4(a). *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (The Hague, 1954; entered into force on 7 August 1956) (see *Yearbook on Human Rights for 1954*, pp. 380-389)

During 1972, no States became parties to the Convention.

At the end of 1972, 64 States were parties to the Convention.

4(b). *Protocol for the Protection of Cultural Property in the Event of Armed Conflict* (The Hague, 1954; entered into force on 7 August 1956) (see *Yearbook on Human Rights for 1954*, pp. 380-389)

During 1972, no States became parties to the Protocol.

At the end of 1972, 56 States were parties to the Protocol.

5. *Convention concerning the Exchange of Official Publications and Government Documents between States* (Paris, 1958; entered into force on 30 May 1961) (see *Yearbook on Human Rights for 1964*, p. 434)

The Dominican Republic ratified the Convention on 24 August 1972.

At the end of 1972, 33 States were parties to the Convention.

6. *Convention concerning the International Exchange of Publications* (Paris, 1958; entered into force on 23 November 1961) (see *Yearbook on Human Rights for 1960*, p. 434)

The Dominican Republic ratified the Convention on 24 August 1972.

At the end of 1972, 34 States were parties to the Convention.

7. *Convention against Discrimination in Education* (Paris, 1960; entered into force on 22 May 1962) (see *Yearbook on Human Rights for 1961*, pp. 437-439)

During 1972, no States became parties to the Convention.

At the end of 1972, 59 States were parties to the Convention.

8. *Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education* (Paris, 1962; entered into force on 24 October 1968) (see *Yearbook on Human Rights for 1962*, pp. 398-401)

During 1972, no States became parties to the Protocol.

At the end of 1972, 20 States were parties to the Protocol.

9. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (Paris, 1970; entered into force on 24 April 1972) (see *Yearbook on Human Rights for 1970*, pp. 322-326)

During 1972, the following States ratified, accepted or acceded to the Convention on the dates indicated: Central African Republic (1 February), Khmer Republic (26 September), Kuwait (22 June), Mexico (4 October), Niger (16 October), Nigeria (24 January), United Republic of Cameroon (24 May) and Yugoslavia (3 October).

At the end of 1972, 10 States were parties to the Convention.

10(a). *Universal Copyright Convention as revised at Paris on 24 July 1971* (Paris, 1971; not yet in force) (see *Yearbook on Human Rights for 1971*, pp. 316-324)

During 1972, the following States ratified, accepted or acceded to the Convention on the dates indicated: France (11 September), Hungary (15 September), United Kingdom (19 May) and United States of America (18 September).

At the end of 1972, 4 States were parties to the Convention.

10(b). *Protocol 1 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to works of stateless persons and refugees* (Paris, 1971; not yet in force) (see *Yearbook on Human Rights for 1971*, p. 324)

During 1972, the following States became parties to the Protocol on the dates indicated: France (11 September), United Kingdom (19 May) and the United States of America (18 September).

At the end of 1972, 3 States were parties to the Protocol.

10(c). *Protocol 2 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to the works of certain international organizations* (Paris, 1971; not yet in force) (see *Yearbook on Human Rights for 1971*, p. 324)

During 1972, the following States became parties to the Protocol on the dates indicated: France (11 September), Hungary (15 September), United Kingdom (19 May) and the United States of America (18 September).

At the end of 1972, 4 States were parties to the Protocol.

11. *Convention concerning the protection of the world cultural and natural heritage* (Paris, 1972; not yet in force) (see above, pp. 304-310).

During 1972, no States became parties to the Convention.

IV. ORGANIZATION OF AMERICAN STATES

Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works (Washington, D.C., 1946; entered into force on 14 April 1947) (see Pan American

Union: *Law and Treaty Series*, No. 19)

Colombia ratified the Convention on 4 January 1972.

V. COUNCIL OF EUROPE

1. *European Convention on the Adoption of Children* (Strasbourg, 1967; entered into force on 26 April 1968) (see *Yearbook on Human Rights for 1967*, pp. 386-389)

During 1972, Norway ratified the Convention on 13 June and Switzerland on 29 December.

2. *European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights* (London, 1969; entered into force on 17 April 1971) (see *Yearbook on Human Rights for 1969*, pp. 383-385)

The Netherlands ratified the Convention on 28 June 1972.

3. *European Convention on the Transfer of Proceedings in Criminal Matters* (Strasbourg, 1972; not yet in force) (see above, pp. 316-320).

4. *European Convention on Social Security and Supplementary Agreement for the application of the European Convention on Social Security* (Paris, 1972; not yet in force) (see above, pp. 321-326).

VI. OTHER INSTRUMENTS

1. *Geneva Conventions of 12 August 1949* (entered into force on 21 October 1950) (see *Yearbook on Human Rights for 1949*, pp. 299-309)

During 1972, Bangladesh succeeded to the Conventions on 4 April and the United Arab Emirates acceded to the Conventions on 10 May.

At the end of 1972, 132 States were parties to the Conventions.

2. *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (Rome 1961; entry into force on 18 May 1964) (see *Yearbook on Human Rights for 1961*, pp. 452-454)

Fiji acceded to the Convention on 11 January 1972.

At the end of 1972, 13 States were parties to the Convention.

INDEX

INDEX

When the item on a particular page to which reference is made in this index is not readily identifiable, a further reference is given in parentheses after the page number.

A

Aliens: Austria 14 (heading I); Belgium 19 (heading 4); Bulgaria 22 (heading III); Ecuador 84-91; France 108-109; Germany, Federal Republic of, 131, 136 (heading 7), 138 (heading 9); Luxembourg 183 (heading II.3); Romania 219; Senegal 224 (art. 853); Sweden 228 (para. 6), 229 (para. 11); Switzerland 232 (heading C.6); Thailand 241 (heading E), 249-250 (headings 3 and 4); United Republic of Cameroon 276 (art. 7); Yugoslavia 286 (art. 8).

Arrest (*see* **Liberty**, Right to personal; and **Security of person**, Right to).

Assembly, Freedom of: Canada 64 (heading 4); German Democratic Republic 120 (art. 28); Germany, Federal Republic of, 144-145 (heading 15); Hungary 151; Khmer Republic 178 (art. 8); Morocco 188 (art. 9); New Guinea 295 (heading I.A); Pakistan 205 (art. 13); Philippines 212 (heading H); Switzerland 231 (heading C.3); Thailand 244-245 (heading G).

Assistance, Public (*see* **Social security**).

Association, Freedom of: Byelorussian SSR 34-35 (chaps. I, II), 46-47 (chap. XV), 48 (chap. XVII); Canada 52 (heading I), 64 (heading 4); Congo 76 (art. 17), 77 (arts. 32, 34); France 109-110 (heading 7); German Democratic Republic 120 (art. 29), 121-122 (chap. 3); Germany, Federal Republic of, 144-145 (heading 15); Hungary 151; Khmer Republic 179 (art. 17); Morocco 188 (arts. 9, 14); Netherlands 195 (heading 1.7); New Guinea 292; Pakistan 205 (art. 14); Philippines 212 (heading H); Romania 220; Status of agreements 336 (headings II.2, 3); Switzerland 231 (heading C.3); Thailand 244-245 (heading G); Trinidad and Tobago 251 (heading I.2); United Kingdom 268, 269 (headings O, Q).

Asylum, Right to seek and enjoy: Congo 76 (art. 15); Ecuador 84-85 (art. 6); German Democratic Republic 119 (art. 23 (3)); Germany, Federal Republic of, 138-139 (heading 9); Hungary 151.

Authors', inventors' and performers' rights, Protection of: Bulgaria 22 (heading II); German Democratic Republic 118 (art. 11); Germany, Federal Republic of, 130 (heading 1), 148 (heading 21); Italy 171 (heading 6); Mexico 187 (heading V); Philippines 215 (Decree No. 49); Status of agreements 337 (headings III.3(a)-3(d), 4(a), 4(b)); 338 (heading III.6, 10(a)-10(c)), (heading IV); 339 (heading VI.2).

C

Censorship (*see* **Opinion and expression, Freedom of**).

Childhood (*see* **Family, Rights relating to; and Young persons, Protection of**).

Citizenship (*see* **Nationality, Right to**).

Conscience (*see* **Thought, conscience and religion, Freedom of**).

Copyright (*see* **Authors', inventors' and performers' rights, Protection of**).

Correspondence, Privacy of: Canada 70 (para. 44); Congo 76 (art. 8); German Democratic Republic 120 (art. 31); Germany, Federal Republic of, 132-133 (heading 3), 137 (heading 7); Hungary 151; Khmer Republic 178 (art. 12); Morocco 188 (art. 11); Philippines 212 (heading F); United Republic of Cameroon 270.

Cultural life, Right to participate in (*see also* **Education, Right to**): Algeria 7-8; Byelorussian SSR 26, 27, 28 (art. 4), 38 (art. 101); Canada 52 (part I, A.2), 57 (heading xi); Congo 77 (arts. 25, 26); German Democratic Republic 120 (art. 25 (3)), 121 (art. 40), 123 (heading B); Hungary 151; Iraq 160; Pakistan 206 (art. 25); Status of agreements 337 (heading III.1, 2), 338 (headings III.9 and III.11); Switzerland 230 (headings A.II.4), 231 (heading B.II.4); UNESCO 304-315.

D

Degrading treatment, Prevention of: Canada 53 (para. 5); United Kingdom 265 (heading C).

Detainees, Treatment of (*see* **Treatment of offenders or detainees**).

Detention (*see also* **Liberty, Right to personal; Security of person, Right to**): United Kingdom 265 (heading B).

Discrimination, Prevention of (*see also* **Equality before the law; Equal pay for equal work, Right to; Women, Status of**): Austria 14 (heading I), 15 (heading IV.3); Byelorussian SSR 26, 34; Canada 52, 53 (para. 7), 54-55 (heading B(i)), 57 (headings xiii, xiv), 60-67; Congo 76 (art. 12); Denmark 81 (para. 4); France 107, 109 (heading 4), 111 (heading III), 113-114 (headings II, III); Hungary 151; Italy 169 (heading II.1); New Guinea 295-296; Pakistan 205 (art. 19(2) (b)), 206 (arts. 22-26); Philippines 211 (heading I.A);

Status of agreements 335 (heading I.12), 336 (heading II.7), 338 (headings III.7 and 8); United Kingdom 264 (heading A); USA 281-284.

Double jeopardy, Application of rule against: Philippines 213 (heading K.6); Council of Europe 319 (part V).

Duties to the community (*see also* **Morality**, Observance of; **Public health**, Protection of; **Public order and security**, Observance or protection of). Byelorussian SSR 34; Canada 56 (headings viii, ix), 57-58 (heading C.1), 67-69 (heading 7); Central African Republic 73-74; Congo 76 (art. 10); German Democratic Republic 123 (art. 106); Japan 174-176; Khmer Republic 179 (art. 18); Laos 180-181; Madagascar 184 (heading 1); Morocco 188 (arts. 16-18); Pakistan 204 (arts. 4-5); Switzerland 230 (heading A.I); USSR 257-263; United Kingdom 264-265 (heading A.4).

E

Education, Right to: Australia 11 (heading I); Bulgaria 23 (heading IV); Byelorussian SSR 26-33, 42-44 (chap. XIII); Congo 76 (art. 24); Denmark 81 (para. 2); Finland 106 (heading 7); France 110 (heading II.4); German Democratic Republic 120 (arts. 25, 26), 123 (heading B); Germany, Federal Republic of, 145-146 (heading 17), 148 (heading 20); Hungary 151; Iran 158-159 (headings 7 and 8); Iraq 160; Khmer Republic 179 (art. 19); Laos 180 (heading V); Luxembourg 183 (heading I.7); Morocco 188 (art. 13); Netherlands 194 (heading I.1); New Zealand 199 (heading I.12 and 13); Pakistan 207 (art. 37); Philippines 211, 213 (heading L); Romania 220; Status of agreements 337 (headings III.1, 2), 338 (headings 7, 8); Switzerland 230 (heading A.II.4), 231 (heading B.II.4); Ukrainian SSR 254, 255, United Kingdom 269 (heading S); United Republic of Cameroon 270; USA 282 (heading 3); 283 (heading 2).

Electoral rights (*see* **Government**, Right of participation in; and **Vote**, Right to).

Equality before the law (*see also* **Discrimination**, Prevention of): Australia 9 (headings I.A, B, C); Austria 14 (heading I), 15 (heading IV.3); Canada 64 (heading 4.1); Congo 76 (art. 11); Finland 105 (heading I.2); German Democratic Republic 122, 123 (part IV.B); Germany, Federal Republic of, 130-132 (heading 2), 134; Italy 169 (heading II.1); Luxembourg 183 (heading II.6); Morocco 188 (arts. 5, 8); Pakistan 206 (art. 22), 207 (art. 35); Philippines 211 (heading A), 212 (heading D); Sweden 229 (para. 10); Switzerland 231 (heading C.2); USSR 257 (heading 4); United Kingdom 265 (headings D, E, F); United Republic of Cameroon 270; USA 281, 283 (heading 6).

Equal pay for equal work, Right to: Canada 52 (heading I.1), 57 (heading xiii); Congo 76 (arts. 18, 21); France 110 (heading 3); Hungary 151; Italy 171 (heading 5); Netherlands 195 (heading I.4), 196 (heading III.2); New Zealand 198 (heading I.5); Philippines 211 (heading I.A); Status of agreements 336 (heading II.4); United Kingdom 268 (heading P).

Expression (*see* **Opinion and expression**, Freedom of).

Expropriation (*see* **Property rights**).

F

Fair trial or hearing, Right to (*see also* **Tribunals**, Access to and remedies before): Australia 12-13; Belgium 21 (heading II); Byelorussian SSR 44 (chap. XIV), 51; Canada 53 (paras. 8-11), 57 (heading (xii) 8, 9), 59-60 (part II), 65, 66 (Nos. 11-16), 70 (No. 46); German Democratic Republic 122 (art. 97), 123 (arts. 101, 105 and heading B); Germany, Federal Republic of, 134 (headings 5, 6), 138, 139 (heading 9); Hungary 152 (heading 3); Israel 162-163 (headings I.1-3), 165 (heading II.1); Italy 168 (heading I), 169-170 (headings II.1-3); Jamaica 173 (heading II); Madagascar 184-185; New Guinea 296 (heading II); New Zealand 199-200 (heading II); Switzerland 230-231 (heading B); Thailand 238-241 (heading C); Trinidad and Tobago 251 (heading II); USSR 257 (heading 4); United Kingdom 265-266 (headings F and G); United Republic of Cameroon 270; USA 283 (heading III.4).

Family, Rights relating to: Algeria 3 (art. 1); Belgium 20, 21; Byelorussian SSR 26, 33, 37 (art. 54), 38 (art. 70), 40 (arts. 162, 163), 41 (arts. 164, 165, 167, 170-172), 48 (arts. 243, 244); Canada 56 (heading v); Cyprus 78; Czechoslovakia 80; Denmark 81 (para. 3); Ecuador 83 (art. 5); France 109 (heading 5), 110-111 (heading II.5); German Democratic Republic 121 (arts. 37, 38), 123 (heading B), 126-127 (heading B); Germany, Federal Republic of, 131, 138 (heading 9), 139 (heading 11); Hungary 151, 152; Iran 158-159; Israel 164 (heading 7); Khmer Republic 179 (art. 20); Laos 180 (title V); Philippines 213 (heading L), 214 (heading 2); Poland 216 (heading I.B); Romania 220; San Marino 221 (para. 3); Senegal 223; Status of agreements 338 (heading V.1); Switzerland 230 (heading B.II.2); United Republic of Cameroon 270; Yugoslavia 285, 288-290 (arts. 26-33 and art. 50).

Forced labour, Abolition of: Byelorussian SSR 34; France 111 (heading III); Pakistan 205 (art. 10(2)); Status of agreements 336 (headings II.1 and II.6).

G

Geneva Conventions: Status of agreements 339 (heading VI.1).

Genocide: Status of agreements 333 (heading I.1).

Government, Right of participation in (*see also* **Petition or complaint**, Right of; **Vote**, Right to): Bulgaria 22 (heading I); Byelorussian SSR 24-30; Canada 58, 67-69 (heading 7); Central African Republic 73, 74; Congo 75, 76 (arts. 1-4, 13, 14, 16); Ecuador 91-104; Finland 105-106 (heading 4); Gabon 115; German Democratic Republic

118 (chap. I), 119 (art. 23), 121 (chap. 2), 122 (chap. 4), 123 (heading II); Germany, Federal Republic of, 145 (heading 16); Hungary 151, 152; Israel 164 (heading 9); Jamaica 173; Khmer Republic 179 (art. 21); Madagascar 184, 185; Mexico 187 (heading VII); Morocco 188-193; New Guinea 295; New Zealand 198 (heading I.4); Niger 201 (para. 1); Pakistan 204-210; Philippines 211-215; Romania 218-220; Senegal 222-224; Sudan 225-227; Sweden 228, 229; Thailand 233-238, 243 (headings 3, 4), 245-246 (heading H), 248 (heading B.2); USSR 256-257; United Kingdom 267 (headings L, M); United Republic of Cameroon 272-280; USA 284; Yugoslavia 285.

H

Health (*see* **Medical care**, Right to; **Public health**, Protection of; and **Social security**).

Holidays with pay, Right to: Belgium 21; Byelorussian SSR 27, 30 (para. 20), 34, 35 (art. 2), 37-38 (chap. V), 43-44 (arts. 194, 197-202); Cyprus 78, 79; German Democratic Republic 120 (art. 34); Hungary 151; Iran 155-156; Status of agreements 337 (heading II.12); Switzerland 231 (heading B.II.5).

Home, inviolability of the: Canada 58 (heading C); Congo 76 (art. 7); German Democratic Republic 121 (art. 37 (3)); Germany, Federal Republic of, 136 (heading 7); Hungary 151; Khmer Republic 178 (art. 11); Morocco 188 (art. 10); New Guinea 295; Philippines 212 (heading F); United Kingdom 266 (heading H); United Republic of Cameroon 270.

Housing, Right to adequate: Byelorussian SSR 26, 27; Canada 54 (para. 16), 55, 56 (heading ix); German Democratic Republic 121 (art. 37), 127 (heading C); New Zealand 199 (heading 11); Switzerland 230 (heading A.1); Ukrainian SSR 254, 255; USA 282 (heading 2).

Human rights (General): Bahrain 16; New Guinea 295; Papua 297; Philippines 211 (heading I.B); Status of agreements 335 (heading I.13-15), 336 (heading I.17); United Nations 301-303.

I

Industry and trade, Freedom of access to: Byelorussian SSR 29; Canada 53 (para. 5 (ii)), 57 (heading xi); Khmer Republic 179 (art. 16); New Zealand 199 (heading 17); Pakistan 205 (art. 15); United Kingdom 269 (heading R).

Information, Freedom of (*see* **Opinion and expression**, Freedom of).

Innocence, Presumption of: Belgium 21 (heading II.b); Germany, Federal Republic of, 134-135 (heading 6); Khmer Republic 178; Philippines 213 (heading K).

L

Liberty, Right to personal (*see also* **Forced labour**; **Movement and residence**, Freedom of;

Slavery and servitude): Australia 9 (heading D); German Democratic Republic 120 (art. 30), 122 (art. 100); Germany, Federal Republic of, 132 (heading 3), 135 (heading 6); New Guinea 295; Pakistan 204 (art. 8); Switzerland 231 (heading C.1); United Kingdom 265 (heading B); United Republic of Cameroon 270.

Life, Right to: Finland 105 (heading I.1); Hungary 151; Khmer Republic 178; New Guinea 295; Pakistan 204 (art. 8); Sweden 228 (para. 2); USA 283 (heading III.5).

M

Marriage, Rights relating to: Canada 56 (heading v), 58 (heading D), 71 (heading 9); Congo 76 (art. 20); German Democratic Republic 121 (art. 38), 123 (heading B), 126-127 (heading B); Germany, Federal Republic of, 131, 138 (heading 9), 139 (heading 11); Guinea 150; Hungary 152; Luxembourg 183 (heading II.6); Philippines 213 (heading II (Act. No. 6268)); Status of agreements 334 (heading I.9), 335 (heading I.11); United Kingdom 265 (heading D).

Maternity (*see* **Family**, Rights relating to).

Medical care, Right to (*see also* **Social security**): Belgium 18, 19; Byelorussian SSR 27, 28, 30, 38 (art. 101); Finland 106 (heading I.6); German Democratic Republic 120 (art. 35), 121 (art. 38 (3)); Japan 174 (heading I.6); New Zealand 198 (heading I.9); Switzerland 230 (heading B. II.1); Ukrainian SSR 254, 255; United Kingdom 266 (heading G.2), 267-268 (heading N); USA 282 (heading II.4).

Minors (*see* **Family**, Rights relating to; and **Young persons**, Protection of).

Minorities, Protection of: Australia 9 (heading I.A); Austria 15 (heading IV.2); Canada 53 (para. 10), 54 (para. 15), 57 (headings xi, xii); Iraq 160; New Zealand 201 (heading I.13); Pakistan 207 (art. 33); United Kingdom 266 (heading I); USA 281, 282 (heading II).

Morality, Observance of: Finland 106 (heading II); New Zealand 198 (heading I.7); Pakistan 207 (art. 47); Status of agreements 333 (heading I.2); United Republic of Cameroon 279.

Motherhood (*see* **Family**, Rights relating to).

Movement and residence, Freedom of: Ecuador 86-91; German Democratic Republic 120 (art. 32); Germany, Federal Republic of, 133 (heading 5), 138 (heading 8); Morocco 188 (art. 9); Pakistan 205 (art. 12); Philippines 212 (heading G); San Marino 221 (para. 4); Thailand 241 (heading D); United Republic of Cameroon 270.

N

Nationality, Right to: German Democratic Republic 123 (heading B); Germany, Federal Republic of, 131, 139 (heading 10); Italy 172; Khmer Republic 179 (art. 13); Status of agreements 334 (heading I.9); Switzerland 232 (heading C.6); Thailand 241 (heading E); United Kingdom 266 (heading I).

O

Offenders, Treatment of (*see Treatment of offenders or detainees*).

Opinion and expression, Freedom of: Austria 14 (heading II); Byelorussian SSR 46 (art. 230); Canada 64 (heading 4); France 112 (heading B); German Democratic Republic 120 (art. 27); Germany, Federal Republic of, 142-144 (heading 14); Hungary 151; Italy 170-171 (heading 4); Khmer Republic 178 (art. 7); Morocco 188 (art. 9); Netherlands 196 (headings II and III.1); New Guinea 295; Pakistan 205 (art. 16); Philippines 212 (heading H); Status of agreements 334 (heading I.5); Switzerland 231 (heading C.3); United Kingdom 267 (heading K); United Republic of Cameroon 270; USA 282-283 (heading III.1).

P

Petition or complaint, Right of: Byelorussian SSR 44 (art. 211); Canada 55 (heading B(i)), 62 (para. 10), 69 (heading 8); Congo 77 (arts. 27, 28); German Democratic Republic 123 (art. 103); Israel 162; Khmer Republic 178 (art. 9); Philippines 212 (heading H); United Kingdom 266 (heading G).

Press, Freedom of (*see Opinion and expression, Freedom of*).

Privacy, Right to (*see also Correspondence, Privacy of; Home, Inviolability of the*): Australia 9 (heading E); Canada 55 (heading iv), 71-72 (heading 9); Denmark 81; Finland 105 (heading I.3); France 107, 108; Germany, Federal Republic of, 135-138 (heading 7); Israel 163 (heading 4); Khmer Republic 178 (art. 12); Sweden 228 (paras. 4, 5); Switzerland 231 (heading B.II.7); USA 283 (heading III.3).

Property rights: Congo 77 (art. 33); German Democratic Republic 118 (arts. 10-12); Germany, Federal Republic of, 140-141 (heading 12); Hungary 152; Iran 154-155 (headings 3 and 4); Khmer Republic 179 (art. 14); Morocco 188 (art. 15); New Guinea 295; New Zealand 199 (heading 16); Pakistan 206 (arts. 20-21); Philippines 212 (headings E, F), 214 (heading III.1); Poland 216 (heading II.A); Switzerland 232 (heading C.7); Thailand 241-244 (heading F); Trinidad and Tobago 251-252; United Kingdom 266-267 (heading J); United Republic of Cameroon 270.

Public health, Protection of (*see also Medical care, Right to*): Byelorussian SSR 39 (chap. X), 49-50 (headings 11, 12); Congo 75 (art. 23); Finland 106 (heading 6); German Democratic Republic 119 (art. 15), 120 (art. 35); Hungary 152 (heading 2); Israel 164 (heading 9); Italy 172; Japan 174 (headings I.1-3); Mexico 187 (heading III); New Zealand 198 (heading I.3); Pakistan 207 (arts. 47-48); Philippines 213-215; Switzerland 230 (heading A.II.1).

Public order and security, Observance or protection of: Byelorussian SSR 35 (art. 2); Canada 57 (heading xii), 59 (heading F), 60 (heading 3); France 110 (heading 8), 111 (annex A); Germany,

Federal Republic of, 134-138 (headings 6, 7); Hungary 152 (headings 4, 5); Israel 164 (headings 8, 9); Mexico 187 (headings III, V, VI); New Guinea 295; New Zealand 198 (heading I.2), 199 (headings I.14, 15); Niger 201 (para. 3); Pakistan 207 (art. 49); Philippines 213 (heading II (Act 6425)), 215 (heading 4); Thailand 235-241, 243-244 (heading 4); USSR 257-263; United Kingdom 264 (heading A.1); United Republic of Cameroon 270; USA 282 (heading III.1), (heading III.3); Yugoslavia 292 (heading II).

Public service, Right to access to (*see also Government, Right of participation in*): Byelorussian SSR 49, 50; Congo 76 (art. 22); German Democratic Republic 122 (art. 94); Germany, Federal Republic of, 132; Morocco 188 (art. 12); New Guinea 295; Pakistan 207 (art. 43); Thailand 245-246 (heading H); United Kingdom 267 (heading L); USA 284.

Punishment (*see Treatment of offenders or detainees*).

R

Refugees (*see also Asylum, Right to seek and enjoy*): France 111 (heading III); Germany, Federal Republic of, 138 (heading 9); Italy 172; Kenya 177; Status of agreements 333 (heading I.3), 335 (heading I.16), 337 (heading III.3(b)), 338 (heading III.10(b)).

Religion (*see Thought, conscience and religion, Freedom of*).

Remuneration, Right to just and favourable (*see also Equal pay for equal work, Right to*): Barbados 17; Byelorussian SSR 27, 35 (chap. II), 38 (chap. VI), 45 (art. 218), 46 (art. 220); France 110 (heading 3); Jamaica 173; Netherlands 195 (headings I.4, 5), 196 (heading III.2); New Zealand 198 (heading I.5); Pakistan 207 (art. 44); Status of agreements 336 (heading II.4), 337 (heading II.11); Ukrainian SSR 254, 255.

Residence, Freedom of (*see Movement and residence, Freedom of*).

Rest and leisure, Right to (*see also Holidays with pay, Right to*): Byelorussian SSR 37-38 (chap. V); France 111 (heading III); German Democratic Republic 120 (art. 34); Hungary 151; Iran 155-156 (heading 5); Netherlands 195 (heading I.6); New Zealand 198 (heading I.6); Pakistan 207 (art. 40); Switzerland 230 (heading A.II.5), 231 (heading B.II.5).

Retroactive application of law, Prevention of: Congo 76 (art. 6); German Democratic Republic 122 (art. 99); Germany, Federal Republic of, 135 (heading 6); Morocco 188 (art. 4); Pakistan 205 (art. 11); Switzerland 231 (heading C.5); United Republic of Cameroon 270.

S

Security of person, Right to: Canada 64 (heading 4); Congo 76 (art. 6); Finland 105 (heading I.1); France 107, 108, 111; Mexico 187 (heading V); New Zealand 198 (heading I.2); Niger 201 (para. 3); Yugoslavia 292 (heading II).

Slavery and servitude: Germany, Federal Republic of, 149 (heading 22); New Guinea 295; Pakistan 205 (art. 10); Status of agreements 333, 334 (headings I.6, 8).

Social insurance (*see* Social security).

Social security: Australia 10, 11; Austria 15 (para. 4); Belgium 18-20; Byelorussian SSR 27, 35 (art. 2); 38 (art. 101), 48 (chap. XVI); Canada 53 (para. 4), 54 (para. 14), 55 (heading iv), 56 (heading x), 61 (para. 6(2)); Council of Europe 321-326; Cyprus 78, 79; Czechoslovakia 80; Denmark 81-82; Ecuador 83-84; German Democratic Republic 121 (arts. 36, 38), 123-129 (headings B and II); Germany, Federal Republic of, 132, 147 (heading 19), 149; Hungary 151; Iran 157-159; Israel 164 (heading 6); Italy 168, 169; Japan 174 (headings I.4-7); Khmer Republic 179 (arts. 15, 17); Luxembourg 183 (heading II.5); Mexico 186 (heading I.2); Netherlands 194-195 (headings I.3, 8); New Zealand 198 (heading I.1); Niger 201 (para. 2); Norway 202 (heading 5); Pakistan 207 (arts. 41, 42); Philippines 211, 214 (heading III.2); Poland 216 (heading I.B), 217 (heading II.B); Romania 220; San Marino 221 (paras. 2, 5); Status of agreements 336 (headings II.5, 8, 9), 339 (heading V.4); Switzerland 230-231 (headings A.II.2, B.II.2, 3); Thailand 247 (heading A.3); Ukrainian SSR 254, 255; United Kingdom 267-268 (heading N); Yugoslavia 285-290, 291 (heading C).

Standard of living, Right to adequate: Canada 54 (para. 14), 56 (heading x); German Democratic Republic 123-129 (heading II); Khmer Republic 179 (art. 15); Pakistan 207 (art. 39); Philippines 213 (heading L); San Marino 221 (paras. 1, 2); Switzerland 230 (heading A.II.3), 231 (heading B.II.3); Ukrainian SSR 254, 255; United Kingdom 269 (heading R).

Stateless persons: Status of agreements 334 (heading I.7), 335 (heading I.10), 337 (heading III.3(b)), 338 (heading III.10(b)).

Strike or lockout, Right to: Germany, Federal Republic of, 147 (heading 18); Israel 163 (heading 5); Morocco 188 (art. 14); Netherlands 195 (heading I.7).

T

Thought, conscience and religion, Freedom of: Byelorussian SSR 35-36 (art. 16); Canada 64 (heading 4); Congo 76 (art. 19); France 109 (heading 3); German Democratic Republic 121 (art. 39); Germany, Federal Republic of, 141 (heading 13); Hungary 151; Israel 166 (heading 3); Italy 168; Khmer Republic 178 (art. 7); Laos 180 (arts. 4, 5); Morocco 188 (art. 6); New Guinea 295; Pakistan 205-206 (arts. 17-19), 207 (arts. 29-30); Philippines 212 (heading I); Switzerland 231 (heading C.4); United Republic of Cameroon 270; USA 283 (heading III.2).

Trade unions (*see* Association, Freedom of).

Treatment of offenders or detainees (*see also* Degrading treatment, Prevention of): Algeria 3-6; Austria 14 (heading III); Belgium 21 (heading II); Byelorussian SSR 50-51 (heading 13); Canada 56, 57 (headings vii, xii); Council of Europe 316-320;

German Democratic Republic 122 (art. 100); Germany, Federal Republic of, 132 (heading 3); Iran 153, 154; Israel 162 (heading I.1), 165 (heading II.2); Jamaica 173 (heading I.1); Luxembourg 183 (heading II.4); Madagascar 184 (heading 2); New Guinea 295; New Zealand 199, 200; Pakistan 204-205 (arts. 9, 10, 11); Philippines 211, 213 (heading K); Status of agreements 336 (heading I.17), 339 (heading V.3); Sweden 228 (paras. 2, 3), 229 (para. 7); Switzerland 231 (heading C.1); Thailand 238 (heading B); United Kingdom 265 (headings B, C, E); United Republic of Cameroon 270, 275-280; USA 282 (heading II.4), 283 (headings 4, 5).

Tribunals, Access to and remedies before: Belgium 21 (heading II); Council of Europe 326-332; Germany, Federal Republic of, 134 (heading 5), 136; United Kingdom 266 (heading G).

V

Vote, Right to: Canada 57 (heading xii), 58; Congo 76 (art. 13); Ecuador 91-104; Finland 105-106 (heading 4); German Democratic Republic 119 (art. 22); Germany, Federal Republic of, 145 (heading 16); Jamaica 173; Khmer Republic 178 (art. 10); Liberia 182; Luxembourg 183 (headings II.1, 2); Mexico 186 (heading II); Morocco 188 (art. 8); Netherlands 194 (heading I.2); Norway 202 (headings 1, 2); Senegal 222 (art. 7); Switzerland 230 (headings B.I.1, 3); United Republic of Cameroon 271 (art. 2); USA 283 (heading III.6).

W

Wages (*see* Remuneration, Right to just and favourable).

Women, Status of (*see also* Equal pay for equal work, Right to): Byelorussian SSR 34, 40-41 (chap. XI); Canada 54 (paras. 12-13), 55, 57 (heading xv), 59 (heading E.2), 60 (heading 3); Congo 76 (art. 18); Cyprus 78 (heading I); Finland 105 (heading I.2); France 110 (heading II.3); German Democratic Republic 123 (heading B), 126 (heading B); Germany, Federal Republic of, 130 (heading 2), 132, 146 (heading 17); Guinea 150; Hungary 151; Israel 164 (heading 7); Italy 171 (heading 5); Luxembourg 183 (heading II.6); Morocco 188 (art. 8); Netherlands 195 (heading I.4); New Zealand 198 (heading I.5, 6); Pakistan 206 (art. 22), 207 (arts. 32, 38); Poland 216 (heading I.B), 217 (heading II.B); Romania 220; Status of agreements 334 (headings I.4, 9); Sweden 229 (para. 10); Switzerland 230 (heading B.I.1); United Kingdom 268 (heading P); United Republic of Cameroon 270; USA 281, 284; Yugoslavia 286 (art. 9), 287 (art. 20), 288 (art. 28).

Work, Conditions of (*see also* Remuneration, Right to just and favourable; Rest and leisure, Right to): Austria 14 (heading IV); Belgium 18; Byelorussian SSR 26, 30 (para. 20), 34-36; Cyprus 78, 79; France 107, 110 (heading II), 111 (heading III); Germany, Federal Republic of, 146 (heading

18); Iran 155, 156; Iraq 160; Ireland 161; Italy 171 (heading 5); Mexico 186 (heading I); Netherlands 196-197 (headings III.2, 3); Norway 202 (heading 7); Pakistan 207 (art. 38); Philippines 211 (heading I.A); San Marino 221 (heading 6); Status of agreements 336 (headings II.10, 13); Thailand 248 (heading B.1); USSR 256; United Kingdom 268 (heading O); Yugoslavia 290 (heading B).

Work, Right to and free choice of: Austria 15; Byelorussian SSR 34 (art. 2), 35 (arts. 15, 16), 36 (art. 31), 42 (chap. XIII), 45 (art. 217); Finland 106 (No. 5); France 110 (heading II); German Democratic Republic 119 (art. 24), 123 (heading B); Germany, Federal Republic of, 145 (heading 17), 146 (heading 18); Hungary 151; Khmer Republic 179 (art. 17); Morocco 188 (art. 13); New Guinea 295; Pakistan 205 (art. 15), 207 (art. 40); Poland 216 (heading I.A); Status of agreements 336 (headings II.7 and 10); Thailand 248 (heading B.1); Ukrainian SSR 254; United Kingdom 268 (heading O); United Republic of Cameroon 270; USA 281 (heading II.1).

Y

Young persons, Protection of (*see also Family, Rights relating to*): Algeria 5 (chap. III), 6-7 (heading 2); Australia 11 (paras. 14, 15); Belgium 18 (heading I.1); Byelorussian SSR 29-33, 37 (arts. 43, 54), 38 (arts. 67, 101), 41-42 (chap. XII), 51 (art. 51); Canada 53 (para. 6), 59 (heading E), 71 (heading 9); Congo 76 (art. 24); Czechoslovakia 80; France 109 (heading I.6), 111 (heading III); Germany, Federal Republic of, 149; Hungary 151; Iran 158-159 (heading 7); Israel 162-163; Laos 180 (title V); New Zealand 198 (heading I.6); Norway 202 (headings 3, 6); Philippines 213 (heading L); Romania 219-220; Status of agreements 338 (heading V.1); Switzerland 231 (heading B.II.4); Thailand 239 (heading C.2), 246-248; Ukrainian SSR 255; United Kingdom 269 (heading S); United Republic of Cameroon 276 (art. 6), 279 (sections 344, 346, 347); Yugoslavia 289 (art. 31).