

*FOR THE RULE  
OF LAW*

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***Bulletin  
of the  
International  
Commission  
of Jurists***

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## LEGAL REFORMS IN CZECHOSLOVAKIA

### Rehabilitation sparking legal reforms

As readers of the *Bulletin* will recall, Rudolf Slansky and his associates were rehabilitated in 1963. *Rudé Právo*, the official newspaper of the Communist Party of Czechoslovakia, published a long account on this subject on August 22, 1963. Slansky, First Secretary of the Party, had been driven from power, tried in a big political show trial, sentenced and executed on December 3, 1952, with ten associates on faked charges of espionage and high treason. His rehabilitation, reported in *Bulletin* No. 17, marked the belated official recognition of serious violations of legality during a lengthy period, called "the period of the cult of personality" in Czechoslovakia. *Rudé Právo*, going further than the rehabilitation at the time of its announcement, concluded:

Strict observance and development of the Leninist norms in the life of the Party... gives a firm guarantee that similar painful things will never happen again.

However, public opinion in Czechoslovakia does not seem to be satisfied with this as a guarantee of justice. In the months following the rehabilitation of Slansky and the Slovak leader Clementis, criticism of basic violations of laws increased, and the need for thoroughgoing reforms in public life, including law reforms, has been voiced with growing emphasis.

Socialist Legality does not only mean the revision of illegal court sentences but also the elimination of any lack of respect towards laws in general wrote *Práca* (Bratislava) on November 26, 1963. It recalled also that under the cover of the theory of "the common good" rules of law were—and sometimes still are—applied only as far as they seem to be expedient for the authorities in the given case. A detailed list of past grievances was presented by the Slovak Commissioner of Justice in *Kulturný Život* (July 27, 1963):

The harmful influence of the personality cult was expressed by wrong verdicts, by turning the principle of Socialist humanism upside down and by a certain drop in the confidence of the public in the courts of justice... The principle of the judge's independence was gravely infringed... by directly dictating verdicts to them... The abolition of the institution of investigating judges, the insufficient because abstract definition of the rights of the defence as well as neglect of other fundamental principles of criminal procedure... helped to cause violations of legality.

The issue of restoring legality was taken up also by writers and journalists and widely discussed in different mass media. The periodicals leading this drive, the Bratislava *Kulturný Život*, the Prague *Literární Noviny* and *Plamen* urged fundamental revision in all spheres of public life. The mounting pressure of public opinion, together with historical forces active in other Communist countries, imposed a major Party and government reshuffle in which the top Stalinist leaders involved in the Slansky trial were removed, and only President Novotny himself managed to survive. The leadership of the Czechoslovak Communist Party was compelled to embark on a policy of gradual concessions, with a postponement of concessions as long as possible. A brake was to be put on mounting public criticism. An ideological plenum of the Party's Central Committee in December 1963 voiced the Party's determination to re-establish full control and discipline on all means of expression of thought. The existing situation, where anybody published whatever came into his mind regardless of the medium concerned, was declared "harmful and untenable". To implement all-out control over all mass media and cultural organizations a new ideological committee was established under the chairmanship of Vladimír Koucký.

The desire for reforms in the legal system was remarkably outspoken. At a meeting of representatives of Universities and of the Institute of State and Law of the Academy of Sciences it was stated (*Práce*, November 26, 1963), that the term "class enemy" had become largely historical, and that equality before the law should now be established. In the present situation, continued the criticism, the fact that a person comes from a family of a former shopkeeper, lawyer or craftsman is sometimes taken as an aggravating circumstance by the courts, although young people from these families have nothing in common with the former occupation of their parents. The meeting discussed also the problem whether the citizen has the feeling that the law supports him. The answers seem to have been rather negative.

The first national conference of Czechoslovak lawyers, which opened on November 19, 1963, dealt mainly with the rights of the defence. Discussion covered the role of defence counsel, their work and political education and asked for a greater role for the defence both in and out of court.

To channel efforts towards law reform through dependable Party organs, the same measure was taken as in the field of mass media. A Legal Commission was set up in the Central Committee of the CzCP under the chairmanship of Vladimír Koucký, Secretary

of the Central Committee. Members of this Legal Commission are high-ranking functionaries of the legal branch of the Party Secretariat together with the Procurator-General, President of the Supreme Court, Minister of Justice, Minister of the Interior, the Slovak Commissioner of Justice, the Director of the Institute of State and Law of the Academy of Sciences, Deans of the two Law Faculties and Professors of Law. The Commission's task is to "help the Central Committee to solve fundamental questions of the development of Socialist statehood".

Indeed, in the first months of 1964, both before and after the setting up of the Legal Commission, the Czechoslovak National Assembly passed a considerable number of bills. Two of them referred to the re-organization of mass media: radio and television. The new Laws defined the organization, rights and obligations of these two State broadcasting organs and stressed their ideological purpose: to build a Socialist society and create conditions for the transition of Communism.

Among the series of these laws there are two important amendments of the legal system: firstly, the introduction of a new Civil Code, and, secondly, a new Electoral Law. The former Civil Code of 1950, as the Minister of Justice stated, became impracticable and in 1960 it was decided to draft a new one, based on the assumption that under the present social system in Czechoslovakia the rights of the citizens are in harmony with the interests of society. The new Code provides two means of ensuring the satisfaction of individual needs: personal property and personal use, and both are guaranteed.

Personal property is of a "consumer nature" and must be acquired honestly. Personal property is a wider concept; it includes also small lots of housing estates, for example, which can be inherited and ceded. There is, however, one important change compared to the previous situation. People who already own their building land may build their family houses there and remain owners of the ground as well. But if they do not build and want to sell the ground, they can sell it only to the State or a Socialist organization. On the other hand, a prospective house builder cannot buy land; he can get it only from the State, and will be able to obtain only the title to use the land, but not ownership rights. The right of using the land will be permanent. Payment for the title to use the land will correspond to the sum paid by the State when buying up land. The construction erected on this ground will be, however, the property of the builder. He will be free to sell the houses without any restrictions, the right of using

the ground will pass automatically to the new owner of the house.

The new law does not affect agricultural land. The shares of farm land owned by members of agricultural cooperatives are regarded as their private property and their family houses as their personal property.

This amendment of the Civil Code limits the citizen's power to dispose of his property. A further restriction consists in provisions of the new Housing Administration Act. It authorized a redistribution of living space. Thereby people who occupy a flat larger than the new units prescribed by the law will lose rooms qualified as "excessive".

Both the new Code and the Housing Law entered into force on April 1, 1964. In only one case did new legislation, when redrawing the line between the private and public sphere, move in favour of the private sector: in some consumer and personal services. A new decree, announced by *Rudé Právo* on April 11, 1964, and in force from the first of the month, permits private enterprise in refreshment, fruit and souvenir kiosks, carrying of luggage, delivery and messenger services, laundries, minor tailoring jobs, shoeshining, car washing and cloakroom attendance.

The 11th Congress of the Czechoslovak Communist Party in June 1958 passed resolutions to take decisive steps against remnants of private enterprise. In fact, since 1961 there is no private enterprise at all in retail trade or catering, whereas the number of private artisans, amounting to 380,000 in 1948, was reduced to 3700 by 1962.

The new provisions indicate a turn in this policy. *Rudé Právo* explained that "it is more important to satisfy the growing demand for services than to be overanxious about any profits individuals may make". One should add that in these activities the costs of State management were much higher than the profits obtained. Thus the only step which might become a decision of principle is the authorization of private enterprise in some restricted fields where State enterprises are deep in the red.

Another important piece of legislation is the new Electoral Law passed on January 31, 1964. It was hailed as an "important step towards Socialist Democracy". Two features should be particularly mentioned. One is that elections are conducted by the National Front, a social organ, and not by a State body. This, it is claimed, ensures for the working people direct participation in the conduct of elections. Secondly, on the National Front Electoral Committee long forgotten small parties made a

nominal come-back. This Electoral Committee is composed, under the leadership of the Communist Party, of the Socialist Party, the People's Party, the Slovak Revival Party, the Slovak Freedom Party and other mass organizations. Their role consists of figuring in the ballot lists, since, as was clearly stated during the debate on the Bill:

In our elections there is no room for a battle between political parties. On the contrary, they will be held in an atmosphere of unity of workers, farmers and the working intelligentsia. The unity of the people will be demonstrated by the unanimous selection of the best candidates and by a uniformly conducted campaign.

The unanimity of selection of the best candidate is ensured by a simple voting system, a show of hands. There is a possibility of choosing between candidates in the pre-election period. The law enables every organization or even every citizen to launch and campaign for a candidate at public meetings, in the press, or in any other way. Proposals are being gathered by the Electoral Commission of the National Front. Then public meetings are arranged to select from among the candidates by a show of hands, since there can be only one candidate for each of the 300 constituencies of the Republic. The unanimously selected candidates then are registered and a few weeks later the citizens may cast their secret ballot for the only candidate, on June 14, 1964. The citizen may be comforted by the fact, announced by the chairman of the National Front Electoral Committee, that two thirds of the candidates are workers or peasants, that not only Czechs and Slovaks, but also citizens of Hungarian, Ukrainian and German nationality may be candidates, and above all that the unanimity in selection has been achieved by comradely discussion.

On the occasion of the June elections votes will be cast for the representatives for the National Assembly, the Slovak National Assembly, the National Committees and also to elect judges.

The Law on the Election of Judges, which was passed together with the Electoral Law, stipulated that candidates for the post of professional judge must have a full university education. Lay assessors, i.e., part-time judges, are also to be elected in such numbers as to allow them to be called on to exercise their judicial duties not more than 12 times a year.

### **Reforms without real changes**

These reforms without real changes are the essence of the legal policy of the Government as outlined recently by President Novotny in an electoral speech before the National Front in March 1964.

The President expressed the need to enhance the role of the National Assembly "as a working institution of deputies", which will gradually amalgamate the legislative and the executive power. Legislative power will be discharged by the Plenum of the Assembly, executive power by its Presidium. This development, however, is only a trend for a distant future. At present the Assembly must fulfil its supreme supervisory power vis-à-vis all state bodies. Members of the Government should regularly account to the Assembly, which on its part should regularly meet to listen to these reports, and engage in interpellations and other active forms of parliamentary work. A major task of the Assembly will be to elaborate in detail all constitutional principles in legal codes.

Citizens of the Czechoslovak Socialist Republic now have it on the authority of their President that the deformations of the personality cult have been remedied, and Socialist Legality restored. The ground for the anti-legal practices of the personality cult was that for a long time after 1948 the former practice of bourgeois law persisted, and the cult therefore asserted that Socialism did not need law and highly qualified jurists.

In present-day Czechoslovakia the dictatorship of the proletariat and the new form of an all-people's state are two complementary aspects of Socialist statehood, stated the President. The development towards an all-people's state—he warned—will depend on how actively every citizen combats various liberal and anarchic tendencies... expressed in the literary press and elsewhere, which call for unrestricted freedom for everybody.

This presidential rebuke was addressed to Czechoslovak proponents of legal reform aiming at the implementation of fundamental human rights and institutional safeguards of Socialist Legality going beyond Party resolutions, and shows clearly that the struggle for legal reforms is engaged. It remains to be seen for how long the rigid policy advocated by President Novotny against "various liberal and anarchic tendencies" can be maintained.

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## THE ELECTION LAWS OF JAPAN

To those who wonder whether Western parliamentary institutions and procedures can operate with success in Asian countries, the working of parliamentary democracy in Japan, and more particularly her complex election laws, must certainly provide a most interesting study. From an empire with an autocratic military regime, Japan has been transformed after the Second World War into a parliamentary democracy with a constitutional monarchy serving as a symbol of national unity and with election laws which are perhaps more meticulously designed to prevent electoral abuses than the election laws of any other democracy in the world.

### Japan before 1945

It is not proposed in this article to give a detailed account of the political structure of Japan prior to her defeat in 1945. However, some reference to political features prior to 1945 will be necessary in order to appreciate the completeness of the swing from empire to democracy and in order to understand why her election laws of today are more stringent than in older democracies.

For fifty six and a half years, i.e., from November 29, 1890, until May 3, 1947, the Meiji Constitution was in force in Japan. This Constitution, which was promulgated by Emperor Meiji as a result of the agitation of certain powerful political clans, introduced for the first time in Japanese history some elements of representative government. It was modelled upon the Constitutions of pre-revolutionary Prussia and other German States. It provided for a Diet, which was a two-Chamber Assembly composed of a House of Peers and a House of Representatives. The demand for electoral expansion which followed upon the introduction of the Meiji Constitution gradually gathered momentum and culminated in the granting of manhood suffrage in 1925. Women, however, were not granted the right to vote.

Notwithstanding the introduction of the franchise, there was very little liberal development until the First World War for various reasons. Politics were monopolised by a few aristocratic families and the government took great pains to discourage ideas which might suggest to the people alternatives to official orthodox ideology. Although militarists and industrialists were ever ready to grasp anything from the West which they thought would serve their purposes, they were equally determined to prevent the intro-

duction of unorthodox ideas or liberal thought. One method by which they sought to prevent this was by making the educational system an arm of the State. Yet it was impossible to shut out completely the influx of broader ideas, and a somewhat more liberal outlook was certainly noticeable after the end of the First World War. But the tendency towards liberalism was again checked by the rise to power of the Military, who in the early 1930's gained a dominating position among Japanese power groups. Public opinion turned more and more against party politicians and even showed lack of respect for the Diet. With the rise of the Military there was a corresponding rise in public respect for the military virtues of discipline, devotion to duty, bravery and reverence for the Emperor. Individual freedom was subordinated to the greatness and the glory of the State. The military objective of Japanese leadership in a world community of nations steadily continued to gain public support and fire the imagination of the average Japanese. The Military continued to dominate Japanese politics until Japan's defeat in the Second World War.

Reference has already been made to the granting of suffrage concessions in 1890. Even before the new Constitution of 1947 came into force, the laws governing the conduct of election campaigns had been particularly stringent. Pre-war regulations imposed restrictions upon processions and public demonstrations, prohibited door-to-door canvassing, regulated even the number and size of election posters and forbade the transportation of voters to the polls. There were many other regulations imposed with a view to preventing one candidate from gaining an unfair advantage over another. It is difficult to understand completely why a country, which, notwithstanding the suffrage concession, was basically ruled by an oligarchy, and in which emperor-worship found so important a place, should have made such efforts to ensure that elections themselves were fairly conducted. It may well be that this effort originated from the basic distrust that one political clan had for the other, but whatever the reason, these restrictions were introduced and, as will be seen later, were adapted so as to be applicable to the new democratic set-up which the Constitution of 1947 ushered in.

### **Election Laws and the 1947 Constitution**

After the defeat of Japan in 1945 the Allied administration of occupied Japan was carried out by General Douglas MacArthur, the Supreme Commander for the Allied Powers (hereinafter referred

to as SCAP). The following were the aims of the occupation: the elimination of militarism and militant nationalism in Japan; the prosecution of war criminals; the removal from leadership of those considered responsible for Japan's policy of aggression; the destruction of Japanese war industries, and the initiation of political, economic, educational and certain social reforms with a view to opening the way for democratic development.

The last Session of the old war-time Diet obediently passed legislation to implement SCAP directives regarding elections, trade unions and other matters. The private property of the Imperial House was transferred to the State by legislation, thus making the Imperial House dependent upon the Diet. In order to prepare the way for new ideological developments, State Shintoism was abolished, although Shintoism was permitted to continue as a private religious practice. By the Imperial Rescript of January 1, 1946, the Emperor officially gave up the doctrine of divinity, thereby demolishing the ideological structure which has been built up by the militarists in order to advance militant Japanese nationalism.

A new Constitution, which in theory was the work of the Japanese, but which in fact was imposed upon the Japanese people by SCAP, was introduced, establishing a firm institutional framework within which Japan could develop along democratic lines. This Constitution was announced by the Emperor, approved by SCAP and ratified by the Diet, in February and March, 1946. The most important innovation of the new Constitution was that sovereignty rested with the people, not with the Emperor. The Emperor now became the symbol of the State and the unity of the Japanese people, deriving his position, not from any divine right, but from the people's will.

The Constitution contained guarantees of the fundamental rights of the people similar to the guarantees found in the American Constitution, and these guarantees were enshrined in a Bill of Rights.

The House of Peers was abolished and in its stead the House of Councillors was set up as an Upper House. Both the House of Representatives and the House of Councillors were to be elected, the former for a period of four years and the latter for a period of six years.

The House of Representatives Election Law was revised by the Diet in December 1945. The new Election Law set out the pattern for post-war voting qualifications and election procedures. The voting age was reduced from 25 to 20 years. For the first time voting privileges were granted to women. The country was divided

into 53 large constituencies, each being allocated one representative per 150,000 people.

The first election under the revised electoral law was held in April 1946. The political parties that presented themselves for election were the Liberal Party, the Progressive Party, the Social Democrats, the Cooperatives and the Communist Party. At the General Election these parties secured 139 seats, 93 seats, 92 seats, 14 seats and 5 seats respectively. A Liberal Progressive Cabinet took office in May 1946.

The new Japanese post-war Constitution came into force in May 1947. In April 1947, shortly before its implementation, General Elections were held again under somewhat amended election laws which provided for medium-size electoral districts for the House of Representatives, with each voter casting his vote for one candidate only. After the 1947 elections important innovations in election legislation were introduced. In December 1947 there was created a National Election Administration Commission to supervise all Japanese elections. In 1948 the Diet, with the object of preventing corruption in elections, introduced regulations for the public management of specified campaign activities and for the partial financing of such campaigns from public funds. The regulations also provided for strict control of political contributions and expenditure. In 1950 the Diet, realising the need to bring the multiplicity of election laws and regulations under the umbrella of a single statute, passed a composite election law, covering both national and local elections. The 1950 Statute, with its subsequent amendments, embodies the present Election Law of Japan.

Looking back on the election laws of Japan as they stood from time to time, in regard to elections to the House of Representatives, one sees that Japan has experienced three types of electoral districts. The first Election Law of 1889 provided for small single-member constituencies. The 1900 law provided for large constituencies, each electing from two to twelve members, except some municipal areas that elected one member. In 1919 there was a return to the small single-member system, but in 1925 medium-sized multi-member constituencies were introduced. In 1945 very large constituencies, each returning from four to fourteen members, were carved out, but shortly afterwards in 1947 there was a return to medium-sized constituencies each returning one to five members. The last represents the pattern of electorates until this day.

None of these delimitation plans have met with universal approval. Those who support the existing pattern of electoral

districts maintain that smaller single-member constituencies encourage bribery and give an unfair advantage to those who have the time to nurse the electorate over more capable politicians who lack such time. However, in the constant effort to devise methods of making elections cleaner and more truly democratic, the existing electoral system has often been strongly criticised. Opponents of the present system urge that smaller single-member constituencies will help to eliminate factionalism in Japanese political parties and will accelerate the trend towards a two-party system. Further, the financial burden on a candidate will be reduced, thereby encouraging the candidature of competent persons who otherwise may not be able to afford to run for election.

It may be convenient at this stage to make a brief reference to the composition and method of election of the upper House, namely, the House of Councillors, which together with the House of Representatives constitutes the Diet or national assembly. The House of Councillors consists of two hundred and fifty members, one hundred of whom are elected by the national constituency, i.e., the whole nation considered as a single electoral district. This method of election was designed to ensure the election of distinguished persons representing different fields of national endeavour. The balance of one hundred and fifty Councillors are elected from the forty-six prefectures, each prefecture constituting an electoral district and returning from two to eight members. The prefectures are local public bodies, the administrative area of each constituting an electoral district. The eligible age for election to the House of Councillors is thirty years. The House of Councillors was said by the Election Administrative Commission to have been established "to restrain the lower House when the latter becomes an arena of political struggle or when a majority party in it becomes oppressive". However, final legislative authority remains with the lower House, which could pass a law on a second vote and thus override the opposition of the upper House.

Since the first post-war general election in 1946, popular voting has followed a consistent pattern—a clear majority voting for the more conservative parties, a substantial minority voting for the socialist parties and a very small number consistently voting Communist. Except in 1946 when conditions were still chaotic, minor parties and independents have not played an important role. The Liberal-Democratic Party was created in November 1955 by the merger of the Liberal Party and the Democratic Party and has been in power ever since.

The stringent pre-war election regulations were considerably relaxed during the early days of the occupation, but later the Diet asserted its power to reimpose the strict pre-war regulations upon electioneering and to introduce new restrictions resulting in even more rigorous controls than those of pre-war days. These became operative during the 1949 election campaign. Restrictions were placed on political speeches by a candidate and on the circulation of propaganda on his behalf. One section in the election law was even interpreted by officials as forbidding newspapers from supporting or attacking a candidate or party. Although there was a slight relaxation of the regulations in 1950, subsequent changes made by the Diet in nearly every session have continued to place further curbs upon certain forms of electioneering considered quite permissible in most other countries.

In 1952 the National Election Administration Commission was dissolved and replaced by the Local Autonomy Agency, the Election Division of which has supervised the election system ever since. The five-member Central Election Administrative Committee supervises the election of Councillors from the national constituency and the Director-General of the Autonomy Agency supervises all other elections through the election of Administration Committees for the different localities.

One sees, therefore, that Japan has established very effective administrative machinery for the supervision of all elections, whether to the Diet or to local bodies. This supervision is not confined only to the conduct of elections, but extends the prevention of election abuses and even to referring matters of doubt to the Supreme Court for decision.

The restrictions placed on election propaganda through press, posters, flags and political speeches have resulted in Japanese politicians devising new techniques of campaigning which do not offend the letter of the law. Some instances are: playing speeches already recorded on tape-recorders, scattering literature from aeroplanes, attending birthday celebrations of constituents and distributing safety matches with election propaganda on the boxes. In rural areas it is a widespread practice that the villagers gather in "Ohimachi" meetings where village affairs are discussed and *sake* is served. Candidates through their local agents sometimes supply all the *sake* needed. As new devices to circumvent the regulations keep making their appearance, new revisions of the regulations are made to check these devices as far as possible. The result is that the prohibitions and restrictions contained in the election laws today are so multifarious that the election authorities are faced

with a very difficult problem of enforcement. The fact that it is often not easy to determine whether certain borderline practices constitute an infringement of the election laws or not makes this problem all the more difficult.

The interest which successive Diets have shown in the review and revision of election laws with a view to ensuring that elections become as fair as possible and the frequency with which the Japanese press has had occasion to advert to the election laws and to suggest methods for their improvement establish beyond doubt that parliamentary democracy is working quite smoothly in Japan and has in fact come to stay as the way of life of the Japanese people. This is a fact that Asian and African critics of parliamentary democracy and politicians who contend for new-fangled forms of democracy on the theory that these are more suitable to the genius of their people have seriously to contend with.

### **The General Election of 1963**

The last general election held in Japan was that of November 22, 1963. This election saw the return to power of the Liberal-Democrats, who together with 12 Independent supporters obtained 295 seats out of a total of 467 in the House of Representatives, and the re-appointment of Hayato Ikeda as Prime Minister. It is interesting to note some of the pre-election editorials and articles appearing in Japanese newspapers on election laws, as they illustrate how deeply wedded the Japanese people now are to the principles of democracy and how vigilant they are to prevent transgressions of these principles, however slight they may be.

In an article entitled "Plan for Electoral Reform", appearing in *The Japan Times* of August 17, 1963, Kazuo Kuroda examines the weaknesses in the Japanese electoral system and deals in particular with the defects in the working of multiple-member constituencies. He points out that where a political party puts forward two candidates for the same electoral district it often happens that the more outstanding of the two polls most of the votes cast for that particular party, with the result that the other fails to be elected, although a sufficient total of votes was cast in favour of the particular party to enable both candidates to be elected. The following simple illustration will help one to appreciate the writer's point. If in an electorate returning two members, where A and B are candidates representing Party X and C is a candidate representing Party Y, "A" were to poll 25,000 votes, "B" 10,000 votes and "C" 12,000 votes, A and C would be declared elected although

A and B representing Party X together polled 35,000 votes as against only 12,000 cast for Party Y.

The writer observes that even if the government were not prepared to adopt a one-district one-seat electoral system, the proposal made by the Electoral System Sub-Committee of the Liberal-Democratic Organization Survey Council to adopt what is known as the Hagenbach-Bischoff Plan (so named after its author, a Swiss professor) was highly commendable. The Hagenbach-Bischoff system is a type of proportional representation which eliminates the "waste" of votes and by which the allocation of plural seats in a constituency is made to each party in proportion to the number of votes cast for it.

An editorial entitled "Money and Politics" in *The Mainichi Daily News* of September 13, 1963, drew attention to the "dirty relations" between politics and money and strongly condemned "the ill-famed political donations among the various Tory party factions". This editorial makes, *inter alia*, the following strong comments:

It is not too much to say that all the political vices such as election irregularities, political scandals and corruptions have originated in unhealthy handling of political funds in some form or other. Clean elections will be no more than a day-dream unless fair and square means are established for channelling political funds.

As a remedy for this unhappy situation, we have often pointed out the need of collecting funds from party members. As in England, membership fees should be the major source of their political funds.

An editorial published in *The Japan Times* just eleven days before the general election, entitled "For a Clean Election", was a call to the Japanese people to give every encouragement and assistance to the campaigners for a clean election:

The clean election drive, as a matter of fact, is organized on a nationwide scale and billions of yen are being spent annually to ensure success. The Fair Election Federation is the command center, while the Fair Election Promotion Councils represent the local organization. The Election Bureau of the Home Ministry is the interested bystander; a considerable sum of money is being pumped into the clean election drive from the Government budget.

If the drive is not achieving satisfactory results despite the money and effort expended, the main reason for that is to be sought in the fact that irregularities border so closely on normal, regular activities that most violators of the law are not fully aware of doing something unlawful or shameful.

The Law is so watchful, yet there are irregularities closely interwoven with normal activities. Not that this nation is more dishonest than most others, but it sometimes does not lend itself to modern legal control.

Although the major political parties in Japan are organized on democratic lines, factionalism within these parties tends to weaken them. In fact Takeo Miki, Chairman of the Liberal Democratic Party's Organization Research Council, has warned Prime Minister Ikeda that factionalism is corroding party unity and morale.

Factionalism and election abuses are, however, minor flaws in a political system which is by and large firmly democratic. In a system where election laws are so stringent, the total elimination of violations is virtually impossible. The November 1963 local, national and prefectural elections were all conducted without a single major incident. Even after these elections the campaign for improved standards continues. A recent Report to the Prime Minister by the Organization Research Council states:

But this means we have heavy responsibilities and must develop stricter self-discipline and make ourselves adaptable to reform. What is asked of most of us now are high moral principles and integrity as the essence of the national party. We are not free to act complacently simply because we are the majority power.

The spirit of these sentiments, which emanate from an organ of the party in power, is yet another indication that the roots of democracy are now firmly planted in Japanese soil.

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## PROGRESSIVE REFORMS IN NEW ZEALAND

### One year of the Ombudsman

New Zealand has a reputation among English-speaking countries for progressive and imaginative reforms. It is interesting to consider the example of New Zealand in law reform, especially in fields where strong initiatives in the same direction have been unsuccessful in the United Kingdom itself. The institutions of New Zealand are British by inspiration and very largely in pattern, and in many respects what can work in New Zealand can work equally well in Britain. The Ombudsman, or Parliamentary Commissioner, in New Zealand is important not only to New Zealanders, but also to the citizens of any country based on the British model of parliamentary democracy.

As readers of the *Journal of the International Commission of Jurists* will know, the first Ombudsman, Sir Guy Powles, took

office on October 1, 1962 (see " The Ombudsman in New Zealand ", Part I, in Vol. IV, No. 1, and Part II, in Vol. IV, No. 2, by Professor A. G. Davis). The work of " Justice ", the British Section of the International Commission of Jurists, in studying and advocating the establishment of the Ombudsman in Britain is well known and has attracted wide attention. The New Zealand experiment is encouraging and serves also to accentuate the disappointment in Britain that the Government has rejected the idea.

The reports by Sir Guy Powles on the work of his office to date are a very clear justification for the experiment. The most fundamental point is that he found " nothing really sinful " but did find " mistakes, carelessness, delays, rigidity, and perhaps heartlessness ". This is precisely why an Ombudsman is necessary; the danger is not of dishonesty in the administration but of the occupational failings of administrators. In the first ten months of the complaints investigated one in four was found to be justified; of 628 complaints, 228 were investigated. But statistics do not tell the whole story:

Many people whose complaints I have had to classify as unjustified have been satisfied to receive a full and careful explanation of the reasons behind decisions. They have realised that they have not been so badly treated and have written to tell me so.

Ensuring that the individual does have a full and satisfactory explanation is of great value. Another important point is that about half of the complaints that were found to be justified were put right when brought to the attention of the permanent head of the department. Hierarchical control seems to be much more effective when there is an outside catalyst to help along the departmental process.

Another aspect of unsatisfactory administration was well brought out in a report by Sir Guy.

I have had occasion to make recommendations to reverse departmental decisions where the citizen had failed to do something through ignorance of departmental requirements. Loosely worded circulars, omissions from explanatory pamphlets and inadequate information by one department of another's contact with the particular circumstances are cases in point. In some cases I could only make recommendations to avoid such situations in the future.

It is not to New Zealand's shame that these problems exist; they exist in any modern state. It is rather to New Zealand's credit that these matters have been faced frankly and openly and that Parliament and the citizen, through the Ombudsman, are accurately and objectively informed. New Zealand, like Britain, follows a system whereby the Executive is answerable to Parliament.

Unlike Britain, New Zealand takes the view that an Ombudsman better enables Parliament to fulfil its function, for it is in Parliament that his authority ultimately lies.

As far as Britain is concerned the Government's position is firmly against the Ombudsman. The Lord Chancellor and the Attorney-General had this to say:

The organisation known as Justice made two proposals: (one on tribunals) ... secondly that a Parliamentary Commissioner should be appointed to investigate cases of alleged maladministration. The Government considers that there are serious objections in principle to both proposals and that it would not be possible to reconcile them with the principle of Ministerial responsibility to Parliament. They believe... that the appointment of a Parliamentary Commissioner would seriously interfere with the prompt and efficient dispatch of public business. In the Government's view there is already adequate provision under our constitutional and Parliamentary practice for the redress of any genuine complaint of maladministration, in particular by means of the citizen's right of access to Members of Parliament.

The reports by Sir Guy Powles in New Zealand give the answer to this if an answer is needed. Lord Shawcross, the Chairman of "Justice", described the British Government's reasons as "disputable and thin" and also has said:

No one really believes that there is adequate machinery in this country for the redress of grievances or that our Ministers and civil servants are wholly free from the weaknesses against which the citizens of nearly every other progressive country are now being given protection.

The main value of Sir Guy Powles's work, with great respect to the citizens of New Zealand, is to show that the Ombudsman can fulfil a need in a parliamentary democracy of the British type. Those who think that it interferes with Ministerial responsibility and with the efficient dispatch of public business have the means of verifying this from New Zealand experience, and the question needs to be asked once more whether without the office of Ombudsman the citizen really does have the fullest opportunity of ventilating his grievance.

### **Compensation for victims of crimes of violence**

Another bold step forward in New Zealand is the new Act providing for compensation for victims of crimes of violence. This Act came into force at the beginning of this year, and it was stated by the Minister of Justice on April 10, 1964, that £1,200 is to be paid out on claims arising before the Act came into force. On this point, Britain, after a good deal of hesitation and uncertainty, has now accepted to follow the New Zealand example.

Once more generous acknowledgement was made of the part played by "Justice" in pioneering these ideas. In New Zealand a Crimes Compensation Tribunal has power to award compensation for expenses incurred, for pecuniary loss and for pain and suffering.

The reason for accepting the financial responsibility of the State was not, according to the Attorney-General, responsibility for failing to prevent crime. It was that the theoretical right of a victim to sue the wrongdoer was largely valueless, and that the State should do something to help. Whatever the reason, New Zealand is to be congratulated on considering and accepting a proposal whereby society helps the innocent but unfortunate to shoulder his burden where the existing law gives him only theoretical relief.

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## POLITICAL INTERFERENCE WITH A TRIAL IN CUBA

Even after the many harsh judgments of Cuba's courts and the remarkable judicial procedure which leads to such judgments, the recent death sentence and execution of Marcos Armando Rodriguez stands out as a travesty of the form and substance of justice. Readers of the Commission's publications will be familiar with the detailed account of revolutionary justice given in *Cuba and the Rule of Law*, published by the Commission in 1962.

It is, of course, a central principle in the Communist administration of justice that the Judiciary are required to further the aims of the party rather than to hold the balance between the State and the individual. For all this, the Rodriguez trial, and especially the retrial on appeal, stands out as a remarkable implementation of this principle. Seldom if ever has a trial so obviously been misused to clear the name of the party and never before has it been known that the leader of a Communist State should personally and publicly intervene in the judicial process. This is what happened on the retrial of Rodriguez, which aimed at a public vindication of the Communist party in the days before the Castro revolution, and the principal role in this public performance was taken by no less a person than Fidel Castro himself.

The case goes back to the time when the Cuban Communists were on good terms with Fulgencio Batista, then the dictator in power. For reasons no doubt of mutual convenience, Batista

tolerated the Communists and the Communists did not, at least openly and officially, associate themselves with the anti-Batista movements. On March 13, 1957, a group known as the Student Revolutionary Directorate, which was not Communist, launched an armed attack on the presidential palace. The police had been warned beforehand and were waiting. The police then discovered the whereabouts of four students who were concerned in the plot against the life of Batista and surprised them in their hideout. All four were shot. It was Rodriguez who had informed the police of the whereabouts of the four students and, according to him, he was acting on the instructions of the Communist party, of which he was a member. So far, his act could scarcely be described as criminal in informing on persons who by the law of Cuba then in force were traitors. However, in the aftermath of revolutions, the loyal citizens of today become tomorrow's traitors and, retrospectively, traitors of the day before.

Rodriguez left Cuba and with the help of friends obtained a scholarship to study in Prague. Last year, he was brought back to Cuba to stand trial for having betrayed the four students to Batista's police. In February of this year, he was tried in camera and sentenced to death. After his appeal was dismissed he was shot on April 20, 1964.

The Articles of the law under which Rodriguez was charged are remarkable indeed. The old Cuban revolutionary law of 1896 punished informers who had the misfortune to have chosen the losing side in the revolution of that time; the appropriate articles are Art. 100 and Art. 7 for aggravated cases. This legislation is reinforced by Art. 39 of the 1938 Code of Social Defence. The crime consists essentially of an act done in the service of a dictatorship by informing.

The Penal Code of Cuba, much of which is still in force, could not, by virtue of the Constitution, apply laws retroactively unless their effect was to operate in favour of the accused. This position was soon changed by an amendment to the Constitution of January 14, 1959, and is now permitted by the Fundamental Law of February 7, 1959, as amended by the Law of December 20, 1960. The death penalty was re-introduced.

Although the trial was in camera, reports appeared in the Havana daily newspaper *Revolución*, which is run largely by "new Communists", i.e., former Fidelistas, as distinct from the other daily newspaper *Hoy*, which is run by "old guard Communists". The difference between the two groups is that the new Communists were active against Batista, whereas the old guard Communists

had cooperated with him. Reports in *Revolución* blamed the old guard Communists for what Rodriguez had done. Clearly the situation was politically explosive and became even more so when Rodriguez appealed; his appeal would have to be decided after these allegations against the old guard Communists had become common currency. The appeal became in fact a retrial on the orders of Fidel Castro and began in March 1964. This time, the trial was in public and was broadcast. According to Dr. Castro, in his statement published in *Hoy* on March 21, the testimony by the chief prosecution witness was "very deficient", and would have to be revised because it promoted "resentment and divisionism" and "a reactionary spirit". The irony of this situation was that the chief prosecution witness had been Faure Chaumon, now Castro's Minister of Communications, but in 1957 leader of the Student Revolutionary Directorate. It is widely believed that Chaumon was behind the attempts, the last of which was successful, to bring Rodriguez back to Cuba to stand trial.

Chaumon gave evidence on March 24 and had this to say:

In my previous declaration to the Court of the Fourth Chamber, I made an analysis of why I felt that Marcos Rodriguez had acted as he did and why the revolution or any revolutionary organization could have had such a monster within its ranks. The fact that there was a bad shorthand note required a reconstruction of everything said there. Having to wait to reconstruct that shorthand copy, which was very difficult and with which, much to my surprise, I was not in agreement, enabled many elements to use the time during which it was unpublished and the statement was being reconstructed to turn this entire revolutionary trial into a weapon with which to attack our revolution.

He then went on to talk of traitors and informers infiltrating into revolutionary movements and said:

We noted that Marcos Rodriguez could not be a socialist youth because a socialist youth was one who had struggled to defend his cause and his ideas in an unselfish manner . . . We should all be satisfied that we have found a traitor, tried him and convicted him.

The next day, Edith Garcia Buchaca indignantly denied Rodriguez's allegation that he had told her about his responsibility for denouncing the four students. Her position was rather delicate. She is a Communist of the old guard and had helped Rodriguez after he confessed, as he alleged, to her. On March 27, Fidel Castro himself began his lengthy statement in court, which lasted for four hours and thirty-six minutes. Some idea of the political importance of this trial for Cuban Communists can be gauged from the mere fact of Dr. Castro himself ordering a retrial and himself appearing before the court. Even more remarkable was the fact that Dr.

Castro himself had been to interrogate Rodriguez in prison and related to the court *verbatim* the details of this interrogation. No one would suggest that Dr. Castro be disqualified as a witness, but what is curious is the extraordinary lengths to which he went in order to be able to come before the court with his own detailed account of what was supposed to have happened and why. The short point is that he appeared not as a witness but as a prosecutor and virtually as a judge. No one questioned Dr. Castro and, on the contrary, he himself questioned the accused at a point when he was unable to find his own record of the interrogation in the prison.

The opening passages of his speech before the Supreme Court may well find their way into a classical anthology of what a witness should not do in an ordered system of criminal procedure, and also is a classic example of the party showing its power in judicial trials in a Communist State.

Gentlemen judges, this trial has acquired a special characteristic. In this trial an accused is being tried for certain crimes but at the same time that a legally constituted court of the Republic is judging these events, public opinion in the whole country has also been attentive. *Therefore, it is here necessary to speak before two courts, the Court of Appeals and the Court of the People.* That is why it appears to us to be best to separate one question from the other, although it is not always entirely possible but, after all, everything that is said in one sense or the other can be enlightening.

*I begin by saying that I consider the accused guilty with absolute conviction.* With respect to the reasons for his behaviour, they have not yet been learned with complete exactitude—whether he acted for political reasons, or whether he was moved by money or by other reasons. I personally am inclined to think that he was moved by a passion of base and cowardly hatred. *Whether he was always absolutely unscrupulous, I do not know. Whether his subsequent behaviour was the result of never having had the slightest scruple about anything, I do not know.* To analyse the causes which might have engendered this type of person without scruples, reasons of the social or family order or whatever it could be, would be simply to digress. For my part, perhaps there are those with time and knowledge of these matters who may clarify this. *It is my opinion that he in no way acted in an act of temporary insanity.* He had time, more than enough, to think about what he was going to do, calculate what he was going to do, and he did it coldly, methodically and, it appears, without vacillating in any way. (Italics added.)

Later on, Dr. Castro paints an equally vivid picture of the process of justice in Cuba in discussing what should not have come out at the trial. He himself had been away from Cuba and was not able to provide the guidance necessary on this somewhat delicate matter.

Our compatriots may ask why these political matters are not discussed in party meetings of the United Party of our revolution, whose very unity

has been questioned at this trial. Why not discuss these matters within the leadership of our party? As a method, as a principle, the logical and the normal thing is for us to discuss these problems in the bosom of our organization. The reality in this legal trial to judge the conduct and the activities of Marcos Rodriguez is that it unexpectedly became a political trial . . . The political aspect of the trial could be seen basically from the version issued or the statements issued by Comrade Faure Chaumon before the Havana Court hearing the case of the accused, Marcos Rodriguez . . . In reality, from a militant viewpoint, from the viewpoint of the role of a revolutionary leader, what is correct, what is really correct, would have been for Comrade Chaumon to have presented those things that concerned him to our leadership, to the body of the national leadership of our party.

According to Castro, a showdown between Rodriguez and those implicated by his accusations, in particular Edith Garcia and her husband, Joaquín Ordoqui, meant assuming that the informer was telling the truth and in short the washing of a good deal of dirty linen ("doubt", and "divisionism") in public. As he asked:

What would have been the situation of the revolutionary leadership, what might have been the situation of the comrades who were slandered, what would have been the weapons which the enemy might have had in its hands? That is why for various reasons, first because of principle, elementary prudence and tact, we would not propose such a confrontation. However, the slandered comrades requested it. It was really not fair. We had no right to deny them this.

Of course, the central difficulty in the case from a legal and political point of view was, whether or not the activities of the old guard Communists before the revolution squared with what is now conceived to be revolutionary activities. It would certainly not be the first time that a Communist party had worked against its rivals in the revolutionary struggle in order to ensure pride of place for itself, when the great day dawned. Now the United Party embraces elements of the old guard Communists and of other organizations that were not, at least prior to the revolution, linked to the Communist party. In order to show that Rodriguez had informed in the service of a dictatorship, it would surely have been vital to the prosecution's case to show that Rodriguez had served the purposes of Batista and whether or not he was serving the interests of the Communist party in a roundabout way would, if anything, have been a relevant matter in his defence in that, albeit deviously, he was advancing the cause of the Communist revolution. There is, nowadays, no pretension in Cuba or elsewhere that the Castro regime is anything but Communist. The fatal error made by Rodriguez and by the Communist party, if it is true that he was acting on instructions, would be, not of backing the losing side, but of failing to realize that the rivals of that time

would subsequently become absorbed in the Communist revolutionary movement and would not forget what the Communists had done to them in the earlier struggle for power. Chaumon's allegations were legally relevant in Rodriguez's defence on charges of informing against the revolution in the service of a dictator, since the vital question was what was the revolution. Chaumon was more concerned with the political differences with the old guard than he was in testifying on behalf of Rodriguez. For his ventilation of this matter in court, he was rebuked by Castro in the course of his long speech, and other "witnesses" joined in a chorus of party solidarity, old guard and new, waxing indignant that such matters had been ventilated in the press and become current gossip in Cuba. This was not a matter for ventilation in open court.

Finally, whatever Faure Chaumon had to say about the short-hand note of the trial, Castro administered a firm rebuke for raising this matter at all and regretted that the press had reported it:

It is unquestionable, it cannot be denied, that comrade Faure made statements which by their nature and political character, of necessity had to cause a discussion of the problem. Everyone has read those statements. Neither comrade Dorticos nor I was in the capital. The comrades responsible for the press were placed in a position in which they did not have instructions. They had nobody to consult right then. On the one hand, they had a version which was very deficient and would have to be revised and could definitely not come out the next day, and on the other, they faced the necessity of reporting on a problem wholly new and unexpected by them. What they did was to release a version. Those comrades could do nothing else because they could not publish the integral account as it was and they simply had to release a version; but the version itself transformed the trial into a public trial. Many people had gone to the trial for different reasons, because not everyone went to that trial for the same reasons, and, naturally, if the version had been published, even revised and clarified, nothing would have been resolved. The problem began the moment the matter was brought up, whether it was published or not, with a version or with the complete text. The problem was simply posed in that way and then the worms and the schemers got busy. They had been provided with a magnificent culture medium. That kind of medium which certain parasitical elements, schemers by nature, creators of problems, individuals who do not care a jot for the revolution, could use as a magnificent, wonderful, formidable culture medium as at that moment.

This remarkable passage is pregnant with revelation. The role of the Cuban press is admirably described and the extent to which guidance is available in the absence of Castro and Dorticos (President of the Republic) is not encouraging. It is not quite clear whether the worms and the schemers are inside or outside Cuba,

but one fact emerged with painful clarity after Chaumon's accusations against the old guard Communists: divisions within the ranks of the revolution had become serious and one wonders whether the United Party in Cuba has even yet managed to cement its ranks. This aspect of the problem, however, is not the Commission's concern. The significance of the Rodriguez trial for the Rule of Law is in the substantive and procedural principles of justice, which were ignored in the interests of politics. In particular, the following aspects of the case all merit vigorous condemnation by all who believe in an orderly, dispassionate and decent administration of justice:

1. An act was condemned as criminal which in form was that of a loyal citizen of Cuba at the time that it was committed.
2. Elementary principles of evidence were ignored in allowing a witness to deliver a speech in which opinion as to the guilt of the accused was put forward, a non-expert opinion on his sanity was put forward, and the interests of the party were openly stated to be the main question at stake.
3. No-one spoke on behalf of the prisoner.
4. The death penalty was applied retroactively.

It is very seldom that the world has the misfortune to observe so crude and blatant a perversion of the forms of justice in the name of politics as took place in this case, which, if the law and the Judiciary mean anything worthwhile, can be described only as a hollow mockery of both.

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## NEW STATUTES FOR THE BAR IN POLAND

### Basic Change

A new law on the organization of the Bar came into force in Poland on January 1, 1964 (Law of December 19, 1963, *Dziennik Ustaw*, No. 57). The history of the Polish Bar has followed in the last twenty years the ups and downs of the policy line of the Polish Communist Party. The recent law reflects current policy.

Until 1956 development tended to reduce the autonomy of the Bar, to make it increasingly an instrument of the Party (Cf. *Bulletin* No. 10, January 1960). In 1956, with the policy of "eliminating the cult of personality" or de-Stalinization and the "strengthening of Socialist Legality", the trend was reversed: a new law of November 1956 granted greater professional freedom and administrative autonomy. So that in 1958 the *Journal* of the Polish Lawyers' Association was able to emphasize "the pride and joy of all lawyers in the fact that the period of administering lawyers' affairs by the government has passed".

However, since the end of 1958 signs of slow but steady tightening of State control and supervision can be observed. The new law of 1963 can be regarded as a further and decisive step in this direction, effecting as it did a basic change. The law reshaped the whole structure of the Bar and replaced all former legislation concerning it. The main change from the previous situation is the provision which puts an end to all private practice and imposes a kind of employee status on all lawyers.

An advocate may practise his profession in an advocates' collective or a social office for legal assistance. (Art. 3)

The social offices for legal assistance are set up by the local administrative organs, called people's councils, by trade unions or other authorized social organizations. They employ lawyers on terms defined in contracts of employment. These advocates, like the legal advisers of State enterprises, are simply employees, whereas members of advocates' collectives are assimilated in their social status to other workers, and in respect of social insurance, the work in the collective is treated on a par with normal employment [Art. 77 (1)], as is the remuneration. For the loss of their liberal profession lawyers are guaranteed a minimum remuneration of 2,000 zlotys (£1 = 20.16 zlotys) a month (Decree of the Minister of Justice concerning Advocates' Collectives, December 23, 1963, *Dziennik Ustaw* No. 1 of January 6, 1964).

This is a most important and thoroughgoing change in the situation of lawyers in Poland. Former legislation on the Bar, even if curtailing the Bar's autonomy and introducing lawyers' collectives as an *alternative* form of organization of practice, did not touch the foundations of the Bar as a liberal profession. With the exception of Yugoslavia, Poland was until now the last East European Communist country in which private practice was allowed. Now lawyers with private offices can continue to run them until the end of 1964. After this transitional period private practice will end.

## Organization of the Bar

### GENERAL PROVISIONS

In the new structure the basic organizational unit of the Bar is the Advocates' Collective. The aims, tasks and organization of these collectives are outlined by Chapter 2 of the Law and the Decree of the Minister of Justice, cited above. Other organs of the Bar are: the Regional Bar Council (Voivodship Chamber of Advocates) and the Supreme Bar Council (Supreme Council of Advocates). Supervision over the Bar is exercised by the Minister of Justice personally, with the help of organs and persons appointed by him for this purpose [Art. 13 (1)]. The Minister of Justice has the power to interfere at any stage of the procedure of any unit of the Bar at any level. He may annul resolutions of such organs alleged to be contrary to the law or *public interest*, and may remit the matter for further consideration. In submitting the matter for further consideration the Minister outlines the way in which he wants it to be settled (Art. 14). He may also dissolve self-governing bodies, except the Supreme Bar Council.

There is only one exception to this sweeping power of the Executive: disciplinary verdicts. In a disciplinary measure of disbarment the lawyer may appeal to the Supreme Court, where the appeal is considered by a Bench composed of three Supreme Court Judges, selected by the administrative Collegium of the Supreme Court.

The Bar or "Advocature" is defined by the new law as "the general body of advocates and advocate trainees organized on the basis of professional self-government" [Art. 1 (1)]. It will be seen, however, that this professional self-government is in practice no more than a possibility; it may always become nugatory, since the Executive may interfere whenever it deems appropriate. Besides this the abolition of private practice and organization of lawyers in Collectives means the loss of their economic and organizational independence.

The new organization of the Bar was designed to "supervise the correct fulfilment by the Advocature of its legislative tasks, assurance of its correct social standpoint, high ethical standards and continuous improvement of professional qualifications, exerting supervision over the strict observance of the provisions on the carrying out of the rules of the profession" [Art. 1 (2)]. The task of the Bar is to co-operate with the courts and other State organs to safeguard legal order and to give legal assistance in accordance with the law in the interest of the working masses (Art. 2).

In carrying out their activities in court the lawyers have the same protection as judges or procurators (Art. 8), and are bound to professional secrecy.

#### ADVOCATES' COLLECTIVES

The basic organizational unit of the Bar, as stated in Article 4 of the Law, is the Advocates' Collective. The Minister of Justice defines the number of collectives to be set up in the country and their distribution in the different regions. The Minister, in his Decree cited above, fixed the minimum and maximum membership of these Collectives at five and twenty, in exceptional cases twenty-five. Collectives are named after the town where they are set up; if there are more than one, they receive consecutive numbers.

Each Collective has its head, also called manager (and his deputy), who are appointed by the Regional Bar Council from among the candidates proposed by the Collective. They can be dismissed by the same Council if they neglect or violate their duties or if it is in the public interest. The manager represents the Collective, supervises its work and its economic and financial matters, and presides over its meetings. He deals with all the problems of the Collective unless these are reserved as the prerogative of other organs. It is the manager of the Collective who enters into a contract with clients. The client may express a wish as to which lawyer he wants to entrust with his case. The manager complies with the client's wish unless "the chosen advocate's excessive duties prevent him from taking up the case". The manager credits all payments by clients exclusively to the Collective's account, and deals generally with economic and financial matters. He is also responsible for hiring and dismissing auxiliary labour within the limits of the job determination of the budget of the Collective.

Other organs of the Collective are: the meeting, where participation is compulsory, and in larger Collectives an audit commission.

The scope of activity of the Collective's meeting includes the supervision and evaluation of the members and trainees in respect of professional, ethical and social qualities. The meeting may adopt resolutions in these respects. It selects delegates for the Regional Bar Council Assembly, for the post of manager and/or deputy of the Collective, elects the audit commission, submits a motion to the Regional Bar Council to dismiss the manager before the expiry of his term, works out the budget of the Collective, admits

and expels members, decides on the location of premises and on the dissolution and liquidation of the Collective. The Collective can also be dissolved by a resolution of the Regional Bar Council, or by a decision of the Minister of Justice. Against the decision of the Regional Bar Council there is an appeal to the Supreme Bar Council. There is no appeal against the decision of the Minister of Justice.

Members of the Collective receive clients only in the premises of the Collective. They are forbidden to display notices or advertisements outside these premises. Members receive equal shares of the income of the Collective up to a sum fixed for the Collective by the Regional Bar Council. This fixed sum cannot be less than 2,000 zlotys a month. The remaining surplus is divided between the members in proportion to their personal work contribution. The bases for fixing work contribution are the amounts received by the Collective in respect of the briefs held by the lawyer in question and the sums which would be owed for briefs held by the lawyer without payment (legal aid), at charges fixed by the manager of the Collective. During the period of leave, 30 calendar days, and in the case of illness a member participates in the division of the income under the same conditions. Members have to notify the manager of their activities on the side and the amount of regular income derived from them. If they obtain a regular income in this way, and if the meeting of the Collective finds that they have neglected their work in the Collective and did not work enough to cover the sum due on an equal division, their share may be reduced.

A lawyer may choose the Collective he wishes to join. He may also ask the Regional Bar Council to move to another Collective within the confines of the Regional Bar Council. On the other hand, the Regional Bar Council has the power to move a lawyer, against his will, to another Collective, to another locality, if this is "required in the public interest". The Supreme Bar Council may move a lawyer to any Collective in the country, provided it takes steps to obtain housing for him in the new locality and pays the cost of moving. If the transfer is a disciplinary measure under Article 94 of the Law, no provision for housing and costs is required.

#### REGIONAL BAR COUNCIL

The Regional Bar Council (Voivodship Advocates' Chambers) is the self-governing body of lawyers and trainees in the region of a Voivodship, an administrative region of the country. Its organs are: the Assembly of Delegates, the Council, and the audit and the

disciplinary commissions. The Assembly holds routine meetings once a year. Its delegates are elected at the meeting of Advocates' Collectives, by lawyers employed in social offices of legal assistance, and those lawyers, who, though figuring on the rolls, do not practise actively (being engaged in other legal or extra-legal jobs).

The main task of the Assembly is to elect its Council, which is composed of six to fourteen members. The number of the delegates to the Assembly and of the Council members is determined by the Supreme Bar Council. Members of the elected Bar Council elect from among themselves a Dean (chairman) and one or two Vice-Deans as well as other presidium members. The Regional Bar Council is responsible for all problems concerning the legal profession which are not subject by law to other organs of the Bar or to State organs. The Bar Council keeps the list or rolls of the names of lawyers and trainees (Art. 48) and exercises disciplinary power through its disciplinary commission.

The Dean represents the Council, guides its work, presides over its sittings and carries out the functions provided for by the law.

The Minister of Justice can dissolve the Regional Bar Council if it violates the law, or endangers the public interest by its activities or by neglecting its duties [Art. 47 (1)].

#### SUPREME BAR COUNCIL

The Supreme Bar Council (Supreme Advocates' Council) is the highest organizational body of the legal profession. It is composed of the Deans of the Regional Bar Councils and nine lawyers elected by these Deans. The Supreme Bar Council represents the legal profession, supervises and co-ordinates the activities of the Regional Bar Councils, supervises the training of advocates, manages the Supreme Council's Fund, fixes its own budget, elects the Disciplinary and the Audit Commission and considers the reports submitted by them, considers the appeals against resolutions of the Regional Bar Councils, passes regulations concerning the work of the legal profession, gives opinion on legal provisions in draft at the request of the Minister of Justice and submits proposals concerning legislation to the Minister of Justice. The Supreme Bar Council elects a Presidium of six members, who under the Chairman of the Council may pass resolutions with the same validity as the Supreme Bar Council itself. Regulations passed by the Supreme Bar Council are subject to approval by the Minister of Justice. Officers of the self-governing bodies of the Bar (including

the Collectives) hold their offices for a term of three years. The Minister of Justice may, in the public interest, suspend individual members of the governing bodies of the Bar and may request their dismissal by the appropriate body.

#### ADMISSION TO THE BAR AND DISBARMENT

The following qualifications are required for admission to the Bar: an undertaking to practise in accordance with the tasks of the Bar, Polish citizenship, irreproachable character, completion of higher legal studies, training at court and in the legal profession (following the general continental European pattern). There are special conditions for law professors and former judges and procurators. Not every lawyer enrolled is in practice. Research workers, workers in State administration (civil servants), employees of State enterprises and institutions, as well as of co-operative organizations and legal advisers may be enrolled and remain on the lawyers' list, but do not practise during the period of their employment.

The practising lawyer may decide to leave the profession, or accept a post as a judge or procurator, in which cases his name will be deleted from the rolls. A lawyer's name is removed in the following cases: call-up for active military service, loss of public and civic rights or the right to practise his profession in consequence of a court sentence, loss of Polish citizenship, staying abroad longer than permitted; suspension, disbarment on disciplinary grounds. In the case of disciplinary action the lawyer may appeal from the Regional Bar Council to the Supreme Bar Council and finally to the Supreme Court.

The Minister of Justice may, in the public interest, submit an appeal to the Supreme Court against a resolution of the Regional or Supreme Bar Council refusing to strike a lawyer's name from the rolls.

#### Conclusions

The *Conclusions* of the International Congress of Jurists held in New Delhi in 1959 stated unequivocally that it is essential to the maintenance of the Rule of Law that there should be an organized legal profession free to manage its own affairs. This principle has been re-stated several times as one of the basic principles of the Rule of Law. The New Delhi Congress added as further requirements that the lawyer should be free to accept any case.

which is offered to him and at the same time he is under a duty to accept even unpopular causes wherever a man's life, liberty, property or reputation are at stake, and that legal advice should be equally accessible for the rich and poor, under appropriate legal aid schemes.

Measured against these requirements of the Rule of Law, the new Polish Law on the Bar has some limited positive aspects and a fundamental weakness.

The positive aspects are limited to the acceptance of cases and to legal aid.

According to Article 22 (1) of the Law, a Lawyers' Collective can refuse legal assistance only for important reasons. Doubts concerning the granting or refusal of legal assistance are resolved by the Regional Bar Council, and in urgent cases by the Dean. Thus there is a possibility for prospective clients to appeal against a refusal to take a case.

Equal access to legal assistance is ensured by an official legal aid scheme, (following the European continental pattern) in which the Courts assign a lawyer to a party who cannot afford to pay one. "In cases where legal assistance is to be given by a court-appointed advocate by virtue of regulations, the advocate can be released from giving assistance only by the organ which appointed him" [Art. 22 (3)]. It is to be seen that the lawyer has a duty to take up the case assigned to him under the legal aid scheme (and receives a fee for it from the Collective, the amount being fixed by the manager).

The basic weakness of the Law is to subordinate the self-government of the Bar to the power of the Executive. Supervision by the Court, as envisaged by the *New Delhi Conclusions*, cited above, is realized only in one case: disbarment for disciplinary reasons. In every other case decisions and resolutions of the Bar are subject to the interference of the Executive under the rubric of "public interest".

The lawyers' Collectives may work quite efficiently in many cases if the spirit of self-government is maintained, but they offer at the same time the possibility of too much power in the hands of the Executive. This power over the lawyers and lawyers' organizations makes the provisions of the law extremely dangerous and lawyers' freedom precarious.

## THE CONSTITUTIONAL INSTITUTIONS OF THE ALGERIAN REPUBLIC\*

The Democratic and People's Republic of Algeria will shortly celebrate the second anniversary of its independence. The Constitution—the draft of which was approved by a referendum on September 8, 1963—has undergone the test of nine months' experience. The recent congress of the National Liberation Front (the F.L.N.) shed interesting light on the spirit of the new institutions. It seems timely therefore to look at the results obtained so far by a political system whose originality merits particular attention.

### The Creation of Algerian Political Institutions

We shall confine our remarks to a brief recapitulation of the essential role which the National Liberation Front has played from the outset, not only in launching the insurrection and the struggle for independence, but in drawing up a political doctrine and programme. The first F.L.N. congress, clandestinely held in the Soumman Valley in August 1956, had delegated supreme powers to the *Conseil national de la révolution algérienne* (C.N.R.A.) and executive powers to the *Comité de coordination et d'exécution*, which two years later became the Provisional Government of the Algerian Republic (G.P.R.A.). It was with the G.P.R.A. that the French Government made the first unofficial contacts at Rome and Geneva in December 1961 and January 1962. Having been delegated full powers by the C.N.R.A. at its meeting in Tripoli in February 1962, the G.P.R.A. negotiated with the French plenipotentiaries at Evian, from March 7 to 18, the agreements laying down the conditions under which the Algerian people would be called on to decide, by a referendum, their political future. From March 28 until the results of the referendum were published, public authority in Algeria was to be provisionally exercised by a French high commissioner and a provisional Executive composed of prominent Algerian and French individuals. On July 1, 1962, the

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\* Valuable background material for this article was found in the first number of the *Revue algérienne des sciences juridiques, politiques et économiques*, published in January 1964 by the Algiers Faculty of Law and Economics.

vast majority of the Algerian people voted in favour of an independent and sovereign Algeria which, however, would maintain particular ties of association and co-operation with France.

As early as June 1962, a C.N.R.A. meeting at Tripoli had revealed symptoms of a very serious crisis within the F.L.N. A confused situation ensued, which lasted for several months after the proclamation of independence. On returning to Algeria after being detained for six years in France, Mr. Ahmed Ben Bella came into violent conflict with Mr. Youssef Ben Khedda, President of the G.P.R.A., and swiftly assumed a leading position in the Political Bureau of the F.L.N. Moreover, the G.P.R.A. came to loggerheads with the General Staff of the liberation forces, the commanders of various *wilayas* showed reluctance to give up their civil authority, and *wilaya* 4 rebelled against the Political Bureau at the end of August. On September 20, 1962, the electors were called on to elect the 180 members of the National Constituent Assembly from a single list drawn up by the Political Bureau. On September 25 the G.P.R.A. and the provisional Executive officially handed over their powers to the Assembly and on September 26 Mr. Ben Bella was elected, by a very large majority, head of the provisional government.

A special constitutional committee was entrusted by the Assembly with framing a draft constitution. In fact this task was taken over directly by the F.L.N. By July 1963 the Political Bureau had drawn up a preliminary draft, which was submitted to a conference of party leaders and unanimously adopted. It was this text that was laid before the Assembly by a group of deputies. It was examined and very slightly amended by the special committee, and then discussed by the Assembly at an open meeting held from August 24 to 28. The draft prepared by the committee, that is to say, by the Political Bureau, was subjected to only a few purely formal modifications and was adopted by 139 votes against 23, with 8 abstentions. The inconsistency of this procedure with parliamentary practice had already led Mr. Ferhat Abbas, President of the Assembly, to resign on August 12. On September 8, 1963, the Algerian people in turn were called on to vote on the text adopted by the Assembly. It was approved by 5,166,195 votes to 104,861.

### **Essential Characteristics of the Algerian Political System**

On September 25, 1962, the Constituent Assembly, elected five days earlier, had passed a constitutional resolution whereby:

Algeria is a Democratic and People's Republic which ensures its citizens the exercise of their fundamental freedoms and inalienable rights.

The choice of " democratic and people's " as qualifying words already gave a specific character to the system being developed. Dated September 10, 1963, the day of its promulgation, the Algerian Constitution comprises 78 Articles. A long preamble and the first 26 Articles lay down the guiding principles of the system and have approximately the same importance as the Articles dealing directly with the organization of the public authorities.

The essential nature of these principles stands out from the very circumstances in which the constitutional text was drafted, that is to say, the preponderant position of the official party, the National Liberation Front, vis à vis the other constitutional organs: because the F.L.N. is itself a constitutional organ, indeed the foremost of all. A section of the Constitution, comprising Articles 23 to 26, is devoted to it.

Article 23. The F.L.N. is the sole party of the avant-garde in Algeria.

Article 24. The F.L.N. defines the policy of the Nation and prompts the action of the State. It controls the action of the National Assembly and the Government.

Article 25. The F.L.N. reflects the profound aspirations of the people. It educates and trains the people and guides them in realizing their aspirations.

Article 26. The F.L.N. achieves the goals of the democratic and people's revolution and builds socialism in Algeria.

These four Articles deserve to be quoted because they sum up the essential nature of the system. Opinions differ on the merits of a system that makes a single party the mainspring of the State. The International Commission of Jurists sees in the one-party system the beginning of totalitarian rule and holds it to be inconsistent with the Rule of Law. But no one can deny the framers of the Constitution at least the merits of clarity and frankness. For the implementation of its role in this system the F.L.N. is perfectly placed as an intermediate body between the Algerian people, in whom sovereignty is vested, and the organs of the State. The fundamental objectives of the Algerian Republic are defined in the preamble to the Constitution and recapitulated in Article 10: it is stated that the people " continue their progress on the course of a democratic and people's revolution " and that the Republic " steers its activities towards building up the country, in accordance with the principles of socialism and the effective exercise of power by the people ". The task of achieving these goals is assumed

directly by the Party and by it alone: this is the purport of Article 26 quoted above. The F.L.N. assumes this task with respect to the people on the one hand and with respect to the public authorities on the other.

(1) *With respect to the people.* Here again a distinction must be made. Sovereignty is ultimately vested in the people and the preamble clearly specifies that "the fundamental rights enjoyed by each citizen of the Republic enable him to participate fully and effectively in the task of building up the country". It is on these grounds that the Party "reflects the profound aspirations of the people". But it is far from being simply a driving-belt: the F.L.N. is the "avant-garde" of the people and as such "it educates and trains the people and guides them in realizing their aspirations" (Article 25). It will be noted that in several passages of the Constitution the sovereignty of the people and the one-party system are presented as complementary terms, just as these two aspects of the party's activities are complementary. The sovereignty of the people seems to be little more than theoretical in the face of the power of the Party.

(2) *With respect to the public authorities.* The preamble stresses the predominant role of the Party "in formulating and controlling national policy", adding that the F.L.N. "shall be the best guarantee that the country's policy conforms with the people's aspirations". In other words, the Party, having defined the general and specific terms of a policy calculated to achieve the Republic's basic objectives, must now bring influence to bear on the organs of the State to ensure that this policy is carried out. To this end the Constitution establishes precisely defined relations between the Party and the organs in which the legislative and executive powers are vested. These relations will be examined in the third part of this article, which will deal with the organization of the public authorities.

It is necessary to understand the thoroughgoing originality of this system. No doubt many new African States have slid, more or less rapidly and more or less completely, towards a single-party system; this is particularly true in French-speaking Africa. This is a tendency which has come about, however, through the play of circumstances and within the frame-work of constitutional institutions, which on their face are in keeping with the most conventional type of multi-party democracy. Even in the case of Guinea, there is nothing in the Constitution of November 10, 1959, that establishes the predominant position of the Guinean Demo-

cratic Party, and Article 40, devoted to freedom of association, appears even to legalize the existence of more than one party. The Constitution of the Soviet Union of December 5, 1936, which was doubtless the first Constitution to define the position of a party in the State, contains on this point only a single provision, considerably more circumspect and less precise than those contained in the Algerian Constitution; Article 126 states simply that "the Communist Party of the U.S.S.R. is the avant-garde of the workers in their struggle to build a Communist society and represents the guiding nucleus of all workers' organizations, whether social or state". Similarly, the provisional constitutions of the United Arab Republic, the most recent of which is dated March 23, 1964, state that the role of the Arab Socialist Union consists in representing the vital forces of the nation, but do not grant that party any power of its own with respect to the organs of the State. The Algerian model is therefore completely unique. Another State has already begun to take its bearings from that model, namely Ghana, whose Parliament adopted in February 1964 an amendment to the Constitution prohibiting the existence of any political party but the Convention People's Party.

But the system presents a complementary aspect which is equally important: the F.L.N. is not a closed party after the pattern of the Communist Party of the Soviet Union or more generally the Communist parties in the people's democracies. No legislative text limits the freedom of any Algerian subject to join the Party, but the Party Constitution limits membership to those who join in the revolution. Historically the F.L.N. was set up by the union of *fellahs*, workers and intellectuals in the struggle for independence and was identified with the hard core element of the population. The struggle has now shifted to the political field; the Party continues to be the spearhead of the national community, and consequently it should be natural that it should be open to anyone evincing goodwill and that no one should be excluded *a priori*. But the F.L.N. insists on adheredce to the revolution, which can mean simply the leadership's view. In view of the various levels of the Party, it will be more or less inevitable for diverse opinions and tendencies to come face to face, as the National Congress held at Algiers in April 1964 has already shown. The existence of various factions, which cannot organize into other institutions, comes out in fact to a large degree within the Party. But a single party cannot provide full and legitimate expression for all.

This observation leads to underline a final aspect of the Constitution. By the terms of Article 11 the Algerian Republic

accedes to the Universal Declaration of Human Rights. A special section, comprising Articles 12 to 22, is devoted to the definition of "fundamental rights". Article 10 mentions, among the objectives of the Republic, "protection of freedom and respect for the dignity of man" and "condemnation of torture and of any physical or moral encroachments on the integrity of the individual". This is an undeniably liberal aspect of the Algerian political system. But Article 22 clearly specifies that the exercise of such rights is not to endanger the foundations on which the political community rests and cites among these bases "the principle whereby the National Liberation Front constitutes the sole political party". The relationship between these two provisions bespeaks a very peculiar interpretation of the freedoms proclaimed in the Universal Declaration of Human Rights.

### **The Organization of Public Authorities**

The preamble dismisses the conventional presidential and parliamentary forms of government as being incapable of ensuring the stability of political institutions. The system established by the Constitution does not fall into traditional classifications. Its essential nature may be summed up by saying that the main powers of the State are divided between the President of the Republic and the National Assembly, that according to the law the preponderant position is held by the elected Assembly but in fact by the President and that, moreover, the powers of both are delegated to them by the Party and are revocable under certain circumstances.

#### **(A) THE PRESIDENT OF THE REPUBLIC**

In the Algerian Republic all powers stem directly or indirectly from the Party. Article 39 of the Constitution applies this principle to the method whereby the Head of State is appointed: he is elected on the basis of universal, direct and secret suffrage, *after nomination by the Party*. The relations between the President, the Assembly and the Party, moreover, are very clearly defined by Article 48, according to which:

The President of the Republic defines and directs the Government's policy, conducts and co-ordinates the country's home and foreign policy in accordance with the will of the people as defined by the Party and expressed by the National Assembly.

The Head of State is at the same time the head of the government. He chooses his ministers, who are responsible solely to him; he must choose at least two-thirds of them from among the

members of the Assembly. He enjoys a wide measure of power in directing the overall policy of the country. It should be noted in particular that by the terms of Articles 42 to 44 he is the supreme commander of the armed forces, he is empowered to declare war and conclude peace subject to the approval of the Assembly and, lastly, he is empowered not only to sign but also to ratify treaties, in which case the Assembly is merely "consulted". With respect to legislation, the President is in charge of promulgating and publishing laws as well as ensuring that they are carried into effect (Articles 49 and 52) and is empowered to make rules and regulations (Article 53).

#### (B) THE NATIONAL ASSEMBLY

Article 27 states that:

National sovereignty rests with the people, who exercise it through their representatives in the National Assembly, nominated by the National Liberation Front and elected for a term of five years by universal, direct and secret suffrage.

Here again, then, the Party acts as mediator between the sovereign people and the organ vested with state power. The method of election is the same as for appointing the President of the Republic; the F.L.N. chooses a number of candidates identical to the number of posts to be filled, and the electoral body is invited to ratify this choice, possessing no alternative other than abstention. In this way, on September 20, 1962, the Assembly, which is still in office, was elected. It is interesting to compare Article 27 of the Algerian Constitution with Article 114 of the Soviet Constitution. The Soviet text does not go nearly as far as the Algerian text; by the former the C.P.S.U. shares the right to present candidates at elections with other collectives: "trade unions, co-operatives, youth organizations, cultural societies", whilst by the latter the F.L.N. does not share this right with any other organization.

On the other hand, under Article 30 the supreme authority of the F.L.N. may request the National Assembly to remove a deputy from office. A two-thirds majority is required to take this decision. Here again, this is an innovation which apparently is based on no precedent.

The Constitution deals only very briefly with the powers of the Assembly. According to Article 28 the Assembly "passes laws and controls governmental action". Article 36 states that it falls jointly to the Head of State and the deputies to introduce legislation. Articles 37 and 38 specify that the Assembly's control

over governmental action is exercised through hearings held by ministerial committees and by means of oral and written questions, and that the Ministers have access to the Assembly, in which they are entitled to participate. No provision of the Constitution defines the legislative field *stricto sensu*, which comes within the province of the Assembly, or the ambit of the rule-making power, which falls within the competence of the Head of State. On the other hand, according to Article 58, the Assembly may delegate to the President of the Republic, for a limited period of time, the power to adopt measures of a legislative nature by means of ordinances; such ordinances must be submitted to the Assembly for ratification within a period of three months.

(C) RESPONSIBILITY OF THE PRESIDENT OF THE REPUBLIC TO THE ASSEMBLY

This is perhaps the most original aspect of the Algerian constitutional system. The President and the members of the Assembly are both elected for a five-year term by universal and direct suffrage after nomination by the Party. Since their powers stem from the same source, they should normally be interdependent. Should a conflict arise between them showing a crisis to exist, it is natural that the people's voice should prevail. The Assembly may therefore force the President to resign but in this case it will itself be automatically dissolved. Such is the principle. One is obviously very far from the conventional rules of the presidential or parliamentary form of government.

This ingenious system of presidential responsibility is dealt with in Articles 47, 55 and 56 of the Constitution:

Article 47. The President of the Republic alone is responsible to the National Assembly . . .

Article 55. The National Assembly may invoke the responsibility of the President by tabling a motion of censure signed by one-third of the deputies composing the Assembly.

Article 56. If a motion of censure is passed by an absolute majority of the deputies of the National Assembly, this shall entail the resignation of the President of the Republic and the automatic dissolution of the National Assembly.

Under any other system there would be the risk that an appalling vacuum of power would be produced until the next elections were held. Here continuity of power is virtually ensured by the Party. It is likely, moreover, that should these provisions be applied some day, the motion of censure will come from the F.L.N. There is a definite parallel between the forfeiture of parliamentary office as

provided for by Article 30 and invoking the responsibility of the President: in both cases the party uses the round-about means of a vote of the Assembly to discharge those who have lost its confidence. It is therefore quite true to say that the powers delegated by the Party to State organs can always be revoked.

### **The Algerian Constitution in Operation**

Article 71 of the Constitution, included under the heading of "temporary provisions", extends for one year the legislative term of the Constituent Assembly elected on September 20, 1962. As a result, the present Assembly will continue to act as the National Assembly until September 20, 1964, prior to which the next elections are to take place. On the other hand, the presidential elections were held on September 15, 1963: Mr. Ahmed Ben Bella, until then head of the provisional government, was elected, as is known, by almost the total number of votes cast. As an exception, the National Assembly that in a few months' time will succeed the present Assembly is to be elected for only a four-year term, so that the President's term of office will then coincide with that of the Assembly.

It would obviously be premature to attempt to draw up at this stage a balance-sheet of the Algerian political experiment. In assessing the results obtained, it is only fair to recognize that the government born of the F.L.N. had, as soon as it had been formed, to face overwhelming tasks: it had simultaneously to assume at the international level the responsibilities of an independent and sovereign State, to provide the country with new political institutions, to ensure the continued running of public services, to orientate the administration along new lines and, above all, to make profound changes in the economic and social structures. Moreover, personal disagreements and ethnic rivalry gave rise to several very grave crises within the Party. The first three months of independence were, as we know, marked by violent and at times bloody clashes. Since then, under the firm hand of President Ahmed Ben Bella, the situation has been stabilized. Since the Constitution took effect the most serious internal difficulty has been an outbreak at the end of September by part of the Kabylia, under the leadership of Dr. Ait Ahmed and the clandestine organization known as the "Front des forces socialistes", supported openly or tacitly by several deputies of the Assembly. A peaceful settlement of the conflict was reached in September 1963, and met with the acceptance of most of the rebels.

The Government therefore now appears to have firmly established its authority over the country as a whole. Can it be said that it has succeeded in establishing, within the framework of the constitutional institutions, a real system of legality?

1. On July 1, 1963, the Algerian people voted almost unanimously in favour of maintaining special ties with France, and President Ben Bella has never ceased to affirm that such co-operation with France is one of the cornerstones of his policy. The referendum of July 1 therefore amounted, at least morally, to a ratification by Algeria of the Evian agreements. To what extent has the Algerian Republic observed its commitments? This question alone would require a special study. We shall mention only two among the most important points. The Evian agreements included safeguards for the persons and property of French citizens residing in Algeria. Now, on the one hand, it is an established fact that at least two thousand French citizens, if not more, were killed or disappeared in the weeks following the proclamation of independence. It appears that in most cases the murders and plundering were committed by armed bands beyond the control of the authorities; these bands took advantage of the anarchy in a large part of the country. Fortunately the Government regained control of the situation fairly quickly and dealt relentlessly and severely with the outlaws.

On the other hand, the policy of socialization inevitably had to run counter to many private interests. A series of laws, the most important of which are the ordinance of August 24, 1962, and the decree of March 18 and 22, 1963, empower the administration to sequester real estate, farms, industrial and commercial undertakings, and all other personal and real property abandoned by its owners. These provisions have frequently been applied in too extensive a manner. The field of nationalization has gradually been extended to large sectors of agriculture, industry, commerce and transport, despite the clauses contained in the Evian agreements which guarantee patrimonial rights acquired prior to independence, and the French Government has been obliged to use part of the financial aid intended for Algeria to indemnify French subjects whose property has been expropriated without compensation. With or without the Evian agreement the nationalizations in Algeria are contrary to the Rule of law as being confiscatory.

2. Even before the Constitution came into force, the Government of Mr. Ben Bella had dissolved all rival parties of the F.L.N.,

such as the Communist Party, the Algerian People's Party (*parti du peuple algérien*) and the Socialist Revolutionary Party (*parti de la révolution socialiste*). Mr. Mohamed Boudiaf, head of this last party and former vice-president of the G.P.R.A., was arrested in June 1963 along with a number of leading civil and military figures; they were released in November. Lastly, in January 1963, the Government succeeded in placing confidential agents of the Political Bureau in the key posts of the U.G.T.A., the major trade union organization. In the National Assembly and before party bodies, the Government's opponents have on these grounds accused Mr. Ben Bella of subjecting the country to a veritable dictatorship. It is clear that real freedom of association does not exist in these circumstances. Yet the very fact that they are able to voice criticism demonstrates that some measure of freedom continues to exist in the country. What is curious is that, in spite of the uniform political composition of the National Assembly, there has always been and continues to be real opposition to the governmental majority. This opposition has managed in various instances to be vigorous and has always expressed itself in bold terms. It is known that at the National Congress of the F.L.N. held in Algiers from April 16 to 21, 1964, although the debates took place in private, several currents of opposition appeared and in the central committee elected at the end of the Congress places had to be found among its eighty members for representatives of very diverse tendencies.

It may therefore be concluded that the Algerian Government, which has succeeded in restoring law and order and ensuring the operation of basic services, has, while radically transforming the country's political, social and economic structures, laid the foundations of a system of legality. This is a legality which no doubt differs from both that of liberal capitalism and socialist legality, a legality which is in a class by itself, which has at times been shaky but which will become stronger as the system itself becomes stronger. The Government born of the F.L.N. has chosen the difficult road, a choice which has led it to resort to considerable restraints, while leaving some latitude to critics; what remains to be seen is whether the development of Algerian institutions will bring greater or lesser freedom in the direction of democracy. It is to be hoped that the restraints will be relaxed as the country progresses.

However, what most concerns the jurist is the absence of effective constitutional guarantees to protect freedom of expression and the right of association. The one-party system invariably tends towards authoritarian dictatorship. There are really

no effective safeguards to prevent this tendency in Algeria - save the good will of its present rulers. This, however, may not be enduring or effective in the future.

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## **DISCRIMINATION—UNITED NATIONS GENERAL ASSEMBLY RESOLUTION**

### **Resolution adopted by the General Assembly**

*On November 20, 1963, the General Assembly of the United Nations adopted an important Declaration on the Elimination of all Forms of Racial Discrimination. In the belief that this Declaration deserves the close attention of all who are interested in promoting this aspect of the Rule of Law, the Commission is pleased to publish in this Bulletin the complete text of the Resolution.*

[On the report of the Third Committee (A/5603 and Corr. 1, A/L. 435)]

1904 (XVIII). *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*

*The General Assembly,*

*Considering* that the Charter of the United Nations is based on the principles of the dignity and equality of all human beings and seeks, among other basic objectives, to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration, without distinction of any kind, in particular as to race, colour or national origin,

*Considering* that the Universal Declaration of Human Rights proclaims further that all are equal before the law and are entitled without any discrimination to equal protection of the law and that all are entitled to equal protection against any discrimination and against any incitement to such discrimination,

*Considering* that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the granting of independence to colonial countries and peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end,

*Considering* that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination either in theory or in practice,

*Taking into account* the other resolutions adopted by the General Assembly and the international instruments adopted by the specialized agencies, in particular the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, in the field of discrimination,

*Taking into account* the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world none the less continues to give cause for serious concern,

*Alarmed* by the manifestations of racial discrimination still in evidence in some areas of the world, some of which are imposed by certain Governments by means of legislative, administrative or other measures, in the form, *inter alia*, of *apartheid*, segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansionism in certain areas,

*Convinced* that all forms of racial discrimination and, still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights, tend to jeopardize friendly relations among peoples, co-operation between nations and international peace and security,

*Convinced also* that racial discrimination harms not only those who are its objects but also those who practise it,

*Convinced further* that the building of a world society free from all forms of racial segregation and discrimination, factors which create hatred and division among men, is one of the fundamental objectives of the United Nations,

1. *Solemnly affirms* the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person;

2. *Solemnly affirms* the necessity of adopting national and international measures to that end, including teaching, education and information, in order to secure the universal and effective recognition and observance of the principles set forth below;

3. *Proclaims* this Declaration:

### *Article 1*

Discrimination between human beings on the grounds of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

### *Article 2*

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the grounds of race, colour or ethnic origin.

2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

### *Article 3*

1. Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of

civil rights, access to citizenship, education, religion, employment, occupation and housing.

2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.

#### *Article 4*

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

#### *Article 5*

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of *apartheid*, as well as all forms of racial discrimination and separation resulting from such policies.

#### *Article 6*

No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

#### *Article 7*

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental

rights and freedoms through independent national tribunals competent to deal with such matters.

#### *Article 8*

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal Declaration of Human Rights, and of the Declaration on the granting of independence to colonial countries and peoples.

#### *Article 9*

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.

2. All incitement to or acts of violence, whether by individuals or organizations, against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.

3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.

#### *Article 10*

The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

#### *Article 11*

Every State shall promote respect for and observance of human rights and fundamental freedoms in accordance with the Charter

of the United Nations, and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the granting of independence to colonial countries and peoples.

*1261st plenary meeting,  
20 November 1963.*

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