

## **NORDIC CONFERENCE ON THE RIGHT TO PRIVACY**

*On Monday, May 22nd and Tuesday, May 23rd 1967, an important Conference of Nordic Jurists and legal experts from different regions of the world on "The Right to Privacy" was held in Stockholm. It was organized by the Swedish Section of the International Commission of Jurists in collaboration with the Secretariat of the Commission.*

*The Right to Privacy is of growing importance and this was the first international legal Conference at which this Right was considered comprehensively. The Conclusions of this Conference were not restricted in their application to the Nordic countries only and are intended to be of universal value.*

*We set out below the Conclusions of the Conference.*

### **THE RIGHT TO PRIVACY**

#### **Preamble**

WHEREAS Article 12 of the Universal Declaration of Human Rights and Article 17 of the United Nations Covenant on Civil and Political Rights of December 1966 have provided that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation" and that "everyone has the right to the protection of the law against such interference or attacks"

AND WHEREAS Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms has provided that "everyone has the right to respect for his private and family life, his home and his correspondence"

AND RECALLING that the International Commission of Jurists has at its first international Congress held at Athens in 1955 stressed that the Rule of Law requires that the private lives of individuals be inviolable

AND CONSIDERING that the increasing complexity of modern society makes it desirable to protect the Right to Privacy with greater particularity than hitherto

BEING REQUESTED by the International Commission of Jurists to examine the scope at the present day of the Right to Privacy and the particular problems relating thereto and to advise on the safeguards and remedies that should be made available to protect this Right

NOW THEREFORE this Nordic Conference of Jurists from Denmark, Finland, Iceland, Norway and Sweden, attended by legal experts from Austria, Brazil, Ceylon, Ecuador, France, Great Britain, India, Ireland, Japan, Netherlands and the United States, and distinguished observers from the Council of Europe, the International Press Institute, the English Law Commission, the Press Council of Great Britain, the World Federation of United Nations Associations, the International Bar Association and the World Peace Through Law Center, having considered the issues involved in the Right to Privacy, adopts the Conclusions hereinafter set forth.

## CONCLUSIONS

### Part I: Nature of the Right to Privacy

1. The Right to Privacy, being of paramount importance to human happiness, should be recognised as a fundamental right of mankind. It protects the individual against public authorities, the public in general and other individuals.
2. The Right to Privacy is the right to be let alone to live one's own life with the minimum degree of interference. In expanded form, this means:

The right of the individual to lead his own life protected against:  
(a) interference with his private, family and home life; (b) interference with his physical or mental integrity or his moral or intellectual freedom; (c) attacks on his honour and reputation; (d) being placed in a false light; (e) the disclosure of irrelevant embarrassing facts relating to his private life; (f) the use of his name, identity or likeness; (g) spying, prying, watching and besetting; (h) interference with his correspondence; (i) misuse of his private communications, written or oral; (j) disclosure of information given or received by him in circumstances of professional confidence. (The limitations of this right are set forth in Part II.)

3. For practical purposes, the above definition is intended to cover (among other matters) the following:

- (i) search of the person;
- (ii) entry on and search of premises or other property;
- (iii) medical examinations, psychological and physical tests;
- (iv) untrue or irrelevant embarrassing statements about a person;
- (v) interception of correspondence;
- (vi) wire or telephone tapping;
- (vii) use of electronic surveillance or other " bugging " devices;
- (viii) recording, photographing or filming;
- (ix) importuning by the press or by agents of other mass media;
- (x) public disclosure of private facts;
- (xi) disclosure of information given to, or received from, professional advisers or to public authorities bound to observe secrecy;
- (xii) harrasing a person (e.g. watching and besetting him or subjecting him to nuisance calls on the telephone).

## **Part II: Limitations**

4. In modern society, the Right to Privacy, as any other human right, can never be without limitation except in the sense that nothing can justify measures which are inconsistent with the physical, mental, intellectual or moral dignity of the human person. The limitations which are necessary to balance the interests of the individual with those of other individuals, groups and the State will vary according to the context in which it is sought to give effect to the Right to Privacy.

5. The public interest frequently requires the granting to public authorities of greater powers to interfere in the individual's private sphere than would be acceptable in the case of interference by private individuals or groups. Such powers should never be used except for the purpose for which they were granted.

6. The circumstances in which a public authority may be granted such powers have been laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms as

those in which interference in the private sphere is necessary in a democratic society:

In the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

7. It is essential that the cases in which interference is permitted be defined with precision. Legislation should ensure that powers which may involve invasion of privacy should only be exercised by a specifically appointed person or agency upon the order of a judicial authority or some other public authority ultimately responsible to the Legislature. Such order should determine the period and place of the exercise of the powers concerned.

8. In relation to interference in the above-mentioned circumstances, the following considerations apply:

(a) *National Security, Public Safety and Emergency Situations*

State powers to interfere with the Right to Privacy must vary according to the situation facing a country and may not be exercised except in accordance with its international obligations.

- (i) *In peace-time* national security may require invasions of privacy for very special and limited purposes. In order to ensure that such invasions are made only in cases of genuine threats to national security, and that powers granted by law in the interests of national security are not misused for political purposes, it is desirable that some form of independent supervision or control be instituted.
- (ii) *In time of war or other public emergency* threatening the life of the nation, any additional powers to interfere with the right to privacy of the individual in the interests of public safety should be restricted to those strictly required by the exigencies of the situation and should be limited in time to the period of war or public emergency. For this purpose, they should be subject to periodic review and renewal by Parliament.
- (iii) *In cases of natural disaster* public safety may necessitate invasions of privacy to enable measures to be taken to deal with such disasters or other calamities endangering

the life of the people. The measures taken should be strictly proportionate to the threat involved.

- (b) *The economic well-being of a country* is not a concept which is capable of being precisely and narrowly defined. Therefore, it should not be relied upon except when absolutely necessary.
- (c) *The prevention of disorder or crime* may justify measures taken in the sphere of criminal law:
  - (i) for the investigation of criminal offences and the detection of offenders;
  - (ii) for the prosecution and punishment of offenders;
  - (iii) to prevent the commission of a criminal offence or the outbreak of disorder which there are compelling grounds to believe is imminent.

This presupposes that the criminal law does not make it an offence to exercise any of the fundamental human rights and freedoms. It further presupposes that legal provisions define in detail the powers of the police and criminal investigation authorities, set out the offences in relation to which they can be used and lay down precise limits to their use. These limits should, in particular, ensure that measures involving an invasion of privacy are in all cases reasonably necessary having regard to the gravity of the offence involved and that there should be a reasonable proportion between the measures taken and the magnitude of the offence. In addition, there must be reasonable grounds for suspecting that the person concerned is guilty of or is about to commit a criminal offence.

- (d) *The protection of health* may justify reasonable measures taken in order to combat or to prevent the outbreak of an epidemic, or the spread of communicable diseases. Measures taken for *the protection of morals* (otherwise than within the ordinary framework of criminal law) should be limited to those necessary for the protection of children and young persons.

#### 9. *The Administration of Civil Justice*

The extent to which the Right to Privacy requires to be limited for the purposes of the administration of civil justice must be

clearly defined in the laws relating to procedure and evidence in civil cases.

#### 10. *Freedom of Expression, Information and Debate*

The exercise of these freedoms is obviously in the public interest and it is inevitable that in some cases there should be a conflict between the interest of society in their exercise and the interest of the individual to live his private life unmolested. The line of demarcation between these interests is very difficult to draw. Certainly it cannot be drawn in the simple terms of the axiom that where public life begins private life must end. The private life of public figures is entitled to immunity save where it can be shown to impinge upon a course of public events. Even less acceptable is the axiom that "being in the news" of itself justifies intrusion on private life. It would be undesirable and indeed impossible to provide for all cases by legislation; but it may be insufficient to rely exclusively upon the self-discipline of the press and other mass media or upon rules of conduct laid down by the professional organisations concerned.

The subject-matter is so full of problems, and the checks and balances must be so many and so delicate that a combination of all these methods, the formulation of rules of conduct, the establishment of professional disciplinary tribunals and appropriate legislation may be required for dealing satisfactorily with this aspect of the Right to Privacy.

It should be emphasized however that, because freedom of expression is one of the great freedoms on which so many others depend, it ought not to be curbed by special legislation designed to protect privacy against invasion by the press or other mass media, unless the self-discipline of the press and other mass media and the rules of conduct laid down by professional organisations have been shown to fail. This does not imply that the press or other mass media are exempt from general legislation protecting the Right to Privacy including legal provisions which apply to improper methods of obtaining information.

### **Part III: Protection**

#### 11. *Protection under existing rules*

There are in most countries legal rules in other fields which provide civil remedies or criminal sanctions against certain forms

of invasion of privacy. Some of these remedies or sanctions have not the protection of privacy as their primary object and it may therefore be necessary to strengthen or modify the provisions in question in order to secure the more effective protection of privacy aspects involved. An institution which can give valuable assistance in the protection of privacy against invasion by public authorities is the Ombudsman.

12. The following invasions would seem to fall within the category referred to in the preceding paragraph. Where provisions of the nature described do not already exist, their introduction is considered necessary as part of the adequate protection of the Right to Privacy.

(a) *Entry on and search of premises and other property*

Criminal provisions in this field may not provide an adequate protection of individual interests. Similarly, civil remedies designed primarily to protect ownership or possession may not extend protection to individuals who have the mere use of premises or other property without possession.

(b) *Search of the Person*

Where existing laws provide for the search of the person, they should ensure that the search is limited to the object for which it is authorised and conducted with due respect for the individual searched.

(c) *Compulsory medical examinations and other tests*

The circumstances and cases in which medical examinations or other tests can be ordered and carried out should be clearly defined.

(d) *Interception of correspondence and other communications*

Most countries have legislation provisions prohibiting the opening of correspondence and protecting the secrecy of telegrams. In some cases these provisions apply only to employees of the postal and telecommunications services and there would seem to be a need for more general provisions—criminal and civil—protecting correspondence and other communications from interference by other third parties.

(e) *Disclosure of information given to public authorities or professional advisers*

Such disclosures are normally covered by legal or disciplinary provisions against the disclosure of confidential information given to public authorities. In the case of communications to professional advisers, their unauthorised disclosure should be made the subject of sanctions, which may be criminal, civil or disciplinary, or a combination of these, according to the circumstances of the case.

(f) *Defamation*

The law of defamation in most legal systems protects the individual against attacks on his honour and reputation. In some systems truth is an absolute defence; in others it is not. In the former types of system there is need for legal protection in relation to the publication of true but irrelevant embarrassing facts relating to the individual's private sphere.

13. *Protection under special Rules relating to Privacy*

There are forms of invasion of privacy, other than those mentioned in the preceding paragraph, infringing rights which cannot be adequately protected by straining the existing legal rules devised mainly to meet other problems in other fields. These naturally fall within a Law of Privacy and should be protected by such a Law. The following invasions are within this category:

(a) *Intrusion upon a person's solitude, seclusion or privacy*

An unreasonable intrusion upon a person's solitude, seclusion or privacy, which the intruder can foresee will cause serious annoyance, whether by the intruder's watching and besetting him, following him, prying on him or continually telephoning him or writing to him or by any other means, should be actionable at civil law; and the victim should be entitled to an order restraining the intruder. In aggravated cases, criminal sanctions may also be necessary.

(b) *Recording, photographing and filming*

The surreptitious recording, photographing or filming of a person in private surroundings or in embarrassing or intimate circumstances should be actionable at law. In aggravated cases, criminal sanctions may also be necessary.

(c) *Telephone-tapping and concealed microphones*

- (i) The intentional listening into private telephone conversations between other persons without consent should be actionable at law.
- (ii) The use of electronic equipment or other devices—such as concealed microphones—to overhear telephone or other conversations should be actionable both in civil and criminal law.

(d) *The use of material obtained by unlawful intrusion*

The use, by publication or otherwise, of information, photographs or recordings obtained by unlawful intrusion (paras. (a), (b) and (c) above) should be actionable in itself. The victim should be entitled to an order restraining the use of such information, photograph or recording, for the seizure thereof and for damages.

(e) *The use of material not obtained by unlawful intrusion*

- (i) The exploitation of the name, identity or likeness of a person without his consent is an interference with his right to privacy and should be actionable.
- (ii) The publication of words or views falsely ascribed to a person, or the publication of his words, views, name or likeness in a context which places him in a “false light” should be actionable, and entitle the person concerned to the publication of a correction.
- (iii) The unauthorised disclosure of intimate or embarrassing facts concerning the private life of a person, published where the public interest does not require it, should in principle be actionable.

14. *Need for Specific Legal Rules*

Finally, this Conference recommends that all countries take appropriate measures to protect by legislation or other means the right to privacy in all its different aspects and to prescribe the civil remedies and criminal sanctions required for its protection.

The Conference was opened by the Hon. Lemmart Geijer, Minister of State, on behalf of the Swedish Government. The other principal speakers at the Opening Session were: Judge Gustaf Petrén, President of the Swedish National Section, Mr. Per Federspiel, M.P. and Member of the Commission, the Hon. Mr. Justice T. S. Fernando, Q.C., President of the International Commission of Jurists, Judge K. Thestrup, M.P. of Denmark, Dr. Stig Strömholm, Lecturer in Comparative Law, University of Uppsala and author of the Working Paper, and Mr. Seán MacBride, S.C., Secretary-General of the International Commission of Jurists.

Special credit is due to Dr. Stig Strömholm for having prepared the excellent Working Paper, which provided the basis for discussion for the Conference. Judge Gustaf Petren, President of the Swedish Section, was Chairman of the organising group, Mr. Per Federspiel, President of the Danish Section and Chairman of the Conference and Chief Justice Terje Wold, of Norway, who presided over the latter part of the deliberations, deserve particular mention for their respective contributions towards the success of the Conference.

The following were the participants from the Nordic countries:

*Denmark*

Mr. Per Federspiel, M.P., Mr. Jørgen Jensen, Professor M. Koktvedgaard, Professor Vinding Kruse, Mr. J. A. Melchior, Mr. Perch Nielsen and Judge K. Thestrup, M.P.

*Finland*

Mr. G. Ehrnrooth, M.P., Mr. Mikael Hidén, Mr. E. Hultin, Professor Bo Palmgren and Mr. Christian Reims.

*Iceland*

Ambassador Arni Tryggvason and Professor Thor Vilhjálmsón.

*Norway*

Professor A. Bratholm, Mr. J. B. Hjort, Mr. E. Løchen and Chief Justice Terje Wold.

*Sweden*

Mr. B. Ahrnberg, Mr. Christer Bergman, Professor S. Bergström, Ombudsman A. Bexelius, Mr. J. H. Björck, Mr. Erik Blomquist, Judge Anna-Maria Eek, Mr. S. von Feilitzen, Judge P. E. Fürst, Mr. Lennart Groll, Mr. Stig Gustafsson, Judge C. F. Hadding,

Mr. Gunnar Hansson, Ombudsman Hugo Henkow, Professor Nils Herlitz, Professor L. Hjerner, Judge Kurt Hohngren, Mr. Sven Klippvall, Mr. Jon Lindgren, Professor Seve Ljungman, Judge A. Litzén, Judge G. Ljungberg, Mr. Gunnar Lundberg, Professor A. Nelson, Judge Ulf Nordenson, Judge Sten von der Osten-Sacken, Mr. W. Patek, Judge Gustaf Petrán, Mr. Ivar Philipson, Mr. R. Rembe, President S. Rudholm, Mr. U. Serner, Dr. Stig Strömholm, Professor H. Thornstedt, Judge Bertil Voss and Judge Bertil Wennergren.

The following distinguished Jurists from non-Nordic countries also participated:

The Hon. T. S. Fernando, Q.C., President of the International Commission of Jurists, Ceylon; Mr. A. J. M. van Dal, Vice-President of the I.C.J., Netherlands; Professor Kenzo Takayanagi, Vice-President of the I.C.J., President of the Japanese National Section; Mr. Eli Whitney Debevoise, Member of the I.C.J., U.S.A.; The Right Hon. Lord Devlin, President of the Press Council in the United Kingdom; Sir John Foster, Q.C., M.P., United Kingdom; Dr. Rudolf Machacek, Secretary-General of the Austrian Commission of Jurists; Mr. Andrew Martin, Q.C., Law Commissioner, United Kingdom; Mr. Norman S. Marsh, Law Commissioner, United Kingdom; M. le Président René Mayer, Member of the I.C.J., President of the French National Section; Mr. José T. Nabuco, Member of the I.C.J., Brazil; Professor K. van Rijkkesvorschel, Delegate of the Dutch National Section of the I.C.J.; Dr. Enrique Sanchez Barona, Delegate of the Ecuadorian National Section of the I.C.J.; Mr. Purshottam Trikamdass, Secretary-General of the Indian Commission of Jurists, and Mr. Edward H. Tuck, U.S.A.

Observers at the Conference from other organisations were:

Mr. A. H. Robertson, Director of the Division of Human Rights, Council of Europe, Mr. Per Monsen, Director, International Press Institute, Miss Christina Palm, World Federation of United Nations Associations, Mr. Bertil Ahrnborg, the International Bar Association, and Mr. Johan Rosenlund, World Peace Through Law Center.

The Conference was attended by the following Members of the Commission's Secretariat:

Mr. Seán MacBride, S.C., Secretary-General, Dr. V. M. Kabes, Executive Secretary, Mr. Lucian G. Weeramantry, Senior Legal Officer, Miss Hilary A. Cartwright, Mr. Daniel Marchand and Mr. Dominick Devlin, Legal Officers.