

For the Rule of Law

THE REVIEW



INTERNATIONAL COMMISSION OF JURISTS

NOTES AND COMMENTS

HUMAN RIGHTS COMMISSION	1	INDIA	4
BANGLADESH AND PAKISTAN		FRANCE - THE MEDIATOR	5
CONSTITUTIONS	2	MALAYSIA	5
BOTSWANA, LESOTHO AND		SPAIN - THE CATALANS	7
SWAZILAND	3	- COLLEGE OF ADVOCATES	7
CZECHOSLOVAKIA	3	URUGUAY	8

HUMAN RIGHTS IN THE WORLD

TORTURE CONTINUES	10	SOUTH AFRICA	21
GREECE	13	SRI LANKA	24
INDONESIA	15	USSR	30
MOROCCO	19		

ARTICLES

INDEPENDENCE OF THE JUDICIARY IN ITALY, BY AN ITALIAN JUDGE	34
THE RULE OF LAW IN TURKEY AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS	A STAFF STUDY 37

BASIC TEXTS PRINCIPLES OF EQUALITY IN THE ADMINISTRATION OF JUSTICE	57
ICJ NEWS	63

No. 10

June 1973

Editor: Niall MacDermot

THE INTERNATIONAL COMMISSION OF JURISTS

It was to realise the lawyer's faith in justice and human liberty under the Rule of Law that the International Commission of Jurists was founded.

The Commission has carried out its task on the basis that lawyers have a challenging and essential role to play in the rapidly changing ecology of mankind. It has also worked on the assumption that lawyers on the whole are alive to their responsibilities to the society in which they live and to humanity in general.

The Commission is strictly non-political. The independence and impartiality which have characterised its work for some twenty years have won the respect of lawyers, international organisations and the international community.

The purpose of THE REVIEW is to focus attention on the problems in regard to which lawyers can make their contribution to society in their respective areas of influence and to provide them with the necessary information and data.

In its condemnation of violations of the Rule of Law and of laws and actions running counter to the principles of the Universal Declaration of Human Rights and in the support that it gives to the gradual implementation of the Law of Human Rights in national systems and in the international legal order, THE REVIEW seeks to echo the voice of every member of the legal professions in his search for a just society and a peaceful world.

ASSOCIATES

If you are in sympathy with the objectives and work of the Commission, you are invited to become an Associate by making an annual contribution to its funds. A contribution of not less than Sw. Fr. 100.00 per year will entitle you to receive free copies of the REVIEW and of any special reports we may issue.

An application form will be found on the last page.

SUBSCRIBERS

Alternatively, you are invited to become a subscriber to the REVIEW.
Annual Subscription Rates:

By Surface Mail	Sw. Fr. 10.00
By Air Mail	Sw. Fr. 15.00
Special Rate for Law Students	Sw. Fr. 7.50

(For mode of payment, see note on Application Form for Associates)

Notes and Comments

Human Rights Commission

The 29th session of the U.N. Human Rights Commission was one of considerable interest to the non-governmental organisations (NGO's). As a number of NGO's had requested at last year's ECOSOC meeting, it was allotted an extra week to help it clear off some long outstanding issues on its agenda. This it largely succeeded in doing, even if in a somewhat summary fashion. A general spirit of harmony and compromise prevailed, but the price to be paid for this was some lack of vigour in debate and lack of force in the resolutions. Two admirable studies, the Abu Rannat Study on Equality in the Administration of Justice (of which we publish the Draft Declaration of Principles later in this issue) and the José Ingles Study on the Right to Leave and Return were politely praised and then disposed of by a general recommendation to the General Assembly which makes it unlikely that they will be considered further by the Commission. The important study on Arrest and Detention dating from 1964 was not even discussed.

Much attention was naturally given to the Programme for the Decade against Racism and Racial Discrimination, and it is hoped that following forceful interventions by the representative of the World Council of Churches and of the Trade Unions, the role of the NGO's in the programme will be recognized.

A draft Convention for the Suppression and Punishment of the Crime of Apartheid was approved. This defines the crime and establishes individual criminal responsibility in international law. Any country will have jurisdiction to try offenders wherever their offences were committed. A number of countries expressed serious reservations about this draft convention. In response to a request from the General Assembly, a draft declaration of principles for international cooperation in dealing with war criminals was considered. The general rule proposed is that offenders should be tried in the countries where they committed their crimes, and should not be entitled to asylum.

Three new subjects have been recommended for study by the Sub-Commission on Discrimination and Minorities, namely the exploitation of foreign workers, the rights of non-citizens, and the development of the right of self-determination.

Under the item of gross violations of human rights a number of short but interesting debates arose out of NGO interventions on current situations. The All-Pakistan Women's Association raised the question of the Pakistani POW's illegally held in India. The All-India Women's Conference responded by alleging that Pakistan was holding some 300,000 Bengalis who wished to return to Bangladesh. A representative of the Bangladesh Ministry of Foreign Affairs was then allowed to address the Commission, even though Bangladesh is not a member state. He replied to the criticisms and also complained of Pakistan's refusal to accept some 240,000 "West Pakistanis" (i.e. Biharis) who wanted to leave Bangladesh. The Pakistani and Indian

representatives on the Commission then spoke at some length, each of them, incidentally, quoting from ICJ publications in support of their argument. Other debates arising out of NGO interventions dealt with situations in Turkey, Greece and India. Though no action or decision resulted from these debates, they are of interest in showing that, when it wishes to do so, the Commission can and will discuss topical situations which do not figure upon its agenda. This may establish an important precedent.

Bangladesh and Pakistan Constitutions

The new Constitutions of Pakistan and Bangladesh, adopted respectively in December 1972 and April 1973, represent very considerable achievements. Both are carefully drawn constitutions establishing parliamentary democracies, with independent judiciaries and what should prove to be effective guarantees of the fundamental freedoms, which are spelt out in detail. Whereas Bangladesh is a secular unitary state, Pakistan is an Islamic federal state with a strong central government, but in which the residual powers rest with the provinces. In both states the head of the government is the Prime Minister rather than the President.

The Pakistan Constitution allows for preventive detention of persons suspected of acting against the security of the state, but subject to the agreement of a review board *after one month and thereafter at three-monthly intervals*. This safeguard continues even in times of emergency, when the central government has power to take over part or all the functions of a provincial government. A remedy of the nature of *habeas corpus* is available at all times. The separation of the magistrates from the executive is to be completed within a period of three years.

There is to be an Islamic Council in Pakistan, whose functions are to make recommendations to enable and encourage Muslims to order their lives in accordance with the principles and concepts of Islam, to advise whether a proposed law is repugnant to the Injunctions of Islam, to recommend ways of bringing laws into conformity with them, and to compile for the guidance of the legislatures such Injunctions as can be given legal effect.

Under the Bangladesh Constitution provision is made to enable an Ombudsman to be introduced. An unusual provision is that any Member of Parliament who votes against his party automatically vacates his seat. This seems to be an undesirable way of restricting the power of the legislature to control the executive, particularly where the ruling party has such an overwhelming majority as that currently enjoyed by the Awami League. There is much interim legislation which is exempted from conformity with the principles of the Constitution, including, regrettably, the retrospective provisions in the Bangladesh Collaborators (Special Tribunals) Order 1972 (see REVIEW No. 9, p. 8).

It is to be hoped that these new Constitutions will survive the considerable pressures to which they are likely to be subjected in the initial years, and will be able to provide the basis for continuing stable government under the rule of law.

Botswana, Lesotho and Swaziland

These three independent African countries are peculiarly vulnerable to pressures from South Africa, both from their geographical position and from their economic dependence on South Africa's trade and labour market. In spite of this, the territories have generally managed to maintain a high level of political freedom and civil rights. An exception was the suspension of constitutional rule in Lesotho in January 1970, when it became clear that the governing party was about to suffer defeat in the first general election since independence. However, following an agreement reached with King Moshoeshoe in exile in January 1970, a new constitution has been introduced and both the High Court and Court of Appeal have been restored.

Against this background it is distressing to note that the Constitution in Swaziland was set aside in April 1973 and replaced by absolute rule under a traditional system of tribal government by King Sobhuza. His assumption of "supreme powers" and the banning of all political parties and activities destroys or puts at risk the former safeguards of civil and political rights. It is particularly serious that this appears to have been done as a consequence of a decision of the Appeal Court which clashed with the Swaziland Government's attempt to deport to South Africa a recently elected opposition member of Parliament. The leader of the opposition and several opposition members have been detained and their South African lawyers have been refused entry into the country. Considering that Swaziland has always been regarded as one of the most enlightened countries in Africa in terms of civil rights and race relations, this suppression of liberty and overthrowing of the rule of law is a serious setback. It can only be hoped that, as in Lesotho, it will prove to be temporary.

Friends of Botswana have been much concerned by the circumstances of the deportation across the South African border of Mr. Gordon Beck and his family. Mr. Beck, who was subject to banning orders and was wanted by the South African authorities, was promptly arrested there and has since been held in prison. Enquiries made by the International Commission of Jurists indicate that the Government had good reason and were entitled to deport Mr. Beck. As no other country could be found willing to accept him and as Mr. Beck himself made clear that he did not want to go to another African country, the government had no alternative but to deport him to South Africa.

Czechoslovakia

A new Bill to amend the Czechoslovak penal code contains serious restrictions on individual freedom. The police are to be given the right to open mail and search houses without warrant and without preferring any charge. Offences concerning state secrets will be tried before military courts. Defence rights will be curtailed, with restrictions on choice of counsel, including in certain cases the need to select counsel from a list of "reliable

lawyers ". Reports by independent experts can be replaced by statements or affidavits by state or socialist organisations, not subject to cross-examination. Penalties are to be increased up to 25 years imprisonment for political offences, such as supplying "untrue information abroad concerning the republic's international reputation and foreign policy ". Another Bill, also aimed mainly at political offences, provides for harsher punishments, including up to 60 days solitary confinement, and gives the Minister of Justice the sole right to set aside or remit sentences. After release, prisoners will be subject to strict police surveillance. These changes amount to a repeal of the reforms introduced under Novotny in 1965, hailed at the time as preventing a return to the Stalinist repression of the fifties.

The Appointment of Judges in India

The legal profession in India has reacted vigorously against the method of appointment of the new Chief Justice to preside over the Supreme Court. A practice has developed in India, which has gained the force of a constitutional convention, that a vacancy in the post will be filled by the senior judge of the Court, even if this means that he will have a short tenure of office before reaching the compulsory retirement age. On April 25, 1973, Mr. Justice A. N. Ray was appointed Chief Justice over the heads of three senior judges. The alarm among lawyers that this boded political influence in the appointment and promotion of judges was increased when one of the lawyers in the government, the late Mr. Kumaramangalam, Minister for Steel and Mines, defended the appointment on the grounds that the government wanted judges who shared their " philosophy ".

A one-day strike by advocates closed the courts, and the Executive Committee of the Bar Association of India condemned the government's action as a " blatant and outrageous attempt at undermining the independence and impartiality of the judiciary ". Regional conventions on the independence of the judiciary are being held, to be followed by a national convention in July. It may be difficult for those who are not familiar with the tensions which have arisen following some of the constitutional decisions of the Supreme Court in recent years to understand the strength of the reaction to this appointment. Particularly is this so in countries such as the U.S.A., where political considerations play an important part in appointments to the Supreme Court and to the office of Chief Justice. Indian lawyers argue that there are other checks on the power of the executive in those countries which do not operate in India.

Be that as it may, in view of the strength of feeling which has been shown on this issue by almost the entire legal profession, motivated by a deep concern for the maintenance of the Rule of Law, the government of India would perhaps be wise to appoint a Commission to enquire into the method of appointment and promotion of judges and make recommendations.

Le Médiateur: the French Ombudsman

By law No. 73-6 of 3 January 1973 France has established a Mediator, whose functions are similar to those of an Ombudsman. His scope is wide. He is to receive and inquire into allegations by individual citizens against administrators of public authorities complaining that the administrators have not carried out their functions in accordance with their public duty. The new institution in many respects approximates more closely to the British Parliamentary Commissioner than to the Scandinavian models. Complaints must be processed through a member of parliament or senator, and complaints by public servants relating to their service are excluded. The Mediator can recommend solutions but not enforce them, and in default of satisfaction can publish a special report. Otherwise, he reports annually to the President and Parliament. Ministers are charged to cooperate with the Mediator and to facilitate his inquiries. He can ask for all documents, but does not appear to have an unqualified right to interview all civil servants. The Minister can withhold information relating to national defence, state security or foreign policy. The Mediator cannot interfere in any proceedings which have been started before any court, but it is not clear whether, as in Scandinavia, he can review the functioning of the judicial process.

We welcome this introduction of the Ombudsman institution into a country where it has often, though as we believe mistakenly, been argued that there was no need for it owing to the highly developed system of administrative law.

Malaysia

Some disturbing reports have been received of the misuse of procedures for deprivation of citizenship and banishment in Malaysia. Under Article 30 of the Federal Constitution of Malaysia, a person whose citizenship is in doubt may make an application to the Federal Government for a certificate stating that he is a citizen. A total of 268,756 papers were issued under this Article subject to verification. "Article 30" citizens were asked to verify their status as early as 1966, but little was done to encourage the return of the papers until after 1969. In 1972 the government decided not to accept verification papers beyond September 30, and this resulted in about 120,000 inhabitants being automatically rendered stateless. Those who failed to submit their verification papers under Article 30 did so for a variety of reasons, including illiteracy and insufficient government publicity of the need for verification.

These people are now liable to permanent deprivation of liberty under the Internal Security Act 1960, and the Banishment Ordinance 1959. There is evidence to suggest that these procedures are being abused as a means of dealing with political opponents. The Banishment Ordinance operates in three stages, with the local police being vested with very wide

powers. First, the chief police officer in a particular state reports to the Minister concerned that the presence of an individual is not conducive to the good of the country and that he is not a citizen. Following the report, a warrant of arrest is prepared and served on him. He is then brought before a magistrate where the burden of proving that he is a citizen falls on the arrested person. Being in most cases illiterate, and not being informed of his right to legal advice, it is rare that he is able to discharge the burden of proof. If he fails to prove his citizenship, he is then detained in prison. Later a banishment order signed by the Minister is served on him, banishing him either for life or for a fixed period. In most cases it is for life. If another country is willing to accept him, an execution order is served; but where (as is usually the case) another country will not accept him, he is kept in prison and treated like an ordinary criminal. Some have been imprisoned in this way for years. One detainee, who was born in Johore in 1939 and educated there, was arrested in 1967 and served with a banishment order. His brothers were also born in Malaysia and are citizens, but his application for citizenship was rejected. No execution order has been served in this case. As things stand, not being a national of another country, he will be imprisoned indefinitely. In another instance, with similar credentials of birth and education, the arrest was made under the Internal Security Act in 1967 and the banishment order was served in 1969 when the detainee was only 20 years old. His mother is a citizen and he would have been entitled to apply for his citizenship, but had not done so at the time of his arrest. The International Commission of Jurists has invited the government of Malaysia to comment upon these matters, but there has been no reply.

Other legislation of the Alliance government severely restricts traditional freedoms of speech and action. Examples are the Industrial Relations Act 1967, restricting trade union activities; the Constitutional (Amendment) Act and the Sedition (Amendment) Act of 1971, banning public as well as parliamentary discussion of certain issues, severely limiting freedom of speech and eliminating parliamentary immunity of MP's; the suspension of local council elections for an indefinite period; the Societies (Amendment) Act of 1972 empowering the Minister of Home Affairs to prevent the affiliation of political parties, trade unions, student bodies and other groups with international movements and organisations; the press laws requiring publishers and editors to renew publishing permits every year; and a rigidly controlled radio and television network carrying exclusively the propaganda of the government and the ruling party.

Opposition to the government is divided among numerous small parties which have not yet succeeded in achieving a common policy or programme. Most of the leaders of the Labour Party have been held in jail for several years without being tried before a court of law.

The escalation of repressive and restrictive legislation over the last fifteen years has led the Secretary of the Democratic Action Party, Fan Yew Teng, writing in *Socialist Affairs* of March/April 1973 to describe the Alliance government as "an oppressive, autocratic and reactionary regime which tolerates no dissent, especially when it is informed, serious-minded

and organised, whether it be from opposition parties, students, or workers and their trade union. Malaysia under Alliance misrule is becoming more and more of a closed society in which the special branch of the police plays an often unseen but increasing role". It is only fair to comment that the restrictions on freedom in Malaysia are probably no greater than those in other developing countries in South-East Asia.

Spain — The Catalans

When the Franco government seized power in 1937, it began a concentrated effort to suppress the identities and cultures of the non-Castilian minorities of the country. The use of languages other than Castilian was made illegal in any business or governmental activity, and the once-prolific minority-language press was almost silenced by censorship and suppression. In recent years there has been some relaxation of the censorship, but the rights of these minorities are still severely restricted.

The Catalans are the largest non-Castilian people, at about 7 million. Together with the Basques (1.8 million) and the Galicians (2.6 million), they form about 40% of the Spanish population. The only active separatist movement is found among the Basques.

The lengths to which the government will pursue "national unity" are illustrated by the recent administrative decision by the Minister of the Interior, imposing fines of 200,000 pesetas (\$ 3,500) each on six Spanish Catalan scholars, and revoking their passports. They had participated as judges in the 114th Floral Games of the Catalan Language in October 1972, a literary festival and poetry contest dating from 1393. The festival is held abroad since it was outlawed in Spain with the suppression of the semi-autonomous Catalan Republic in 1939.

The decision was an administrative one, imposed without legal process. The grounds for it were stated to be that the prizes in the contest had been named after former Presidents of the Catalan Republic, and therefore prejudiced the unity of the Spanish nation. There is a right of appeal to the courts; but the fines have to be paid as a precondition of the appeals. Besides having had to pay the large fines, the six men must get specific permission to travel out of the country, a special hardship for scholars who earn their living largely from lectures.

Bar to lose its Independence in Spain

The ICJ's 1962 report on "Spain and the Rule of Law" paid tribute to the independence of the College of Advocates and the courageous stand made by the bar against various abuses of the Franco régime. Unfortunately that independence is now to be ended if the Bill on Professional Colleges recently presented by the government to the Cortes is passed into law.

The Bill has been denounced by the legal and other professions affected by it. The Madrid College of Advocates has demanded its withdrawal, categorizing it as illegal and contrary to the traditions of the Spanish bar. The law was drawn up by the government without any consultation with the legal or other professions.

Its principal features, as it affects the Bar, are the regulation of the general conditions of the profession by the government (Art. 2); its subjection to political control as "an organic agent of the political order" (Art. 5); the control of the officers of the Colleges of Advocates by giving them the status of civil servants and by requiring every candidate for office to swear fidelity to the principles of the National Movement (i.e. General Franco's party) and to the fundamental laws of the country (Art. 5); the extension of the right to vote to non-practising advocates, with voting by post or by proxy (Art. 7; this is aimed at ensuring political control of elections); all decisions and actions contrary to the principles of the National Movement and the fundamental laws are declared null and void (Art. 8). All these provisions indicate the government's determination to subject completely the Colleges of Advocates, like those of other professions, to the will of the government.

Uruguay

The apprehensions expressed in REVIEW No. 8 about the deterioration in the Rule of Law in Uruguay, which provoked such strong reactions in some quarters, are unfortunately proving to be only too well-founded. Although the guerilla activities against which the state of emergency was proclaimed have been brought under effective control, the military intervention in the government of the country, so far from receding, has been intensified and now extended into the economic sphere. It seems that one of the objectives of some of the military leaders is to root out the political corruption against which the Tupamaros themselves were fighting. It is perhaps for this reason that the left wing "broad front" of the communist, socialist and christian democratic parties at first gave qualified support to the increased military intervention.

The true balance of power between the civilian and military authorities was revealed in February 1973 when the army and air force chiefs took over the radio and television stations and forced the resignation of the Cabinet. They obtained the replacement of the Defence Minister by a retired army general. The Defence Minister had, with the approval of President Bordaberry, supported a senator whose criticisms of the army led to an army statement that they "would prevent politicians making public accusations against them". A national security council has been created to "assist the President in creating the conditions necessary for realising the national objectives". Most of the important posts in economic enterprises and banks are being taken over by military officers. In these and other ways, the armed forces are now sharing control with the government.

In spite of protestations by President Bordaberry that freedom and democratic institutions are being maintained, Uruguay can hardly be

regarded as a parliamentary democracy. Having the support of only one-third of the Parliament, the government were unable to obtain an extension beyond 31 May, 1973, of the suspension of the "guarantee of individual security" under the Constitution. They are now legislating by decree under the notorious law of State Security.

Under this Law the political prisoners continue to be detained for long periods in prison without being brought to trial. The torture of suspects continues and another prisoner, Fernandez Mendieta, has died. His relatives were told of his death on the day following his arrest. Two senators have stated publicly that there is definite proof that he died as a result of violent tortures.

The thousands of people who have been arrested for supposed connection with the activities of the guerilla groups are now subject to the jurisdiction of military courts under Law 14068.7/72. The way in which these courts operate has been the subject of a memorandum on Military Justice in Uruguay prepared by five defence lawyers (Drs Jorge Arias, Azucena Berrutti, Alberto Caymaris, Mirka I. Garmendia, and Fernando Urioste). The President of the College of Advocates has conveyed it to the Minister of National Defence and it has been referred to the Military Supreme Court, and discussed in the Legislative Committee of the Senate.

Among the complaints put forward in the Memorandum are the distrust shown by the military courts towards defence lawyers, the lack of independence of the military judges, their lack of proper training for their increased jurisdiction, the incompetence of the court officials, the intolerable delays in all proceedings, the long period of detention (usually lasting several months) before it is decided whether a prisoner shall be brought to trial or released, the nomination by the courts of unqualified military "public defenders" to represent the accused (even in cases where they have stated the names of lawyers they wish to represent them), the difficulties for lawyers in obtaining interviews with prisoners and the presence of guards to control and censor the interviews, the removal of prisoners to places remote from their relatives and lawyers, the unwillingness of courts to listen to arguments based on procedural issues, the joint trials of unrelated cases, the clogging up of the machinery for appeals through bureaucratic incompetence, and finally the disregard by the military authorities of decisions by military courts, including those for the release of prisoners.

Given this general situation, it is perhaps not surprising that the Government of Uruguay has not replied to the proposal made by the International Commission of Jurists to be allowed to send an impartial mission to study the problem of terrorism and the rule of law in Uruguay (see REVIEW No. 9, p. 1). This proposal was in response to a suggestion made by the Government of Uruguay at the time of our article in REVIEW No. 8. At that time, however, the Government enjoyed greater freedom of decision than it now has.

Note:

The above note was written before the Decree of June 27, 1973, by which President Bordaberry, with the support of the armed forces, dissolved the parliament. On the following day he dissolved the 19 elected municipal councils of Uruguay, thus completing the establishment of a military based dictatorship. His action contrasts with the successful maintenance of democratic institutions by President Allende in Chile when subjected to similar pressures.

Human Rights in the World

Torture Continues

A report last year by Amnesty International¹ says "There has been a growing tendency throughout the world for governments to authorise or condone the use of torture, or cruel, inhuman or degrading treatment. There are several countries where, within a period of a few years, the use of torture, at the outset sporadic and exceptional, has become an invariable part of any interrogation". Interrogation by torture is no new phenomenon, but the scale upon which it is used disgraces our modern civilisation. One would like to be able to report that the development of human rights consciousness and the attention given to reports of torture and maltreatment of prisoners had made governments moderate the use of it. In a few cases this may be true, but in most, the only effect is to make them more careful to conceal it.

The use of torture is, of course, prohibited under international law. Article 5 of the Universal Declaration of Human Rights says that "No-one shall be subjected to torture or to cruel, inhuman or degrading treatment". The International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms and The American Convention on Human Rights contain similar provisions. What is lacking is any effective machinery for enforcing them. The most detailed examination by an international body of the use of torture was in the case brought by certain Scandinavian countries against Greece before the European Commission on Human Rights, in which it was found that torture was in use as an administrative practice. When the Greek Government learned that this finding was to be made against them, they withdrew from the Council of Europe. Since then repeated evidence has come from Greece of the continued use of torture. Among recent well-known cases are those of the war-time hero Wing-Commander Minis, Alexander Panagoulis, and Christos Sartzetakis, the judge made famous throughout the world by the film "Z". The continued use of torture against political suspects was the subject of a protest signed by 54 inmates of Korydallos prison and released to the press by the ICJ and Amnesty International in October 1972. The six lawyers arrested for defending students in the wake of university protests are commonly believed to have been tortured savagely, as are several of the detained students themselves.

Brazil is one of the countries which makes the greatest use of torture. The 1970 Report of the ICJ on torture in Brazil led the Inter-American Commission on Human Rights to conclude that the "evidence collected . . . leads to the persuasive presumption that in Brazil serious cases of torture, abuse and maltreatment have occurred" and to recommend to the Brazilian

¹ "Report on Allegations of Torture in Brazil", Amnesty International Publications, London, September 1972, p. 6. Amnesty International have since stated that they have inquired into the situation in 139 countries. They have some indication that in 63 countries the authorities use torture and of these they are satisfied that 34 use it as a regular administrative practice. There were only 26 countries which they were satisfied did not use torture at all.

Government "that it carry out an investigation by independent judges, not subject to military or police influence" (cf. ICJ REVIEW No. 8, p. 4). This recommendation appears to have been ignored. In its recent report referred to above, Amnesty International names 1081 persons reported to have been tortured in Brazil and some of the torturers. It is becoming increasingly difficult to identify the torturers, as suspects are arrested and detained in secret with a hood placed over their heads, both when taken to their place of detention and when subjected to torture. No information of their whereabouts or even of their arrest is given to their families, friends or lawyers. The most inhuman methods are employed including, in addition to conventional beatings, electric shocks and even the use of insects, rats and snakes on women prisoners.

Increasing reports on the use of torture are coming from Turkey. As elsewhere, electric shock methods are employed. There have recently been reports of the arrest, torture and subsequent release of lawyers who have undertaken defences in political trials. No charges are preferred. The technique is the same as that described in Brazil in ICJ REVIEW No. 5, and the object appears to be the same, intimidation.

In October 1972 the United Nations' Special Committee on Apartheid published a detailed report on torture of prisoners and suspects under interrogation in South Africa (U.N. Doc. A 8770, 26 September 1972). In addition to this and other reports of torture in South Africa itself, there are also detailed reports of detention and torture of prisoners in Namibia, over which South Africa continues to exercise its illegal jurisdiction. A report issued by Frau Lenelotte von Bothmer, a member of the German Bundestag, gives detailed descriptions by eyewitnesses of tortures in Northern Namibia, including beatings, electric shocks, hanging on poles, confinement in overcrowded vans for long periods without food, and the unleashing of dogs against prisoners. Some victims have died under torture.

Allegations of torture in Iran were described in 1966 in ICJ BULLETIN No. 26 (at p. 24) and in 1972 in ICJ REVIEW No. 8 (at p. 7). No independent enquiry into these allegations has been permitted, but western observers at trials have seen scars which prisoners have alleged were caused by torture. One of the methods of torture frequently alleged is placing the suspect on a metal table heated to high temperatures.

The European Commission on Human Rights has begun hearings of charges brought by the Republic of Ireland against the United Kingdom in respect of alleged torture and ill-treatment of suspects by British troops and security authorities in Northern Ireland. The British Government have accepted Lord Gardiner's condemnation of such practices as standing hooded prisoners against a wall for long periods and subjecting them to continuous and monotonous noise (cf. ICJ REVIEW No. 8, June 1972).

Confirmation of reports of ill-treatment and torture of prisoners in Uruguay is found in the report of a three member delegation of United States Churchmen who visited Uruguay in June 1972. They reported that there was "impressive evidence that . . . both physical and psychological torture is practiced on political prisoners by the Joint Forces (military and police) as part of the current repression purportedly aimed at the Tupamaros, but in fact extended widely to broad segments of the population for political reasons". They stated that, in reply to frequent questions, no-one during their entire visit denied that such torture was practiced, and a top

government leader excused it on grounds of necessity for the defence of the state.

An article by Sydney H. Schanberg from Saigon dated August 13, 1972, and distributed by the New York Times News Service contains detailed accounts given by civilian prisoners of their torture in South Vietnam, where thousands of suspects are held for months and years without trial. The methods employed include beating a woman with a wooden rod and forcing her to stand naked and burning her breasts with lighted cigarettes; driving needles through a student's fingertips and battering his chest and soles of his feet; beating another woman, hanging her by the feet, and putting her in a small half-flooded room and allowing mice and insects to run over her body. Prisoners subject to interrogation could hear the screams of other people being interrogated. The authorities refuse to allow journalists or other independent observers to visit the prisons but, as Schanberg comments, "the widespread reports bear out the prisoners' version". Many informants quote a favoured police saying, "If they are innocent, beat them until they become guilty".

Reports by released U.S. Prisoners of War seem convincing that North Vietnam also has used torture as a method of obtaining propaganda statements and information.

In May 1973 a letter was delivered to the Spanish government, signed by 595 professional people, calling for investigations of police brutality and torture, and giving particulars of 22 cases which followed the May Day killing of a policeman by left wing demonstrators.

The above examples are not exhaustive and cover only some of the countries prominent in the use of torture.

The purposes for which torture is used are to obtain confessions, to obtain intelligence and to intimidate. As a method of obtaining confessions and intelligence it is crude. Against those few who have the physical courage to withstand it, it is ineffectual. Against others it tends to produce confessions or information which the suspects think will lead to the cessation of their torture. As such it may be unreliable. However, where sophisticated trained interrogators are lacking, it is the method most often used. As a means of intimidation it is an essential and generally effective instrument of government in a police state.

One common feature of countries where torture is widely used is that there is no effective judicial control of the executive. *Habeas corpus*, *amparo*, and similar remedies, where they exist, are suspended. The security authorities, civil or military, are able to arrest, detain, interrogate and torture suspects in secret without being accountable to anyone. In consequence they are, and know themselves to be, beyond the reach of the law. In many of these countries if suspects are eventually brought before a court or, as more often happens, before a military tribunal and complain that they have been tortured, the judges make no attempt to enquire into the complaint, and accept confessions and evidence alleged to have been obtained by these means. In any event, it is usually impossible to obtain corroboration of a complaint unless the prisoner has been medically examined by an independent doctor within a short time of his alleged torture. The most important safeguards against torture are the bringing of all arrested persons without delay before a court and the control by a truly independent judiciary of the circumstances of their detention with frequent appearances of the detainees before the court until such time as they are brought to trial.

Greece

Illegal repression and brutality have continued on a mounting scale in Greece during the first half of 1973. In protest against the tight military controls imposed on the universities and the rigging of the elections to the student council, there were demonstrations and student strikes early in the year at several universities. Strikes were also mounted, especially at Athens Polytechnic, against the opening of branches of foreign universities in Greece. When police raided the campus to disperse student demonstrations in February, students leaders were arrested and many others injured by police violence. The Senate of the Polytechnic resigned *en masse* in protest.

The regime retaliated by a decree empowering the Minister of Defence to revoke deferment of national service for students who abstained from classes or incited others to do so. Even before this, deferment could be cancelled for violations of the penal code, or for disciplinary measures taken by the university authorities. This decree provoked further reaction from the students, the protests spreading to the law faculty and other parts of Athens University. On February 15 and succeeding days, over 100 student leaders were drafted into the army. In spite of protests by students and such prominent persons as Mr. Panayotis Kannelopoulos, former Prime Minister, Mr. Dimitrios Papaspyrou, former Speaker of Parliament, and several retired generals, the call-up orders were not revoked.

By the end of March, the universities had largely re-opened after the government had made some taken concessions to the students' demands. However, although the regime appeared somewhat unsettled by the extent of the opposition to their actions against the students, there was no real relaxation of government control and the students realised that they were still not to be allowed to control their own affairs. There was another series of protests in April. Observers were shocked by the brutality which the police showed in putting down the demonstrations. In spite of governmental assurances that the students drafted following the demonstrations would be allowed to take their examinations, many were transferred to remote outposts, where they could not carry on their studies, and there have been reports that they have been badly maltreated in the army. Many students are still in detention without having been charged, and many of these are believed to have been tortured.

Meanwhile, seven lawyers who had acted for or advised students arrested during the first wave of student protests, were themselves arrested in February and April. These lawyers are still in detention under the pretext that they are being held as instigators of the student activities. There are circumstantial reports that they have been savagely tortured in the notorious military interrogation centre in Athens. They have not been charged with any offence or allowed to see counsel.

In April a delegation of three well-known North American lawyers, Mr. Morris Abram, Professor John Humphreys and Mr. William Butler, went to Greece in response to this threat against the freedom of the legal profession. They represented variously the International Commission of Jurists, the International League for the Rights of Man, the International Law Section of the American Bar Association and the Association of the Bar of the City of New York. Sir Elwyn Jones, former Attorney-General of England, also went on a similar mission from the United Kingdom. The

Greek Government did not accord these distinguished observers even the courtesy of a meeting with government ministers or officials, treating their inquiry as an improper interference in the " domestic affairs and implementation of Greek Justice ".

They were, however, able to meet Mr. Philip Anghelis, President of the Athens Bar Association, to express their professional concern for colleagues imprisoned without charges, and the consequent adverse effect on the right to practice law and on the independence of the judiciary. Mr. Anghelis expressed the extraordinary position that this was not a matter for the Bar Association because the seven were in detention for " subversive activities " unconnected with their defence of the students, and in any case, since Athens was under martial law these matters were exclusively for the military authorities. Mr. Anghelis, who was nominated to his post by the government and not elected by his colleagues, is a cousin of the chief of the armed forces.

The report of this observer mission makes it clear that in detaining the seven lawyers without charge, the government is violating both the Greek constitutional provision for arraignment within 24 hours of arrest (Article X), and the Code of Military Procedure provision for arraignment within 20 days (Article 278).

In February the ICJ sent an Observer to the trial of Wing Commander Anastasios Minis, a World War II hero, and Dr. Stephanos Pantelakis. They were accused of setting off a series of bombs in Athens in 1971 and 1972. The accused readily admitted that they had done so, but pointed out that the " bombs " were more in the nature of large fire-crackers, that care had been taken to prevent injury to any person, and that they were purely a protest against repression. The two were found guilty and Minis sentenced to 9 years 10 months in prison and Pantelakis to 7 years 8 months. There is convincing evidence that both were heavily tortured but, as in other cases, the court made no effort to go into the matter when it was raised at the trial. In the words of the Observer, Professor Martin-Achard, " the judges in this case were in effect accomplices in torture ".

Among other prominent democrats in Greece who were arrested in March, allegedly for conspiring with the students, are Professor John Pismazoglou, the distinguished economist who negotiated the Greek treaty of association with the European Common Market, Mrs Virginia Tsouderos, daughter of a former Prime Minister and Secretary-General of the dissolved Society for the Study of Greek Problems, and Professor Dimitrios Tsatsos, who were arrested in Athens on March 28 and have been held illegally without charge for over three months in solitary confinement. Mr. George Mangakis, the prominent defence lawyer, was also arrested and charged with fomenting student revolt, but released on bail.

Following the attempted revolt by a part of the Greek navy, a large number of officers have been subjected to some of the most severe torture ever known even in the EAS interrogation centre. The number of arrests which have followed indicate how widespread was the support for the coup attempt not only in political circles but within the armed forces. They expose the emptiness of the claim that it was only a few disgruntled politicians and students who opposed the dictatorship.

The colonels seized on the military revolt to abolish the Greek monarchy, a further illegal act by an illegal regime. They now attempt to clothe it with legality by staging a " referendum " on July 29. The so-called referen-

dum will be a farce and a perversion of the democratic process. People will be able to vote only "yes" or "no" on approval of the abolition of the monarchy, the election of Papadopoulos as President for seven years and General Anghelis as Vice-President, and a vague proposal for a presidential parliamentary republic at some unspecified future date. Mr. Papadopoulos and General Anghelis will be unopposed, and the government spokesman has already explained that a "no" vote would result only in a new plan being submitted for approval. As no-one has any confidence in the integrity of the election, it is only the Government who will know the true response of the Greek people to this charade.

Indonesia's Concentration Camps

In the ICJ REVIEW No. 4, December 1969, we commented on the continued detention of thousands of political prisoners in Indonesia. Following an attempted coup in 1965 the government arrested 200,000—300,000 persons. According to the government, all were suspected of involvement with the Communist Party of Indonesia (PKI), which was reported to be behind the plot.

Today, almost 8 years after the attempted coup, there are still at least 55,000 persons being detained without trial. The government acknowledges that there is no evidence against the greater number of them, but they will continue to be held indefinitely nonetheless.

The prisoners are divided into five categories. The official decree defines category 'A' prisoners as those "clearly involved directly . . . those who planned, took part in planning or helped in the planning . . . or had foreknowledge of (the treacherous movement)", or who otherwise participated actively. Subsequent events have shown that the government does not adhere to this definition, but includes in this category many people who took no part in the coup, and had no connection with it, but whom the government fear might form an effective opposition, e.g., former Cabinet Ministers who had no connection with the PKI. Category 'B' prisoners are supposed to be those "clearly involved indirectly", and who "have assumed an attitude, whether in actions or in words, of supporting this movement, or of opposing or retarding efforts to suppress it", and also includes lesser members of the PKI and of similar organisations. The third category, 'C', is the most numerous, composed of persons only suspected of being communist sympathisers. Again, categories B and C have been interpreted widely to include people with no kind of communist connection. Besides these classified persons there is also a category 'X' for those who have not yet been put into one of the other classes, or who are being reclassified, and an undefined category 'F'. The government's declared intention is to bring to trial those in category 'A', to detain indefinitely without trial those in category 'B' and to release in stages those in category 'C'. Detainees in categories 'B' and 'C' are said to be undergoing 're-education' to fit them for some sort of release.

Despite widespread concern for the plight of these political prisoners, the lack of action on the part of the Indonesian Government displays a

remarkable callousness towards the humanitarian problems created by the prolonged detention of so many people, as well as indifference towards the Rule of Law. While their statement that it is impossible to try so many people all at once may be understood, their failure even to know how many people are actually detained is something else entirely. The figure of 55,000 is claimed as a conservative estimate by Amnesty International, an estimate based on conflicting statements by top government officials. In 1971, the then Attorney-General Sugih Arto told a news conference: "It is impossible to say how many political prisoners there are. It is a floating rate, like the Japanese yen vis-a-vis the dollar". This is true in the sense that arrests are still going on,

The matter of arrests is obscure, not so much on the score of government secrecy as because of apparent confusion and lack of information by the central authorities. It seems that no effective control has been placed on the powers of arrest, detention and interrogation, functions which are carried out at local levels by army personnel.

The continued arrests have little if any connection with the 1965 attempted coup. But classification continues to be based on the guidelines established in 1965. As there is no Indonesian equivalent to *habeas corpus*, and no procedure for judicial review, arrest, detention and release are haphazard, and often depend on the whim of the arresting officer. Arrests are sometimes made after denunciation by someone who has a personal quarrel with the victim, and it is later difficult to obtain release although no political connection has been established.

After arrest, detainees are held locally awaiting interrogation or transfer to prisons. The local commander is free to release those whom he decides pose no danger, and some detentions are therefore of relatively short duration. However, reports say that thousands of persons are held at any one time in local detention centres, and that sometimes these people are detained for years. If they have some special skill, or show a willingness to co-operate, they may be made interrogators, clerks or personal servants of the detention centre personnel.

It is the detention of these persons that make the figures given by government officials so difficult to rely upon. There are no effective procedures requiring officers to handle detainees in any particular fashion, or even to report exactly who and how many people are held, or for what. There have been several instances of local commanders ignoring or subverting higher level orders to release or report prisoners.

The one thing that can be said for the detention at local levels is that before a prisoner is sent on to the central prisons he still has some hope of release within a reasonably short period. Once transferred to the prisons, however, he must await interrogation by special investigating teams who have power to order his release. It may be months, however, before these overworked teams get around to him, and when they do their concern is not justice but security. When the prisoner has been classified, he gives up all hope of an early release. The 'B' and 'C' prisoners are held without trial, indefinitely; and the 'A' prisoners must await the slow working of the judiciary for their trials.

One problem frequently cited by the Indonesian authorities is the lack of trained personnel to conduct the trials. A 1969 seminar of Chairmen of High Courts of Indonesia, held by the Supreme Court, revealed that

there were 1,689 judges in State Courts (*Pengadilan Negeri*, or courts of first instance) in Indonesia, of which 792 have law degrees, and 897 do not. In the High Courts, (*Pengadilan Tinggi*), there are 96 judges, 79 of whom have law degrees, and 17 who do not.

There are probably about 5,000 'A' prisoners, but in the six years since the attempted coup only about 300-350 have been brought to trial. At this rate, it would take well over 100 years to complete the process. Such dilatory procedures are in themselves a denial of justice.

The trials which are taking place are conducted with little regard for the rights of the accused and there have been reports of torture during interrogation and of considerable infringements of the right to counsel. Sentences have been extraordinary severe, with a high proportion of death sentences. An Indonesian press report of a case in which the death sentence was passed on one Col. Sudiono said:

"The tribunal was of the opinion that the crime committed as described above is a formal violation. This means that the most important thing is his behavior. Based upon an interpretation of the considerations for Article 1, paragraph 1 of Law No. 11, PNPS, 1963, it is not necessary to prove that there were efforts to undermine the authority of the government; it is enough if there was a tendency in that direction".

10,000 category 'B' prisoners have been deported to permanent exile on the island of Buru, where they are held in camps and are forced to work in the fields. The conditions are harsh, and after 8 months of detention during which a prisoner is fed by the government, he only gets food if he works for it. There are a large number of artists, writers, and intellectuals there, but they are not allowed to work at their former professions. These include an eminent professor and jurist, Mr. Suprpto.

In an interview in *Le Monde* of 17 November 1972, President Suharto offered two justifications for the continued detention and exile of 'B' prisoners. First he said that if they were released society would reject them, but that on Buru they can "cultivate the earth among a population which ignores their culpability". The second justification, which the Indonesian Government had not put forward before, is that this exile achieves a social purpose in redeployment of population by reducing the over-population of Java and removing people to the more sparsely occupied outer islands. These are extraordinary justifications for detaining thousands of people without trial in concentration camps in an island populated by people speaking a different language. Nevertheless, the government has said it plans to establish more 'resettlement' camps like Buru, and has mentioned at least two sites which are under consideration.

The government says that those on Buru island will be released when they have changed their way of thinking and can be allowed to become a part of society again. This does not mean, however that they will be allowed to leave Buru, or to take up their former lives. According to the government's own statements it simply means a relaxation of some of the disciplinary rules.

Part of the 'release' process involves bringing the families of married prisoners to live on Buru with the men there. This, however, will be more nearly exile for the families than an amelioration of condition for the prisoners. There are no schools available for the children, and the government does not want the fathers to educate their children because of the danger

of transmitting their 'dangerous' social views. The island is nearly completely isolated from the outside world, and is mostly covered with jungle. There is no prospect for them of ever returning to their former homes. It is not surprising that even an official government survey in 1971 revealed that 75% of the women would rather divorce their husbands than rejoin them, if it meant moving to Buru.

The condition in all the prisons are markedly below the United Nations' Standard Minimum Rules for the Treatment of Prisoners. The food is inadequate to sustain health, and the prisons are virtually all far beyond their intended capacity. Letters and reading matter are forbidden, and visits are allowed only rarely, even if the family knows the prisoner's whereabouts, or even knows he has been arrested at all. The harsh conditions under which the prisoners are held is attributed to the low living standard of everyone in Indonesia.

The families' situation is also difficult. In addition to losing the breadwinner or mother, other members of the family find it difficult to get employment. It is necessary to have a 'certificate of non-involvement' in the 1965 coup attempt to find work. This is naturally difficult for those whose relatives are in jail for suspected involvement. There is also evidence that prisoners' families are sometimes actively harassed.

In August 1972 in his Address of State before the House of Representatives President Suharto announced that all 22,000 'C' prisoners had been released, but since the government will not publish the names of the prisoners or allow outside observers to visit them there is no way of verifying this. An indication to the contrary appears in the *Le Monde* interview in November 1972 in which President Suharto indicated that there is still a category 'C', which carries the implicit meaning that all these prisoners have not yet been released. In addition, there is reliable information that some 3,000 'C' prisoners were still detained in camps in central Java in the first week of October of last year. It is not known whether these inconsistencies are due to a failure by district commanders to carry out orders to release detainees, as some have suggested, or whether the government is putting out false information for propaganda purposes.

The situation of Indonesia is not strictly analagous to that of other countries where there are large numbers of prisoners in jail some years after an attempted action against the government. In those cases it is simply a question of urging the government to try quickly those prisoners against whom it has evidence of involvement, and release the rest. In Indonesia's case we certainly urge this course, but the situation is complicated by the continuing nature of the arrests and the continuing failure to stabilise the procedure in respect of those arrested. If the Indonesian Government wishes to make any claim to being a just society, it must at least bring the arrest and detention procedure under effective control, with a view to hastening its end. The political situation seems to be under control; surely there is no need to continue measures established in the wake of a rebellion.

As for those already in detention, we would urge the Indonesian authorities once again to review these cases urgently, to bring to trial speedily those against whom there is real evidence of complicity in illegal activities, and to release the remainder. We cannot believe that their continued detention is necessary for the maintenance of public order and security in Indonesia. Nor do we find convincing the argument that they

would not be "accepted" by the population. If the suggestion is that they could not be allowed for their own safety to return to their villages, the obvious alternative is that their resettlement should be worked out with the United Nations Development Program and other agencies, as suggested in our REVIEW No. 4, p. 14. Detainees willing and able to emigrate should be allowed to do so.

Morocco

On 23 September, 1972, the King of Morocco appealed to all political parties to form a government of national coalition. Nothing came of this initiative, as the King was not prepared to accept the degree of liberalisation demanded by the principal opposition party, the National Union of Popular Forces (NUPF).

On 2 April, 1973, a government decree suspended the Rabat Branch of the NUPF, which was accused of having "served as a cover for a secret subversive and illegal activity". It was alleged that it had links with the guerilla activities in two areas in the region of the Atlas Mountains. A number of its leaders and members are now being tried before a military tribunal.

The NUPF was established in 1959, Mehdi Ben Barka being one of its founders. The Rabat Branch was formed on July 30, 1972, arising out of a split within the NUPF, and it has been the most critical of the government. The decree for its suspension, the wave of arrests throughout the country in recent months covering all social strata (lawyers, students, political leaders, trade unionists, etc.), the seizure of opposition newspapers such as "Al Alam", "l'Opinion" and "Al Muharrir" show that the period of the "overture" is at an end and has been replaced by a policy of repression. The Government has taken a series of measures directed at suppressing the activities of those who "seek to undermine the institutions of the Kingdom". The substantial powers concentrated in the hands of the executive in Morocco enable it to intervene in any sphere of activity and to strike at those whose acts are thought liable to "disturb the public order".

The law which governs freedom of association, assembly and the press is the Code of Public Liberties. Dating from 15 November, 1958, its provisions were known for their liberal spirit. On April, 1973, the Code of Public Liberties was amended in a most restrictive way. Penalties were increased, as were the powers of the executive. Most of the new provisions are attributed to a concern for "internal order".

The right of association is now subject to a preliminary declaration by the persons wishing to associate (including political parties). In addition to the former grounds for dissolving an association, the regional tribunals may now order their dissolution at the request of any interested party or at the instance of the Minister of Justice if it appears that the activity of the association is of such a nature as to "disturb the public order". The former safeguard that a dissolution had to be ordered by a tribunal has been removed, as it now provides that "the suspension of an association for a fixed period or its dissolution can also be ordered by decree".

Similar restrictions apply to the right of assembly. Whereas, before, a meeting could be suspended only at the request of the organisers if serious trouble arose, government authorities can now order the suspension of a meeting if they consider that it disturbs or is liable to "disturb the public order". Greater powers are also given to disperse public meetings and marches which "could disturb the public order".

Restrictions are also imposed on freedom of the press. Article 42 provides that "the publication, distribution or reproduction by any means of false information, or of invented falsified or lying statements attributed to third parties shall, if they have disturbed or are liable to disturb the public order, be punished by imprisonment from 1 to 5 years or a fine of 1,000 to 100,000 dirhams or both". Both punishments are to be imposed where the offence is of such a nature as to undermine the discipline or morale of the armed forces. The penalty for "insulting the King or the Princes or Princesses Royal" is increased from 5 years' imprisonment and/or a fine of 1,000 to 100,000 to 5 to 20 years' imprisonment and/or a fine of 100,000 to 1 million dirhams, and no account is to be taken of mitigating circumstances.

All these provisions introduced into the Code of Public Liberties appear to conflict with the provisions of the Moroccan Constitution guaranteeing the fundamental rights of citizens.

The position concerning individual rights and defence rights have been severely affected by Law No. 2/71 of 26 July, 1971. This contains amendments and additions to the Code of Military Justice. The law of 26 July, 1971, was passed a few days after the abortive military coup d'état at Skhirat and was applied retrospectively to the persons prosecuted for their part in this affair. Since then, several hundred people have been accused before military tribunals with "crimes and offences against the safety of the state". Law No. 2/71 is in a double sense emergency legislation, since it amends the Code of Military Justice which is itself a piece of emergency legislation. The principal features of this law are as follows:

- (a) the elimination of the examining magistrate; arrested persons are brought before the Royal Prosecutor and the preliminary examination is entrusted entirely to the judicial police without any supervision by a magistrate.
- (b) the increase in the period of police detention from 48 hours to 10 days; indefinite extensions can be authorised by the Prosecutor.
- (c) release on provisional liberty (bail) is no longer possible.
- (d) impossibility of legal advice or assistance for the accused during the preliminary examination now conducted by the police.
- (e) a maximum period of five days is given to the defence lawyer before the trial in order to study the case, take instructions from his client and prepare the defence.
- (f) the reduction from 8 days to 24 hours of the time allowed for formulating a notice of appeal, and from 20 to 15 days of the period for depositing the statement of legal argument by the defence.

Apart from these severe limitations on the procedures normally to be found in a state governed by the rule of law, there are widespread reports of the arbitrary arrest, detention and torture of opponents of the regime.

South Africa

Recent developments in South Africa indicate some minor breaches in the unified structure of *apartheid*, but at the same time there is a strengthening of general political repression.

The "multinational" South African Games in Pretoria in March 1973 were an attempt to overcome the isolation in sport resulting from *apartheid*. The multinational concept makes the Africans, coloured and Asians separate "nations" within the South African state, and thus allows competition between racial groups while retaining the structure of *apartheid*. The limitations of the concept are illustrated by a May 29 order by the Minister of Sport, preventing inter-racial soccer matches between white and black teams in Newcastle, Natal. The matches had been going on for a month, attracting inter-racial crowds to games between factory and school-boy teams. Although there had been no complaints from the public, the games were declared a violation of the Group Areas Act after a complaint by the local Nationalist Member of Parliament.

The right-wing Herstigte Nasionale Party (HNP) expressed opposition to the Games in a pamphlet which said, "At the stadium non-whites will use the same toilet facilities as whites. (If this process continues in sports)... we shall ultimately be powerless to prevent integration in any area". While the HNP is correct in regarding the Games as a logical inconsistency in the *apartheid* system, there is no reason to think that the mixing of the races on the athletic field will be carried into other fields. The Games were seen by most observers as nothing more than a ploy to cultivate world opinion while maintaining *apartheid* in all other areas.

Like the advances in the field of sport, the small advances in the labour area are a result of both internal and external pressure. Labour conditions for black workers in South Africa have always been abominable. Their wages are markedly less than those of white workers. According to a report by the International Labour Organisation, whites are paid from four times as much as blacks (in banking) to 20 times as much (in mining). In recent years the gaps have been increasing. In a more or less typical situation, the South African Institute of Race Relations notes that, although the minimum wage necessary for survival is 101 Rand per month in Soweto, only 29 to 32 per cent of the residents there earn more than 60 Rand, and most far less.

Inevitably, the dissatisfaction of African workers has increased. In early February of this year some 50,000 black workers went on strike in Durban, Natal, demanding higher wages, even though it is a criminal offence for black workers to strike for any reason whatsoever. (Although black unions are not specifically barred, they are not allowed to negotiate on behalf of workers.) Some minimal wage increases were granted, but the strikes could not continue long because of the lack of any organised effort. Nevertheless, there was some stirring of realisation by the white authorities that unless reforms are initiated there could be major trouble.

The British newspaper *The Guardian* touched off a furore in England with reports that British firms in South Africa were paying black workers far below the poverty line. Some of the firms granted increases to their black workers, and others indicated they would not allow the disparities to continue at present levels. In another development, the United States State Department "advised" U.S. firms in South Africa to raise Africans' pay rates to at least the poverty line. An international trade union conference against *apartheid* organised jointly by the three international trade union organisations in June 1973 in Geneva gives hope of increased trade union support for African workers.

While there have been these minimal improvements in sport and labour, the general atmosphere of political repression has grown worse. The I.C.J. has commented many times on the movement of South Africa towards a police state system and the tendency to label any criticism of its policies as subversive. On February 27 Prime Minister Vorster announced banning orders against 8 leaders of the White National Union of South African Students (NUSAS) for endangering internal security, under the infamous Suppression of Communism Act, after an investigation by a Parliamentary Commission of inquiry composed of members of both the National Party and the opposition United Party. A few days later the entire six-man leadership of the black South African Student Organisation (SASO) was also banned, along with two other black student leaders. Although there was considerable outcry in South Africa, both from the English-speaking press and from the universities, the 5-year banning orders remain in effect. The commission of inquiry is to be formed into a permanent investigating body to probe "subversive" organisations, and is continuing its investigation of NUSAS.

There are reports that the actions against NUSAS and SASO are only the first steps toward a gradual tightening of government control of the English-speaking universities, which are regarded by the government as far too liberal and outspoken. It is feared that the government will introduce a Bill in Parliament in the next few months which will impose substantial fines on universities for each student who is "arrested in the course of public political agitation", regardless of whether he is later charged with an offence or convicted. Universities would also be fined an amount equal to the salary of any member of a university staff who is arrested during a protest. These measures were recommended by another investigating commission under Mr. Justice van Wyk de Vries, along with other measures aimed against the universities' autonomy. It is particularly disturbing that such recommendations should come from a body headed by a jurist.

In another action directed against the universities, the government closed the Coloured University of the Western Cape in June 1973, after a series of non-violent student demonstrations. It has been announced that all students will have to re-apply for admission before the University will reopen. The Minister of Coloured Affairs predicts that 95 per cent of the readmissions will be "just a formality", but student leaders are naturally afraid that the readmissions policy is a tactic to weed out troublemakers.

The government has backed down from its position, but the students say they will not re-enrol without further reforms.

Two other pieces of proposed legislation would increase repressive measures still further. The Citizenship Amendment Bill empowers the Minister of the Interior to revoke, without a judicial hearing, the citizenship of any South African who is entitled to dual nationality and specifically forbids either an appeal or access to any official reason for the action. This would mainly affect South Africans who are entitled to British citizenship, and could easily be used to silence those whom the government do not like.

The second Bill would make open air protests in the centre of Cape Town illegal without the express permission of the chief magistrate. The reason given for the proposed legislation is to protect the dignity of Parliament, but there is no provision to limit application of the Bill either to the immediate vicinity of the Parliament, or to days when Parliament is actually sitting. Even though the Bill has not yet been passed, a quiet protest against it by about 40 people was declared illegal and dispersed on May 15.

The government has also threatened to impose censorship on the press if it "incited racial hatred, endangered the safety of the country or damaged South Africa's name abroad". Although denying that legislation to this effect was actually planned, the Minister of the Interior recently warned the press that it should "act in such a way that it will not be necessary for the government to act against press freedom", and cited these three areas as those which the government might regard as necessitating regulation.

Advocacy in a Police State

Any lawyer who wishes to understand what it is like to strive for justice in a sophisticated modern police state which pretends to uphold the rule of law should read Joel Carlson's *No Neutral Ground* (Thomas Y. Crowell Co, New York, \$8.95; Davis-Poynter Ltd, London, £4.00).

Carlson, who became the representative of the International Commission of Jurists in South Africa, was a native-born South African. He began as a civil servant working in a Native Commissioners Court. What he saw there determined him to become an attorney to try "through the avenues of the law and the courts to expose these injustices and to bring about real change". He did so with patience, courage and compassion for 16 years, and became a leading defence attorney in South Africa before he had to flee the country for the safety of himself, his family and his staff.

He had many successes and was able to expose the brutality, torture and inhumanity of the South African security police. Almost all his victories were pyrrhic, and the changes which resulted were for the worse. Acquitted defendants were rearrested under the Terrorism Act and held in detention beyond the reach of the law. The illegal farm labour system, a modern form of slavery, operated with the connivance of magistrates and police

was exposed, only to be legalised in more subtle form. Finally, Carlson concluded, "it became clear to me that my opposition to the régime, carried on within its framework, helped to maintain the status quo. The irony of the situation was that my work was assisting the régime to present an overall image, at home and overseas, of judicial integrity and a fair legal system. I was, in fact, part of the facade of democracy in South Africa". This is his bitter epitaph to his fearless struggle for justice.

Sri Lanka

In April and May 1971 the government of Sri Lanka (formerly Ceylon) was challenged by an armed insurrection. Acting under emergency powers the government arrested about 18,000 people in putting down the insurrection. Some 14,000 of these have been released after their cases were processed by a Special Investigating Unit. There are about 4,000 still in detention who have been neither charged nor tried, and many of those released are awaiting trial in magistrates courts and district courts on charges relating to the insurrection. Although most of them are allowed access to lawyers in practice, this is not provided in law for all of them, and there is no limit on the time they can be held without trial. In this review of recent legislation and its effects it is suggested that the Sri Lanka government should now release by amnesty those prisoners who have no prospect of trial in the foreseeable future, and should consider whether the time has not come to allow more of the Emergency Regulations to expire.

The Emergency Regulations

A large part of the Emergency Regulations is still in force, and they are submitted to the legislature periodically for review and renewal. Under them any person may be detained if the Secretary to the Ministry of Defence and Foreign Affairs believes that his detention is necessary to prevent his acting in a manner prejudicial to public safety or order, or the maintenance of essential services, or to prevent him from bringing or attempting to bring the government or the Constitution into contempt or hatred; from inciting, inducing, or encouraging feelings of hatred or hostility between different sections, classes or groups of the country; or from inciting people working in essential services to strike, or preventing them from carrying on their work.

If imprisoned for danger to public safety, the prisoner may petition the Prime Minister, and may also petition an Advisory Committee who must tell him the grounds on which he has been detained and allow him to consult a lawyer. The Advisory Committee's report is submitted to the Minister who ordered the arrest, and who may then rescind the arrest order. But if imprisoned for belonging to an organisation which has been proscribed as a subversive organisation he is not allowed to make submissions to anyone concerning the validity of the order under which he was detained.

Besides those arrested under the authority of the Emergency Regulations, many others were arrested or surrendered during the actual fighting. These persons are denied the normal procedures and rights, and their only means of petitioning any authority for their release is through a Magistrate who visits the prison periodically to record their representations, and forward them to the Secretary to the Minister of Defence for consideration. In no case can any tribunal challenge an arrest order, and habeas corpus is denied to all persons held under the Regulations, so that the sole means by which release can be obtained is by administrative decision.

Trials may be either before a regular court, or before the Criminal Justice Commissions discussed below. In a trial before a regular court any statement of the accused may be used against him if recorded by a police officer of the rank of Assistant Superintendent or above, and the statement of one accused may be used in evidence against another, if corroborated by other evidence. The burden of proving that such a statement is inadmissible is on the accused, though in ordinary Sri Lanka law the burden of showing admissibility is on the prosecution.

Under the Regulations the Prime Minister has wide powers to proscribe organisations, ban meetings or prohibit posters, handbills or leaflets.

Criminal Justice Commissions Act

When Criminal Justice Commissions were first suggested they were to be boards of inquiry convened to discover the causes and leaders of the 1971 insurrection. As the idea progressed, however, the Commissions were given the additional function of high-level courts of law to prosecute the offences which they uncovered, and to dispose of the cases of the thousands of detainees whose prosecutions would have overloaded the ordinary courts. When the Act came into force in April 1972 there emerged an unwieldy body, unable to ensure speedy trials of those held in detention, and with powers seriously at odds with the rule of law.

Under the Act one or more Commissions comprised of five Supreme Court judges may be set up to investigate matters relating to insurrection or rebellion, large scale currency offences, or widespread destruction of property, and they are empowered to prosecute any offences which they discover. Owing to the high standing of the Tribunal there is no right of appeal. The Act is effective for eight years and can be renewed for any number of periods of five years.

These Commissions are "to inquire into generally the circumstances which led to, and all other matters connected with or incidental to, the commission... of offences of the description and character set out in the warrant establishing the Commission... to inquire and determine whether any person or persons, and if so what persons were or were not guilty of such offences; and to deal with the persons so found guilty or not guilty" (Section 2(3)).

Commissions are empowered "to procure and receive all such evidence and to examine all such persons as witnesses, as the Commission may think

it necessary or desirable to procure or examine" (Section 6(1)(a)). They have all the powers of ordinary courts to summon witnesses and require the production of evidence, but:

"The proceedings at any inquiry before a Commission shall be free from the formalities and technicalities of the rules of procedure and evidence ordinarily or normally applicable to a court of law and may be conducted by the Commission in any manner not inconsistent with the principles of natural justice, which to the Commission may seem best adapted to elicit proof concerning the matters that are being investigated". (Section 11 (1)).

They may admit any evidence, whether or not it would ordinarily be admissible, including "confession(s) or other incriminating statement(s) to whomsoever and in whatsoever circumstances made by any person who is alleged to have, or is suspected of having, committed an offence". The burden of "reducing the weight of such a confession or incriminatory statement" lies on the accused (Section 11 (2)).

There is a right of representation for the accused, but the Commission may limit the defence counsel in the length of his pleas. The Commission may exclude the public and press. Under the wording of the Act the Commission could conduct its own investigation in an inquisitorial manner, that is by acting as the summoning and questioning power on its own initiative. The Attorney-General, however, or a counsel nominated by him may be present to "assist the Commission in the conduct of the inquiry". There is no requirement that a person under investigation in the inquiry shall be charged with any specific offence. At the conclusion of the inquiry, however, the Commission has power to convict any person whom they are satisfied beyond reasonable doubt has committed "any offence which has been the subject of such inquiry" and sentence him to any sentence, other than death, to which the Supreme Court could have sentenced him (Section 15(b)). A person who is not convicted will not necessarily be acquitted. The Commission has power to acquit a person under investigation, but only if they are satisfied that he has not committed any offence, and they may then recommend, but not order, his release. There is no obligation on the Ministry of Justice to release him following such a recommendation.

The Commissions are to try defendants in groups, and the first one to begin functioning is trying 43 defendants simultaneously, all accused of having been leaders in the rebellion. This first Commission has not made use of its inquisitorial powers, and has acted as a normal court of law, following meticulously the normal procedures for protecting the rights of the accused. The Attorney-General has framed charges against the accused to which they have pleaded, and the prosecution has set out to prove the charges, subject to cross-examination. The members of the Commission function only as judges and have shown considerable patience. One prosecution witness was still under cross-examination after giving evidence for two months. He was cross-examined by one counsel for two weeks.

Although the Act is being operated with genuine respect for the principles of the rule of law, it seems regrettable that it was drawn so widely

as to admit of procedures which would infringe many of the basic requirements for fair trials.

Moreover, this legislation, which began as an attempt to bring speedily to justice and punish those who had committed serious offences, is hardly achieving this object. The government has said that they intend to try approximately 2,500 people by the Criminal Justice Commissions, but besides the 43 brought to trial in the first proceeding, only one other Commission has been given a warrant. It is to try 5 people who are accused of violations of the Foreign Exchange laws. There is no indication when any of the remaining 2,450 people would be brought to trial or released.

The Press Council Law

The Emergency Regulations contained severe restrictions on freedom of the press, including press censorship. Control under the Emergency Regulations was ended in April, 1972, but the government soon submitted a Press Council Bill which they described as an attempt to curb the power of monopoly press interests in the country. The press combines had for some time been the object of popular anger, but the government attempted to re-institute some of the more restrictive elements of censorship at the same time. The original Bill was soon withdrawn in response to widespread criticisms, and a revised Bill was introduced in October 1972. The opposition challenged the new Bill in the Constitutional Court. When the Court had not rendered a decision on its constitutionality within two weeks, a dispute arose in the National Assembly over whether this time limit was mandatory. After some remarks made in the Assembly about the Court, all three members of it resigned, and a new court was appointed. The new Court approved the Bill, and it was passed in the National Assembly after the Opposition walked out when their demand for time to study the decision and reasons of the Constitutional Court had been refused.

The final draft of the law improved upon the original Bill by guaranteeing that journalists cannot be forced to reveal their sources of information. Nevertheless, it retains many of the objectionable features of the original Bill, and has the effect of re-instituting in large measure the censorship which was in force under the Emergency Regulations.

The Press Council consists of seven members, five of whom are appointed directly by the government. The remaining two are selected by the government from two panels, one chosen by working journalists and the other by members of journalism-related trades. The Council's powers and duties include prescribing a code of ethics for journalists, ensuring press freedom and preventing abuses of that freedom, ensuring "that newspapers shall be free to publish as news true statements of facts, and any comments based on true statements of facts", enquiring into complaints by members of the public and, where the Council considers it necessary, ordering a correction to be published and an apology to be tendered.

The law contains a provision which prohibits any newspaper from publishing any reports of proceedings of the Cabinet, or any matter pur-

porting to be the contents of any document circulated to Cabinet Ministers, or any decision of the Cabinet, unless it has first been approved by the government. It is also an offence to publish an account of any measure alleged to be under consideration by any Ministry if that measure is not in fact under consideration. It is understood that this provision was occasioned by fictitious and embarrassing reports in opposition newspapers of a measure wrongly alleged to be under consideration by the government.

The government's original justification for the Press Council Bill rested largely on the control of the largest proportion of the press in Sri Lanka by elements violently opposed to the new government, and whom it considered so irresponsible as to be dangerous. This justification seems to have been undermined considerably, however, when legislation was introduced allowing the government to take control of Associated Newspapers of Ceylon Ltd (Lake House), the largest press combine in the country, by acquiring 75% of its ownership. The two moves at once of instituting measures which would allow effective censorship of all the press, and ownership of a large part of it besides, constitute a grave threat to the principle of freedom of the press.

The New Constitution

A new constitution was adopted on May 22, 1972, and included a number of provisions to secure fundamental rights and freedoms. Chapter VI, Section 18, provides *inter alia* for equal protection of the law; life, liberty and security of person; freedom from arbitrary arrest or detention; freedom of thought and religion; freedom of peaceful assembly and association; freedom of expression; no discrimination in government employment; and freedom of movement and residence.

However, sub-section 2 of Section 18 provides that these rights and freedoms "shall be subject to such restrictions as the law prescribes in the interests of national unity and integrity, national security, national economy, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others or giving effect to the Principles of State Policy set out in Section 16". This provision is open to two criticisms.

First, it does not state expressly that the limitations must be *necessary* for public order, health, morals, etc. It is to be hoped that judicial construction will clarify that a law must be substantially necessary to achieve vital goals if it is to limit fundamental rights.

Secondly, the section provides that any law "giving effect to the Principles of State Policy set out in Section 16" may also limit fundamental rights and freedoms established in sub-section 1. The Principles of State Policy indicated in Section 16 constitute the basic guides for the laws and governance of Sri Lanka, and include such worthwhile and important objectives as the full realisation of the rights and freedoms of citizens, the securing of full employment, the rapid development of the whole country, etc. These are certainly worthwhile objectives, but the protection of fundamental rights must also be accorded great respect if a nation is to make

claim to being a free society. This section could be used to subordinate human rights to any other goal the government might wish to pursue.

Section 52 allows the passage of a law inconsistent with the Constitution if the law is passed by the National Assembly by a majority which would be sufficient for an amendment to the Constitution (a two-thirds majority). Any law so passed does not constitute an amendment, but can stand as a law in conflict with the Constitution. There are no limitations written into the Constitution to restrict the kinds of laws which can be passed under the Section, but it would cover, for example, the Emergency Regulations currently in force.

There is a procedure in the Constitution to allow a challenge to be made to the constitutionality of a proposed law, by referring the Bill to the Constitutional Court. It was under this provision that the challenges were made to the Press Council Bill. The dispute in that case was over whether the two-week limit for decisions of the Constitutional Court was mandatory or merely hortatory. After the original Court resigned in protest to criticisms made of them in the National Assembly, the Court which was appointed did render its decision within that time period, so the question is still unresolved. After a decision of the Constitutional Court, there appears to be no way in which the validity of a Bill or law can be challenged again before any tribunal. One would hope again that judicial construction might find a way to remedy this situation, since there is no solution to it in the words of the Constitution itself.

Conclusion

We would urge the Government of Sri Lanka to consider whether they could not now dispense with some if not all of the remaining Emergency Regulations, and consider amending the Criminal Justice Commission Act. This Act has features strongly at odds with the rule of law. It is to the credit of Sri Lanka authorities that it has not been operated in an objectionable manner, but perhaps partly as a result of this it does not appear to offer an effective solution to the problem of dealing with the detainees. Thousands of them still face further prolonged periods of imprisonment without trial.

The experience of Sri Lanka illustrates the real dilemma facing countries which, during a period of emergency, have interned very large numbers of suspected persons. To attempt to try them under normal trial procedures will result in quite intolerable delays. To attempt to devise a speedy procedure which will allow them to be tried quickly will either fail to achieve this object (as appears to be the case with the Criminal Justice Commissions) or it will result in unfair trials.

The problem exists in Indonesia, Bangladesh, and other countries, as well as Sri Lanka, and we would strongly urge all these countries to confine their legal proceedings to those detainees whom they consider to be primarily responsible and against whom there is prime facie evidence, and to release the remainder under an amnesty.

USSR — Repression of Dissidents

While the USSR has been building a closer relationship with the West, there has been no relaxation of the measures taken against all forms of dissent. The steps taken to suppress the underground *Chronicle of Current Events* have led to the prosecution of numerous Soviet advocates of civil rights. These actions, together with measures taken against Ukrainian nationalists and certain of the Jews wishing to emigrate to Israel, have aroused widespread attention abroad.

Advocates of civil or cultural rights and the publishers of *samizdat* (underground) papers and books have been the primary targets of the KGB (the Soviet Committee for State Security). The charges against them are most often "anti-Soviet agitation and propaganda". This can be anything considered damaging to state security or to the Soviet system. Virtually none of the cases which have come to the attention of Western observers have involved advocacy of the use of violence, or even any changes in the Soviet Constitution. Rather, the dissidents have pressed for observance of rights guaranteed in the Constitution, and for the ability to speak out against abuses.

The Constitution (Fundamental Law) of the USSR promises protection for most of the rights outlined in the Universal Declaration of Human Rights. Chapter X, "Fundamental Rights and Duties of Soviet Citizens", lists among the rights, equality of the rights of all citizens, freedom of worship, freedom of speech, press and assembly, freedom to hold street processions and demonstrations, freedom from arbitrary arrest and respect for the privacy of the home and correspondence. Freedom of speech and the press are the ones most frequently invoked by the dissidents. Although these are protected by Article 125 of the Constitution, their exercise is seriously prejudiced by Articles 70 and 190 of the Criminal Code, which give the authorities power to try citizens for activities contrary to the interests of the State.

Samizdat publications are one of the main targets of the campaign against dissidents. The *Chronicle of Current Events*, a periodic *samizdat* report of political trials and civil rights matters, was published from 1968 until early this year, when it was compelled to cease publication by the KGB investigation known as "Case 24". Mr. Pyotr Yakir and Mr. Victor Krasin were arrested in June and September 1972, respectively, and have since been held in pre-trial detention for their part in the production of the *Chronicle*.

Among many others involved is the author Andrei Amalrik, who was to have completed a three-year labour camp sentence on May 31. He was not released, and has been told he is under investigation again under Article 190-1 of the Criminal Code: "Deliberate defamation of the Soviet State and social order". Several of Mr. Amalrik's books critical of the Soviet regime have been published in the West, but not in the Soviet Union. Lev Ubozhko, a physicist who was sentenced with Mr. Amalrik in 1970,

has also been prosecuted again in his labour camp and sentenced this time to an indefinite internment in a hospital-prison.

All recent political trials have been held *in camera*, so very little is known about the legality of the proceedings. It is, however, known that in many cases the accused have been denied counsel of their choice, and have been unrepresented. Charges are sometimes based on such vague items such as research into pre-Revolution Ukrainian history, or possession of books about Jewish history, songs and poems. These charges serve as mere pretexts: the true basis of the prosecution is the accused's attempt to assert civil rights, and in particular the right to freedom of speech. Appeals are largely ineffectual. No case of a reversal of an initial conviction for political crimes has been reported, though sentences are sometimes reduced.

Apart from the trials, pressure is brought on dissidents by less formal means. Harassment of those who question official policy or sign protest letters can take a variety of forms. They are often dismissed from their jobs, and cannot find new ones. Their children may be expelled from schools on some pretext, or denied entrance in spite of clear qualifications. Telephone service may be cut off without a reason being given, or permission to travel denied. In one recent case which has received wide publicity, the physicist Valery Chalidze, a prominent civil rights spokesman, was allowed to tour U.S. universities on a speaking tour. While he was in the U.S. an order of the Presidium of the Supreme Soviet revoked his Soviet citizenship, and he was informed he would not be allowed to return to the USSR. Soviet spokesmen said that he had been guilty of "acts discrediting a Soviet citizen" while in America, and that "Chalidze is not a Soviet citizen at heart". Neither would provide legal justification for such a move.

The practice of confining dissidents to psychiatric hospitals instead of prison has been growing in recent years, and the well-known case of Vladimir Bukovsky is illustrative of the practice. Bukovsky has been repeatedly incarcerated in asylums for expressing dissident views since 1963, though there is no reason to think that he is anything but sane. In a 1970 interview with a Western correspondent, at a time when he was not in detention, he said that hundreds of persons had been thus confined and described the "treatment" they received in the hospitals. It included continual sedation, the use of drugs with no therapeutical value, and extensive psychological pressure to recant dissident views. Bukovsky has been sentenced to a further 12 years detention for sending out an appeal to Western psychiatrists to protest against this abuse of their profession.

In the case of Major-General Pyotr Grigenko, who had advocated observance of civil rights, a Soviet psychiatric commission concluded that he was obviously sane, and that psychiatric detention was unjustified. In spite of this, he was sent to the notorious Serbsky Forensic-Psychiatry Institute, which can overrule the findings of psychiatric commissions. Grigenko was later transferred to a prison psychiatric hospital. Although he has lost the sight of one eye from illness, and his general health is deteriorating, he is not receiving proper medical treatment. He has been offered

release if he would admit that his views are wrong, but he has not accepted this offer.

The Soviet authorities obviously feel that one must be insane to oppose the Soviet system in any way. However, this method of dealing with dissenters is highly unethical in medical or legal terms, and is used to avoid the necessity of bringing charges even so loosely worded as "anti-Soviet agitation and propaganda". One reason the authorities resort so heavily to this technique is that dissidents have been very careful to refrain from acts which are illegal, and to confine their human rights campaigns strictly to advocating rights already guaranteed in the Constitution. Use of psychiatric detention thus guards against the strong defences which many of these people would certainly mount in any judicial proceedings.

The campaign mounted abroad by Jewish organisations has been successful in securing exit permits for very large numbers of Jews wishing to emigrate. The imposition of the notorious education tax and prohibitive emigration fees has been withdrawn. It is difficult to ascertain any logical pattern in the cases where permits are refused, but there is a high proportion of intellectuals among them.

Less fortunate, perhaps, than the Jewish dissidents are members of the dissenting nationalist movements in the USSR. According to a recent estimate by Professor Peter Reddaway of London, there are some 10,000 political prisoners in the USSR. Far the greater proportion of these are believed to be members of the nationalist movements, and in particular Ukrainian nationalists.

Soviet law and practice relating to advocacy of cultural or political autonomy for one of the State's Republics is contradictory. Article 17 of the Soviet Constitution says that: "The right to secede from the USSR is reserved to every Union Republic". In view of the guarantee of freedom of speech in Article 125 (a) of the Constitution, it is difficult to see how a person can be prosecuted for urging a Republic to exercise the right reserved to it in the Constitution. Any law authorising prosecution for such activity would appear to be unconstitutional.

Nevertheless, any expression of nationalism is regarded as "anti-Soviet thought" without regard to whether it is directed against the Soviet State by advocating separatism. Indeed, none of the nationalist movements go so far as to advocate separatism. Press reports indicate that as a result of a decision of the Supreme Soviet at the end of 1971, a campaign against Ukrainian nationalists resulted in the arrests of over 100 persons in the first half of 1972, mostly writers, artists and other intellectuals. Their offences consisted in openly protesting what they believed to be official discrimination against the Ukrainian language and culture within the Ukrainian SSR and in criticising violations of civil and nationality rights guaranteed in the Soviet Constitution. More than 20 of these persons are known to have been convicted in closed trials, on charges of "anti-Soviet" activities. The sentences were extremely harsh, and are clearly designed to intimidate and silence spokesmen for the rights of national minorities and civil rights.

One of the most aggravated recent cases is that of Yuriy Shukhevych, who was recently sentenced to 10 years imprisonment for his "nationalist activities". Shukhevych is the son of the late Lieutenant-General Roman Shukhevych, a commander-in-chief of the Ukrainian insurgent army. When he was 14 years old, Yuriy was arrested and sentenced to 10 years imprisonment for the first time, because of his father's connection with the Ukrainian insurgent army. On the day his sentence expired in August 1958, a new warrant for his arrest was issued, based on testimony by two KGB agents accusing him of conducting anti-Soviet activities while at the notorious Vladimir prison. He was sentenced to another 10 years imprisonment. In 1968 he was released from prison, but was refused permission to return to the Ukraine. In 1970, he signed a collective protest letter in defence of another political prisoner. In March 1972 he was arrested at his home for the third time. According to press reports from Moscow, he was sentenced once again to 10 years imprisonment and a further five years banishment for unspecified "nationalist activities". If he survives this last 15 years of prison and banishment, he will have spent more than 30 years, almost all his life, in prison.

Another case is that of Ivan Dzyuba, an historian and literary critic. His book *Internationalism or Russification?* was published in the West in 1968. It discusses the history of Soviet nationality policy in the Ukraine from a liberal Marxist position. Although it was never published in the Soviet Union, it did receive a direct reply in an officially sanctioned book soon after its Western publication.

A first attempt to expel Mr. Dzyuba from the writer's union failed, but a second succeeded. He was arrested in 1972 and charged with "anti-Soviet agitation and propaganda", and was held incommunicado for 11 months before his trial, undergoing KGB interrogation. At his trial he was sentenced to 5 years forced labour and a further 5 years of exile. Mr. Dzyuba has suffered from tuberculosis for several years and it is uncertain how well he will survive the severe conditions of the Soviet labour camps, which are characterised by extreme cold and inadequate medical facilities.

Vyachesliv Chornovil, a dissident Ukrainian television journalist, was sentenced to 12 years imprisonment and exile in February or March 1973. His was also a closed trial, and was not announced until it had been concluded. Like Mr. Dzyuba, he had published a book abroad, entitled *The Chornovil Papers*, in 1968. For circulating this book, which analysed Ukrainian political trials of 1965 and 1966, he spent a year and a half in a labour camp. In 1972, he was arrested again in a KGB drive to suppress the *Ukrainian Herald*, the Ukrainian counterpart of the Moscow *Chronicle of Current Events*. He was held incommunicado for 13 months and tried on charges of alleged "anti-Soviet agitation and propaganda".

INDEPENDENCE OF THE JUDICIARY IN ITALY

by
an Italian Judge

Article 25 of the Italian Constitution of 1948 states that "no one can be withdrawn from his natural judge determined (in advance) according to law". Thus the Constitution proclaims the fundamental principle of the "natural judge", which was established for the first time by the French constituent assembly in Article 17 of the Law of 16-24 August, 1790. [A "natural judge" is the normal judge having jurisdiction over the offence in question in the area where it is alleged to have occurred.] This principle relates directly to the independence of the judiciary, which is recognized by all democratic constitutions and is solemnly affirmed by the Italian Constitution (Art. 101: "The judges are subject only to the law").

These essential guarantees for the citizen against abuse of power have often been the subject of attacks, conscious or otherwise, open or otherwise, on the part of the Executive. This is especially so during times of social tension, such as those which Italy has known for several years. Every attack on the independence of the judiciary and on the right to be judged by a predetermined judge established by law, constitutes a serious danger to the liberty of the individual and a weakening of the judicial function. A weakening of this kind may be brought about by discrimination against magistrates, in particular where they are unable to adapt themselves—and to adapt their way of judging—to the interests and to the wishes of the predominant seat of power. In such circumstances the relations between the police and the judiciary may become especially delicate and can illustrate in a symbolic and clear manner the conflict between the executive and judicial power.

It may be of interest in this connection to draw attention to certain incidents which have occurred in Italy in recent years and which certainly are not unique. Significantly, these incidents almost all concern magistrates who in their work and by their attitude have shown themselves to be open-minded and democratic in outlook.

During the notorious Valpreda case, which arose out of a bomb explosion in Milan in 1969, the police transferred from Milan to Rome at the beginning of the investigations a witness who was particularly important and whom the prosecutor was looking for in vain in Milan. Finally the whole inquiry was transferred to Rome, but once it came to a public hearing, the case was acknowledged by the Court of Assize to be within the competence of the Milan courts. Nevertheless the Chief Prosecutor of the court of Milan considered that the town where he exercised his functions

was "suspect" and requested the Court of Cassation to designate another assize court (after Valpreda and others had already been held in prison for over 3 years). Eventually another assize court was nominated by the Court of Cassation, namely that of Catanzaro, a town more than a thousand kilometers from Milan.

The majority of the Milan magistrates considered that the reasons given by the chief prosecutor were a blow to the prerogatives of the judges and an insult to the town itself. The executive committee of the association to which the great majority of the magistrates belong (National Association of Magistrates) called a meeting to discuss the situation. Five out of six members of the executive were later subjected to disciplinary proceedings for having voted in favour of calling the meeting and three of them also for having participated in drawing up a document subsequently approved by the whole assembly. This document contained a statement that "the initiative of the chief prosecutor could have as its object discrimination against Milan magistrates by the systematic withdrawal of the most delicate trials in accordance with the demands of a particular political party" and that "the doubts raised on the impartiality of certain colleagues who have already determined at first instance certain facts of a political nature, can only amount to a warning to the judges who have to decide upon them at second instance".

Also in connection with the events which led to the inquiry against Valpreda, Judge Stiz of Vicenza had opened a separate inquiry on people belonging to neo-fascist movements. The inquiry was transferred to Milan and entrusted, evidently because of its complexity and importance, to two public prosecutors in addition to the examining magistrate. However, when it appeared likely that one of the senior police officials would be charged with a possible neglect of duty at the beginning of the original inquiry, one of the public prosecutors was taken off the case. According to information published in the press Judge Stiz has since been transferred to a civil court.

The prosecutor charged with the inquiry into the death of the student Franceschi, which appeared to have been provoked by the police during a demonstration, was also taken off the case and shortly afterwards the new prosecutor was asked not to concern himself with the case as it had been taken over by the chief prosecutor. Similar incidents, all concerning the possible criminal responsibility of the police, have occurred in Pisa, in Turin and in Rome.

In Rome, the director of the "Pretura" sought to withdraw from the magistrate who had begun it, an inquiry concerning the police chief of the capital. He was said to have failed to take action against fascists who had committed offences in the University. When the magistrate refused to abandon the inquiry, a member of the M.S.I. [the neo-fascist party in Italy] living in Perugia accused him of exceeding his powers. The proceedings against the magistrate in question (in which it was held that no offence had been committed) were entrusted by the Court of Cassation to the magistrates of . . . Perugia.

Another judge, this time at Monza, was subjected to disciplinary proceedings for having asked a prisoner how he was and if he had been well treated in prison.

With regard to relations between the police and the magistrates, mention must be made of the case of Guido Neppi Modona. This magistrate

appeared on a public platform with other speakers to introduce a book on prison conditions in Italy. While he was speaking he was attacked and manhandled by *provocateurs*. One of them struck the magistrate, while others seized his coat and smashed up the furniture in the hall. Dr. Nappi Modona appealed without result to the police to intervene against these *provocateurs*. He subsequently denounced the violent methods, of fascist inspiration, adopted by the *provocateurs* and blamed the police for their non-intervention. No proceedings were taken against the *provocateurs* but the magistrate was brought before the Superior Council of the Magistrates and accused of having compromised the prestige of the judiciary and of having let it "be understood that the police authorities instead of enforcing order, provoke disorder and incidents by the use of fascists and *provocateurs*".

Another well-known case, which aroused strong reactions among the judiciary and public opinion, concerned three Milan judges who were in charge of cases settling disputes between workers and employers. Without any apparent justification, other than very vague "organisational requirements", the three judges were simultaneously transferred by the president of the court to other duties. The Superior Council of the Magistrates restored the three judges to their previous functions, but disciplinary proceedings have nevertheless been opened against them. The accusations are based on the merits of their sentences. Such a procedure makes plain the threat to the independence of every judge, all the more in that it has been adopted in other cases.

In Tuscany other judges who were considered insufficiently accommodating were transferred and these transfers were subsequently adjudged by the Superior Council to be without justification. Only in the case of Judge Accattatis did the Superior Council of the Magistrates confirm the transfer, in this case ordered by the first president of the court of Florence. This decision also seems to be very serious if one reflects that the reasons for the transfer flowed from the fact that Judge Accattatis, who was responsible for supervising the application of the "security measures", had sent to his colleagues copies of a report addressed to the Minister of Justice in which he had expressed his belief that certain of these measures and several of the prison regulations were unconstitutional. His action was regarded as a kind of instigation to those colleagues to whom he sent it to disobey the laws of the state.

To conclude this barely sketched picture, a further example may be given of the dangerous climate for the liberties of the individual which prevails in certain organs of the Italian state, organs which tend to regard as an attack on the established order any exercise of the right to criticise, especially if it comes from members of the judiciary, or any deviation from the traditional interpretation of legislation which, for the most part, dates back to the time of fascism. The Prefect of Milan, when giving a lecture to members of "Rotary", complained that following recent reforms of the criminal procedure code which reinforced the right of defence of the accused, the police would, according to him, have their hands tied. In particular, this prefect asserted that Article 24 of the Italian Constitution which recognises the right of defence as inviolable at every stage of the trial, was directed, and should be applied, in favour of honest citizens and not in favour of delinquents. Comment is needless.

THE RULE OF LAW IN TURKEY AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS *

Part I—INTRODUCTION

On March 12, 1971, a memorandum by the heads of the Armed Forces in Turkey demanding a "strong and credible government" to "neutralise the current anarchic situation", and threatening an army take-over if this were not quickly done, was delivered to President Sunay and to the presidents of the Senate and National Assembly. The memorandum was signed by the chief of the General Staff, and the Army, Navy and Air Force Commanders.

The memorandum alleged that "Parliament and the Government, through their sustained policies, views and actions, have driven our country into anarchy, fratricidal strife, and social and economic unrest; made the public lose all hope of reaching a level of contemporary civilization, a goal set by Atatürk; failed to realise the reforms stipulated by the Constitution; and placed the future of the Turkish Republic in grave danger". Parliament, "in a spirit above all partisan considerations", should now assess the solutions needed to eliminate the "concern and disillusionment felt by the Turkish nation and the armed forces". The memorandum went on to say that it was "essential, within the context of democratic principles, that a strong and credible Government should be formed which would neutralize the current anarchical situation and take up, in a manner conforming with Atatürk's views, the reforms envisaged by the Constitution". If this were not done quickly, "the armed forces are determined to take over the administration of the State in accordance with the powers vested in them by the laws to protect and preserve the Turkish Republic".

The suggestion in the last sentence that powers were vested in the armed forces under the Constitution, entitling them to take over the administration of the state in the manner suggested, is without foundation. The four commanders are the military members of the National Security Council. This is an advisory body, set up under Article 11 of the Constitution, which is presided over by the President of the Republic and included civilian Ministers. Its duty is to "communicate the requisite fundamental recommendations with the purpose of assisting the Council of Ministers in

* This article is a shortened version of a memorandum prepared by the Staff of the International Commission of Jurists. A limited number of copies of the memorandum are available.

reaching decisions relating to national security and coordination". The memorandum of March 12, 1971, did not come from the National Security Council but, even if it had, it would have been for the Council of Ministers to decide what action, if any, to take on it. The threat by the Armed Forces to take over the administration of the state was unconstitutional and had no legal foundation. The fact that the government accepted the threat and resigned and that a new government headed by Dr. Nihat Erim met with the approval of the military authorities and of the National Assembly, does not render the action of the military leaders lawful. Rather does it call in question the independence of Parliament.

Indeed, when Mr. Demirel's government resigned, Mr. Demirel declared in a speech to the Justice Party senators and deputies on the following day, "no-one can find any fault with your Government except that we adhered to the rule of law and the Constitution". He explained that they resigned "to keep alive whatever chance there is of binding up the wound democracy has received", referring of course to the action of the armed forces.

Neither in the ultimatum from the armed forces nor in the programme submitted by Dr. Erim was there any suggestion that it was necessary to amend the Constitution¹. The greater part of the government's programme which received the approval of Parliament on April 7, was a programme for reforms on matters such as land tenure, education, the tax system and the living standards of public employees which had given rise to much of the unrest. The government declared that the "destructive activities directed against the State and social system set up under the Constitution—activities in some cases known to be assisted from outside the borders of the country—will not be allowed or tolerated". If necessary, parliamentary approval would be sought for legislation giving new power to the executive and judiciary for more effective sanctions against armed assaults, kidnapping or terrorism.

A useful summary of the unrest and violence between early 1968 and March 1971 will be found in Keesing's Contemporary Archives for June 5-12, 1971, pp. 24637-24640. It will be seen that most of the violence was the result of fierce opposition between extremist groups of left wing and right wing students, and of widespread opposition to the American presence in Turkey, and of student strikes and "sit-ins", of a kind to be found in many countries at that time, aimed principally at university reforms. Some disorders also resulted from militant trade union activities.

In January 1971, an Ankara bank was successfully raided, reportedly the work of the "Revolutionary Youth Movement" or Dev-Genç, a loose grouping of several left wing factions. In February the police at Erzurum claimed to have broken up a left-wing youth organisation planning action in support of Kurdish separatism. In March, four US servicemen were kidnapped in Ankara by left wing extremists calling themselves the

¹ It is clear, however, that the pressure for amendments to the Constitution came from the military commanders. In a covering letter to their March 1971 memorandum sent to the President of the Republic, they demanded amendments to the articles of the Constitution dealing with fundamental rights and freedoms (Yeni Gazete, March 14, 1971); and in an interview with a French television reporter in June, 1972, Prime Minister Erim said "If it is a question of pressure on me from the High Command, this related only to the amendment of the Constitution as rapidly as possible, and the promulgation of new laws", (Cumhuriyet newspaper, June 7, 1972).

"Turkish People's Liberation Army", who claimed responsibility for the bank raid. The US servicemen were released after four days when the kidnappers' demand for ransom was refused. A number of the kidnappers were arrested, including one of the Dev-Genç leaders, Deniz Gezmiş.

Although there had been acts of violence in a number of different centres, there was nothing in them to suggest that any organisation was planning an armed insurrection or uprising such as would appear to justify a proclamation of martial law under Article 124 of the Constitution. The violence did, however, continue after the formation of the new government. In Istanbul, bomb attacks were made against the US Consulate-General, a Turkish-American bank and two newspaper offices, and there was also another armed bank robbery. Student clashes continued and the university was closed on March 25. In April, two members of a wealthy family and a doctor's son were kidnapped and ransomed. On April 6, bombs were thrown at the CENTO headquarters in Ankara but failed to explode, and on the following days bombs exploded in Ankara, Istanbul, Izmir and elsewhere. On April 11, a general's house in Ankara was attacked. Two suspects, one a former secretary of Dev-Genç, were arrested.

On April 26, martial law was proclaimed in 11 provinces including Ankara, Istanbul, the main industrial centres and the mainly Kurdish areas in the South-East and two provinces near or bordering Syria.² The government stated that the emergency measures had been made necessary not only by student violence and terrorism but by the threat of Kurdish separatist activity. The declaration of martial law was approved in Parliament by a show of hands, the only opposition coming from a deputy and a senator of the Labour Party of Turkey.

Acts of violence continued despite the proclamation of martial law. There was another bank robbery in Istanbul on May 3. On May 17 the Israeli Consul-General in Istanbul was kidnapped, and when the demand

² There are believed to be at least 2 million and possibly more than 5 million Kurds in South East Turkey. An ancient people, having their own national characteristics, language, customs and culture, Kurds are also to be found in north-western Iran (about 1½ million), in northern Iraq (about 1¼ million) and in small numbers in Syria and the Soviet Union. A prolonged struggle for recognition in Iraq led to the agreement in 1970 under which Iraq agreed to recognise the Kurds as one of the two peoples constituting the Iraqi nation, to recognise their language and other minority rights, and to grant them a substantial degree of local self-government in the Kurdish areas.

Successive Turkish governments have refused to recognise the existence of this minority, and even used to refer to them officially as "mountain Turks". The teaching of Kurdish in schools is forbidden. No publications in Kurdish are allowed. Attempts to bring out Kurdish publications have been suppressed and the editors imprisoned. Military repression of Kurdish villages has been carried out by commandos to combat "banditry". This treatment of the Kurds appears to be an infringement of Articles 38 and 39 of the Treaty of Lausanne, by which Turkey agreed to respect the rights of minorities. The official Turkish attitude towards the Kurds has led to sporadic revolts and to a separatist movement which have been ruthlessly suppressed. The frequent references in the Turkish Constitution, and in particular in the 1971 amendments to the Constitution, to "safeguarding the integrity (or indivisibility) of the state with its territory and people" is directed (*inter alia*) against movements asserting the minority rights of the Kurds, even when they are not separatist in character. It was partly on this ground that the Labour Party of Turkey was dissolved and its leaders imprisoned in 1971.

for the release of all " revolutionaries " in detention was rejected, he was murdered. The authorities claimed this was the work of members of the Dev-Genç " Revolutionary Youth Movement ", from which the self-styled " Turkish People's Liberation Army " had sprung. On May 30, two young " Liberation Party " terrorists broke into an apartment while escaping from the police and siezed a 14-year old girl as a hostage. After a two day siege the girl was rescued, one of the terrorists was killed and the other arrested.

About this time, the authorities made hundreds of arrests, including many leading writers, journalists, professors and other intellectuals.

In July 1971 the Constitutional Court ordered the dissolution of the Labour Party of Turkey (see below).

In April 1972, Dr. Nihat Erim resigned as Prime Minister and his place was taken by Senator Ferit Melen.

On March 26, 1972, three foreign radar technicians were kidnapped on the Black Sea coast and the kidnappers demanded the reprieve of three " Liberation Party " members under sentence of death, including Deniz Gezmiş. On March 30, the kidnappers were surrounded. In the shooting which ensued ten guerillas were killed and one captured. These included leaders of the Dev-Genç movement. The three radar technicians were also found to have been shot.

A Turkish Airlines plane was hijacked on May 3 and taken to Sofia airport. The demand for the reprieve of the condemned terrorists was refused and the hijackers, on being granted political asylum, surrendered the plane.

The three men under sentence of death were hanged on May 6. On the following day several bomb explosions took place.

The ruthless methods adopted by the military and police authorities including, it is believed, the extensive torture of prisoners, has led to the rounding up of virtually all the members of the " Liberation Army ", and terrorist activities have been brought effectively under control. Martial law continues, however, in nine of the eleven provinces, and a number of mass trials before military tribunals have been held or are still taking place. Although the special powers of the military authorities are confined to the provinces subject to martial law, it is widely reported that persons have been arrested by the military authorities outside these areas and brought to and held in military prisons within the martial law areas.

When martial law is eventually lifted, it will not mean a return to the democracy which formerly prevailed under the Constitution of 1961. Apart from the dissolution of the opposition Labour Party, numerous amendments to the Constitution, which have significantly qualified the protection of civil rights, came into force in September, 1971, and four further restrictive amendments to the Constitution were adopted in March 1973. (Two of these were to validate laws which had been held unconstitutional).

Part II—THE TURKISH CONSTITUTION

The Turkish Constitution of 1961 has been generally considered to be one of the most liberal constitutions to be found anywhere. As stated in the preamble, the framers of the Constitution were " guided by the desire to establish a democratic rule of law based on juridical and social foundations

which will ensure and guarantee human rights and liberties, national solidarity, social justice and the welfare and prosperity of the individual in society ”.

Article 2 of the Constitution states: “ The Turkish Republic is a national, democratic, secular and social state governed by the Rule of Law, based on human rights and the fundamental tenets set forth in the Preamble ”.

Article 11, a general provision of great importance, laid down the principles to be applied in construing those articles of the Constitution dealing with civil and political rights. In its original form it was entitled “ The essence of basic rights ” and read as follows:

“ Article 11—The fundamental rights and freedoms shall be restricted only by law in conformity with the letter and spirit of the Constitution. The law shall not infringe upon the essence of any right or liberty, not even when it is applied for the purpose of upholding public interest, morals and order, social justice, or national security ”.

Among the articles which established these basic rights are Articles 14 (personal immunities, including freedom from ill-treatment or torture), 15 (right of privacy and freedom from search), 16 (immunity of domicile), 17 (freedom of communication), 18 (freedom of travel and residence), 19 (freedom of conscience and faith), 20 (freedom of thought and expression), 21 (freedom of science and arts), 22 (freedom of the press), 23 (right to publish newspapers and periodicals), 24 (right to publish books and pamphlets), 28 (freedom of assembly), 29 (freedom of association), 30 (personal security, i.e. restrictions on arrest and detention), 32 (right to trial by ordinary courts), 46 (right to establish trade unions), 47 (right to collective bargaining and right to strike), 56 (right to found political parties), 57 (principles to which political parties must conform), 120 (autonomy of universities) and 121 (autonomy of broadcasting and television). Other provisions of the Constitution established the independence of the Judiciary and subjected the Executive to parliamentary control by a freely elected parliament known as the Turkish Grand National Assembly and comprising a National Assembly and Senate. Article 124 prescribed the circumstances and manner in which martial law could be proclaimed in one or more regions of the country, and the manner in which freedoms could then be suspended or curtailed.

The amendments to the Constitution adopted on September 20, 1971, are generally restrictive in effect, and it is hardly an exaggeration to say that the spirit of the Constitution has been substantially altered by them. The Preamble and Article 2 have been left unamended. It is as yet too early to assess the practical effect on the principles of the Constitution of all these amendments, since the main centres of population have remained subject to much severer restrictions resulting from the proclamation of martial law. It is, however, possible to form an impression of their likely effect from an examination of the amendments themselves, and from some recent decisions of the Constitutional Court.

Article 11, which is the key article on civil rights, has been radically altered. Its title has significantly been changed from “ The essence of fundamental rights ” to “ Essence and restriction of fundamental rights, and their protection ”. The text of the new Article now reads (with the new wording in italics):

“ The fundamental rights and freedoms shall be restricted only by law in conformity with the letter and spirit of the Constitution *with a view*

to safeguarding the integrity of the state with its territory and people, of the Republic, of national security, of public order, or for special reasons designated in the other articles of the Constitution.

The Law shall not infringe upon the essence of rights and liberties.

None of the rights and freedoms embodied in this Constitution can be exercised with the intention of destroying human rights and liberties, or the indivisible integrity of the Turkish state with its territory and people, or the Republic, the characteristics of which are prescribed in the Constitution, through recourse to differences of language, race, class, religion or sect.

Penalties for action and behaviour contrary to these provisions are designated by law”.

As will be seen, the whole tenor of the Article has been altered. The original text expressly safeguarded fundamental rights and freedoms, even against restrictions purporting to uphold the public interest, morals and order, social justice or national security. The safeguarding of these rights and freedoms was to be the overriding interest. The purport of the article has now been inverted. Not only has this express protection been removed, but its opposite is now expressly stated. Restrictions are to be permissible with a view to safeguarding the integrity of the state with its territory or people, of the Republic, of national security, of public order, or for special reasons designated in other articles. It is not difficult to foresee how these provisions can be applied to repress any activities or any organisation designed to promote the interests of a particular linguistic or racial minority, or of a particular class, such as the working class.

The framers of the amendments argue that these amendments are necessary and justified in order to prevent the abuse of fundamental rights and freedoms in such a way as to imperil their continued existence. Thus in May, 1971, Prime Minister Erim said “The 1961 Constitution is a luxury for Turkey” (Daily Milliyet, May 2, 1971), and when the amendments were introduced he sought to justify them in the following terms:

“The 1961 Constitution has many loop-holes. In this Constitution there is not one single decree or statement which would prevent exercising fundamental rights and freedoms against a free and democratic society. Therefore, such unlimited conditions of freedom create considerably large operational fields for the extremists as well as a constant state of anarchy”.

This accusation is hardly supported by an examination of some of the provisions of the 1961 Constitution and of the laws which were held valid under it. Not only was the Communist Party always prohibited, but on July 20, 1971, the Constitutional Court ordered the dissolution of the Labour Party of Turkey. This was a non-marxist party (though there were some marxists among its members), devoted to change by peaceful means. Proceedings against it were brought by the chief public prosecutor under Article 57 of the Constitution, the first paragraph of which read as follows:

“The statutes, programmes and activities of political parties shall conform to the principles of a democratic and secular republic, based on human rights and liberties, and to the fundamental principle of the state’s territorial and national integrity. Parties failing to conform to these provisions shall be permanently dissolved”.

As far back as 1967, the Constitutional Court had upheld Article 142 of the Penal Code which made illegal all dissemination of marxist ideas, and Article 141 which prohibited the formation of associations seeking to modify the political, economic and social "established order", even by peaceful means. In view of the guarantee of the right of freedom of thought and expression in Article 20 and of freedom of association in Article 29, it is not surprising that this decision had been strongly criticised by constitutional lawyers in Turkey.

In the proceedings against the Labour Party of Turkey the chief public prosecutor based his case on charges of Communist propaganda and separatist activity. The principal attack was based on the fact that in its 1968 election programme the Party had advocated cultural rights for the Kurdish minority, including the right to be educated and to have publications in their own language. The Labour Party denied that it encouraged Kurdish separatism, claiming that its aim was to end the repressive policies towards the Kurds and to achieve equal rights for them within the framework "of the working class's struggle for socialism". In spite of the fact that the rights which the Labour Party advocated for the Kurdish minority had long been enjoyed by the much smaller Armenian, Greek, Jewish and Bulgarian minorities, the Constitutional Court upheld the complaint and ordered the dissolution of the Party on the grounds that it had sought to perpetuate "national, linguistic, cultural and religious differences among the various ethnic minorities of the Turkish state". If this decision could be reached under the original Constitution, it is difficult to see why the many restrictive amendments to fundamental rights and freedoms were thought to be necessary. It is also difficult not to be apprehensive about the possibilities for repressive legislation which may now be introduced under the amended Constitution.

Against this background, some of the amendments to the particular articles establishing the fundamental rights and freedoms may now be considered. It should be remembered that apart from the additional restrictions written into particular articles, *all* the articles relating to fundamental rights and freedoms are now subject to the very wide restrictions in the amended Article 11, which has already been considered. This is of particular importance in the case of those articles which are formulated without any restrictive wording in the articles themselves. An example is:

Article 20—Freedom of thought. This article reads: "Every individual is entitled to have his own opinions and to think freely. He is free to express his thoughts and opinions singly or collectively, through word of mouth, in writing, through pictures or through other media. No individual shall be coerced to disclose his thoughts and opinions". As will be seen, there are in fact severe limitations on freedom of expression.

The following is a brief summary of the effect of some of the more important amendments to particular articles of the Constitution:

Article 15—Right of privacy and freedom from search. Search of the person or of property by executive action, with the authority of a court order, may now be permitted "where delay is deemed prejudicial from the point of view of national security" and not only, as before, "from the point of view of public order".

Article 22—Freedom of the Press. Restrictions may now be permitted to safeguard "the integrity of the State with its territory and people", "public order" and "the secrecy demanded by national security". These general

phrases will plainly permit wide restrictions of press freedom. Moreover newspapers and periodicals may now be seized by administrative decision without a prior court order.

Among the banned literature in Turkey are to be found not only most left wing literature, but all publications in Kurdish and extremist religious literature opposing the secular state. A Kurdish Dictionary was banned as "separatist propaganda", as was a History of the Kurds written in the 16th century.

Article 29—The right to form associations. Similar widely worded criteria have been introduced for imposing restrictions on freedom of association.

Article 30—Personal Security. Under the original article persons arrested or held in custody had to be brought before a court within 24 hours (excluding the time required to take him to the nearest court). This period was extended by the 1971 amendments to 48 hours or, for collective offences, 7 days. The emergency legislation purported to extend the period of preventive detention under martial law to 30 days. In its decision of February 15/16, 1972, the Constitutional Court held that this provision was unconstitutional. By a further Constitutional amendment which came into force on March 20, 1973, the period has now been extended to 15 days. It is widely reported that even these extended periods of detention are being illegally exceeded.

Article 46—The right to establish trade unions. The original article gave all employees the right to establish trade unions without prior authorisation. The amended article, by substituting the word "workers" for "employees", removes the right to form or belong to unions from all civil servants and state employees, including persons employed in nationalised industries. In addition it is now provided that "The law may impose restrictions for the purpose of safeguarding the integrity of the state with its territory and its people, national security, public order, and public morality". A law to give effect to this provision is understood to be in preparation, but has not yet been published. The revised wording obviously opens the door to substantial restrictions on trade union freedom.

Of the two big trade union confederations, the pro-government TURKIS and the opposition DISK, which was affiliated to the Labour Party, DISK is now under the sword of Damocles. It has severely restricted its comments upon current events in order to avoid providing the authorities with an excuse to take action against it. It has not even protested against these restrictions upon trade union rights.

Article 120—Universities. This article formerly stated that "the Universities are public corporate bodies enjoying academic and administrative autonomy". The words "academic and administrative" have now been omitted and a sentence has been added stating: "The autonomy of the universities is exercised within the provisions designated in this article". Among the new provisions are the following:—

- (1) The police may now investigate offences and pursue and arrest suspected offenders within university buildings (which they could previously do only at the request of the Rector).
- (2) Universities shall now be governed "under the supervision and control of the State".
- (3) The law will now regulate "the manner in which the state shall exercise its right of supervision and control over the universities, the responsibilities of the organs of the university, the measures to

prevent all acts directed towards impeding learning and teaching, the assignment when need be of the members of the teaching staff and their assistants attached to one university to duties in other universities, and the rules for the execution of learning and instruction in freedom and under guarantee and in conformity with the exigencies of modern science and technology, and principles of the development plan ”.

- (4) The Council of Ministers “ shall take charge of the management of the Universities, or of the faculties, organisations and establishments attached to such universities, if the freedom of learning and teaching in these universities and their faculties, organisations and establishment is endangered, and if such danger is not averted by the university organs ”. If the Council of Ministers exercise this power, they must submit their decision without delay for the approval of the Turkish Grand National Assembly.
- (5) The right of the teaching staff and their assistants to join political parties, which was expressly safeguarded in the original article, has now been removed.

It will readily be seen that the autonomy of the universities now exists in name only. Quite apart from the special power given to the Council of Ministers to take over the universities, the universities are no longer independent either academically or in their administration. The supervision and control by the state extends to the removal of teaching staff or their transfer to other universities, to the control of the curriculum, and to police interference within the precincts of the university.

Article 121—Broadcasting and television. As in the case of the universities, it is clear from the amendments to this article that the broadcasting and television corporations are no longer autonomous.

Article 124—Martial Law. The amendments to this article are of considerable significance.

The original article authorised the Council of Ministers to proclaim (subject to the approval of the Grand National Assembly) martial law in any part of the country in four situations, namely in the event of war, a situation likely to lead to war, an armed insurrection or the emergence of definite indications of a serious and active uprising against the fatherland and the Republic. It is open to argument whether the student disturbances and acts of extremist violence which had occurred in Turkey from 1968 to 1971 fell within any of these four categories. The legality of the proclamation of martial law in 11 provinces on April 25, 1971, even though approved by Parliament, has been called into question by constitutional lawyers (as was the imposition of martial law in Istanbul and neighbouring industrial areas from June to September 1970; that proclamation followed violent disorders arising from opposition to proposed changes in trade union legislation, which would have severely weakened the left-wing DISK trade union confederation).

In addition to the four situations previously itemised, the amended article now permits a declaration of martial law in the event of “the emergence of definite indications of widespread acts of violence endangering the indivisibility of the territory and the nation, from within or without, or tending to suppress the free democratic order or the basic rights and freedoms recognised by the Constitution ”.

This provision clearly extends very considerably the circumstances in which martial law may lawfully be proclaimed. It will be noted that there is no requirement that the proclamation of martial law shall be "necessary" for the safeguard of "the free democratic order or the basic rights and freedoms recognised by the Constitution". Nor does it have to be shown that this order or these rights or freedoms are in fact endangered. All that is needed is "definite indications of widespread acts of violence . . . tending to suppress" them. This wording, if it had been in force at the time of the proclamation of martial law in April 1971, would no doubt have been apt to describe the situation then prevailing. It falls a long way short, however, of the wording of Article 15 of the European Convention on Human Rights (on which the Turkish authorities rely to justify their proclamation), namely a "public emergency threatening the life of the nation".

Article 136—Organisation of the Courts. By an amendment which came into force on March 15, 1973, courts of a new kind, known as "Courts of State Security", are now authorised to try political offences. Two out of the five judges of these courts must be military judges.

This amendment illustrates the way in which under the present "emergency", the permanent law is being amended so as to introduce into it features of a kind found normally only under emergency legislation, in this case with the permanent participation of the military in the normal processes of law.

Article 138—Military Jurisdictions. By an amendment of March 1973, the requirement for a majority of professionally qualified judges in military courts does not apply in time of war. Since the law relating to Martial Law applies war-time procedures to the present martial law, the result is that the elementary safeguard of having legally qualified judges in martial law courts has now been abandoned.

Provisional Article 21. By a decision of February 15/16, 1972 (published in the Official Gazette October 14, 1972), the Constitutional Court held unconstitutional the provision in Article 15 of the Law on Martial Law (No. 1402), which purported to give to the Martial Law Courts the power to continue to try, after the lifting of martial law, cases already begun before the lifting of martial law. By an amendment to the Constitution of March, 1973, in Provisional Article 21 this decision is in effect overruled, and the martial law courts are now empowered to continue trying cases after the lifting of martial law. In other words, emergency measures are continued even after the emergency which occasioned them is recognised to have passed³.

³ By the same decision of February 16, 1972, the Constitutional Court held unconstitutional Article 15 of the Law on Martial Law, which purported to give the Martial Law Courts jurisdiction to try a large number of specified offences, mostly of a political nature. The grounds of this decision were that Article 15 gave the Martial Law Commander discretion to decide whether any particular case should be tried before a civil or military court, whereas Article 138 of the Constitution required that the jurisdiction of the courts be prescribed by law. This decision took effect on April 12, 1973. As there has been no amending legislation, confusion prevails at the time of writing (June 1973) as to whether these courts have jurisdiction to continue to try the cases before them. The Izmir Martial Law Court has sought the advice of the Ministry of Defence; an Istanbul court has decided to proceed with its trial; another court has adjourned its case, and the

Article 149—Annulment suits: right of litigation. This article originally provided that any political party which had obtained at least 10% of the total valid votes cast in the last election, or any political party represented in the Senate or National Assembly, could initiate proceedings before the Constitutional Court to have any law declared unconstitutional. Under the amended article this right is now confined to parties having obtained 10% of the votes or one sixth of all the members of either the Senate or National Assembly. This amendment would appear to infringe the principle of equality in the administration of justice. It would for example, have deprived the Labour Party of Turkey of the right to appeal to the Constitutional Court, if that Party had not itself been dissolved by an order of the Constitutional Court in July 1971.

Part III—TURKEY AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The application of the European Convention on Human Rights will be considered under four aspects:

- (1) whether the general law in Turkey is consistent with the Convention;
- (2) whether the emergency measures introduced under martial law derogate from the obligations under the Convention; if so,
- (3) whether these emergency measures are consistent with Article 15 of the Convention;
- (4) whether any illegal practices are occurring in Turkey which constitute violations of the European Convention.

(1) *The General Law and the Convention*

Many amendments and additions to the general law in matters affecting human rights have been made since March 1971. Some of these will now be considered in relation to the relevant articles of the European Convention on Human Rights.

Independence of the Judiciary and Right to a Fair Trial. Under Article 6 of the European Convention "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

As has been seen, by an amendment to Article 138 of the Constitution, Military Courts are no longer required to have any professionally qualified judges. In addition, the independence of the military judges has been eroded by amendments to the Law relating to the Status of Military Judges (No. 357, published October 26, 1963). This was confirmed in a remarkable article by no less a person than the Chief of the Military Court of Cassation, General Rafet Tüzün, published in *Milliyet* on February 12, 1972, when the new law was before the Parliament. In his article he said,

court at Ankara has accepted (it is suggested rightly) the defence argument that it is incompetent to try the case before it and that the case should be transferred to a civilian court.

The Turkish Martial Law Courts, which have been declared unconstitutional, have tried and convicted 1,584 individuals, most of them in mass trials, and have dissolved 404 associations (Yeni Ortam, April 13, 1973). It is believed that over 2,000 other suspects are still being tried or are awaiting trial.

"With the recent amendments to the law relating to the Status of Military Judges, the judges of military tribunals are made subject to the strict hierarchy of the [military] administration. They are strictly under the orders of the Commander under which the Courts are constituted. . . . Even the Military Court of Cassation is integrated under the hierarchic system of the Ministry of Defence."

The most important of these amendments (in Law 1611 of July 17, 1972) provide that all military judges will henceforward be subject to the disciplines of the normal military hierarchy under Law No. 926 relating to Military Personnel of the Armed Forces, and that all military judges "who have not received promotion [within 3 years] can be retired". This means that the military judges will, in their work as judges, be subject to the orders of their military commanders, who are also responsible for their promotion and consequently their continuance as judges.

Later in the article General Tüzün criticised the introduction of Provisional Article 21 into the Constitution, removing the need for professionally qualified military judges, and concluded his article by stating:

"All this is contrary to the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Geneva Conventions, of which we are signatories."

It is important to stress that this is a part of the general law relating to military courts and is not part of the emergency legislation.

Right to a Fair Trial. By amendments to the Criminal Procedure Code contained in Law No. 1696 of March 5, 1973, political suspects may now be committed for trial on the authority only of the civil or military police and public prosecutor, without any preliminary judicial examination. This severe limitation of defence rights for one class of accused persons appears to amount to an unjustified discrimination conflicting with the principle of equality in the administration of justice, and, it is submitted, with the obligations imposed by Articles 6 and 14 of the European Convention.

Presumption of Innocence. Under the same law (No. 1696 of March 5, 1973), persons who have acted in various specified ways in the name of, or on behalf of, or in connection with an illegal association, or an association subsequently declared illegal, are presumed to be members of that association, unless they prove the contrary. This would, for example, apply to membership of the Labour Party of Turkey, which has now been declared illegal. It is submitted that this provision conflicts with the presumption of innocence required under Article 6 (2) of the European Convention.

Freedom of Expression. Under Article 10 of the Convention "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". The wording of Article 20 of the Turkish Constitution (see above) would appear to ensure protection of this right. However, the cases decided *under the general law* by military tribunals show that there are very severe limitations on freedom of expression, which it is submitted cannot be reconciled with the terms of the Convention. The following is a sample of the cases, relating to statements and publications before the proclamation of martial law.

On August 19, 1971, twenty leaders of the recently dissolved Labour Party of Turkey were accused before the Third Military Court at Ankara under Article 141 of the Turkish Penal Code with "trying to establish the

domination of one class over other classes and to follow a separatist policy". The main evidence submitted by the military prosecutor was the programme of the Party (which had been in force since 1964 and which advocated the achievement of a socialist society by peaceful means), and a resolution of the democratic rights of the Kurdish people adopted by the Party Convention in 1970 (which did not advocate separatism). All the accused were convicted and sentenced to between 8 and 12 years' imprisonment. The Military Court of Cassation has recently upheld the decision (April 26, 1973).

In April 1972, Cetin Altan, a former deputy of the National Assembly, and Irfan Derman, editor of the daily Aksam, were charged before the Second Military Court at Istanbul with insulting the head of state in a speech by Altan in the Assembly in 1967, published subsequently as an article in Aksam, in which he said that the President's election was the result of a political manoeuvre. Both were convicted. Cetin Altan was sentenced to one year's imprisonment.

Professor Mümtaz Soysal, Professor of constitutional law, was accused in 1971 under Article 142 of the Penal Code of "making propaganda for communism" in his Introduction to the Constitution, published by the University of Ankara with the approval of the University Senate, and used as a legal textbook in the University for two years. It was alleged that the book, which contained references to the writings of Karl Marx, was written "with the purpose of diverting the minds of students to dangerous ideologies". On three occasions he has been tried and convicted by military courts and sentenced to six years and eight months imprisonment, followed by two years banishment and a life-long ban from public service. On each occasion the judgment has been set aside by the Military Court of Cassation on procedural grounds. He is now awaiting his fourth trial on the same charge.

Dr. Ismail Besikçi, assistant at the Faculty of Political Science in Ankara, was charged before the Military Court of Diyarbakir in July 1971 under Article 142 of the Penal Code for "making propaganda for communism and separatism" in his articles in the monthly Review ANT and in his university lectures delivered before the proclamation of martial law. The thesis he had sought to establish in his writings and lectures was that there exists a Kurdish people as a separate historical, social and ethnic entity from the Turkish people. He was found guilty and condemned to 13 years' imprisonment. This verdict and sentence were confirmed by the Military Court of Cassation in 1973.

Although these and many similar cases have been tried before military courts under martial law, the offences with which the accused have been charged are offences under the ordinary law and not offences against martial law regulations. They cannot, therefore, be justified under Article 15 of the European Convention. Their justification, if any, must be found in paragraph 2 of Article 10 as being "restrictions . . . prescribed by law and . . . necessary in a democratic society, in the interests of national security, territorial integrity of public safety [or] for the prevention of disorder". It is submitted that, on the face of them, cases of the kind referred to cannot be justified under this provision.

Freedom of Association. Under Article 11 of the European Convention "Everyone has the right . . . to freedom of association with others including the right to form and to join trade unions for the protection of his interests". Paragraph 2 of the Article reads: "No restriction shall be placed on the

exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

As has been seen above, Article 29 of the Constitution appears to establish the right of association. It will be remembered, however, that this Article did not prevent the Constitutional Court ordering the dissolution of the social democratic Labour Party of Turkey in July 1971 under the unamended 1961 Constitution. Since then the amendments to Articles 29 and 46 of the Constitution have laid the basis for wider restrictions on freedom of association, in particular in trade unions. Civil servants, who were previously denied the right to strike, are now not even allowed to belong to trade unions, nor are employees in nationalised industries. Even the teachers' union has been dissolved.

Following the amendments to Article 29, a new Law of Associations, No. 1630, was passed on November 22, 1972.

Article 4 of this law lays down twelve categories of associations which are prohibited. These prohibitions appear to be intended for the prohibition of any association having as its object the promotion of ideas of the class struggle, of marxism, communism, or anarchism, or of the rights of the Kurdish minority. It is immaterial whether the realisation of these objects is intended to be achieved by peaceful means or otherwise.

All existing student organisations are dissolved by Provisional Article 3, as from the date of publication of the law. Article 4 provides that in their place "no more than one student association can be formed in each university, faculty, academy or other institution of education". They can only be formed "for the purpose of meeting the social or educational and training needs of the students, such as the maintenance of their bodily and spiritual health and caring for their nutrition, work, rest and recreation, and for the purpose of representing the students before the administration of their institution and other establishments". No student association can be established with political aims or in any "way or form engage in political activities and activities not related to being a student".

International activities by any association are severely restricted. Under Article 6, except by permission of the Council of Ministers, no association can be formed with the aim of engaging in international activities, no Turkish association can affiliate with international or foreign associations, and no association with headquarters abroad can have branches in Turkey. Under Article 38, invitation to members of foreign associations by Turkish associations, or sending members abroad in response to invitations from foreign associations, is subject to permission of the Ministry of the Interior, given after consultation with the Foreign Ministry.

Strict controls are imposed by Article 39 on public declarations or statements by political associations other than political parties. A decision of the "authorised organ" of the association is required; the names and signatures of the persons responsible must appear; a copy of the document must be submitted to the local office of the prosecutor and a receipt obtained; another copy must be submitted to the local administrative authority; the press, radio and television cannot publish such a declaration

or statement before receiving a copy of the receipt from the prosecutor's office.

These are but some of the restrictions imposed by this law. It is emphasised that it is not an emergency provision related to the state of martial law. It is part of the permanent law concerning freedom of association. It is submitted that this degree of restriction cannot be reconciled with Article 11 of the European Convention.

Freedom of Assembly. A Bill before parliament will, if passed, give local authorities the power to postpone any demonstration for up to thirty days. Such a power would, of course, enable the authorities to prevent timely demonstrations on any issue calling for urgent action. This is, it is submitted, in conflict with the right of freedom of assembly under Article 11 of the European Convention.

The Kurdish Minority. The numerous provisions in the Constitution and in various laws referred to throughout this study, whereby all rights of the Kurdish minority are suppressed is, it is submitted, a clear breach of Article 14 of the European Convention.

(2) *Emergency Measures introduced under Martial Law*

It is unlikely to be challenged that the emergency powers granted under martial law to the Martial Law Commanders derogate extensively from the obligations under the European Convention. These powers are contained in Article 4 of the Law on Martial Law (No. 1402 of May 13, 1971), which provides that the Martial Law Commander is authorised to:

- (a) search without warrant any dwelling-house, office of an association, political party, trade union, club etc.; censor letters and communications; search persons and documents; and confiscate any property;
- (b) control the radio and television;
- (c) control the press and any kind of publication ⁴ and close printing presses;
- (d) expel suspected persons from the area of martial law;
- (e) ban the transport of arms, explosives etc.;
- (f) ban strikes and lock-outs;
- (g) ban any meetings, demonstrations, marches etc.; suspend the activities of any kind of association or organisation; regulate the formation of new associations;
- (h) control commercial or industrial undertakings which produce or transport essential goods;
- (i) supervise casinos, cafés, restaurants, theatres, cinemas, bars, discotheques, inns, dance-halls, clubs or sports-halls and, where he considers it necessary, close them;
- (j) regulate all forms of transport and traffic.

⁴ A list of 138 books banned by the Martial Law Commander in Istanbul includes for some reason Einstein's *Theory of Relativity*. Under martial law 39 newspapers and periodicals have been banned, either indefinitely or for fixed periods, including 31 daily papers.

(3) *Whether the Emergency Measures are Consistent with Article 15 of the Convention*

This raises two questions, namely whether there was, and still is, a "public emergency threatening the life of the nation", and if so, whether the emergency measures were and are "strictly required by the exigencies of the situation".

It will be remembered that under Article 124 of the Constitution as it stood at the time of the proclamation of martial law on April 26, 1971, the Council of Ministers could declare martial law in case of internal disorder only "in the event of . . . an armed insurrection, [or] the emergence of definite indications of a serious and active uprising against the fatherland and the Republic". It has already been indicated in the Introduction that although there had been widespread acts of violence, there was nothing in them to suggest that any organisation was planning an armed insurrection or uprising. Support for this view is to be found from two important sources.

On May 1, 1971, i.e. five days after the proclamation of martial law, Prime Minister Erim gave an interview to the foreign press on the occasion of a CENTO meeting. The following are extracts from his statements as reported the following day in *Milliyet* newspaper:

"I should emphasise that in Turkey there is no important separatist⁵ movement. Nevertheless, some organisations formed abroad have succeeded in achieving some results, but I can guarantee that none of these separatist activities constitute an immediate danger to the indivisibility of Turkey.

We also have information about some attempts at sabotage. That is why we have proclaimed martial law. For example, we declared martial law at Zonguldak because one of the most important steel works for our economy is situated there. To protect this factory against sabotage we had to declare martial law in this region. Similarly, in other regions where there are oil refineries we have had to declare martial law, again for the same reason. We also declared martial law in areas where there were extremist activities undertaken by certain associations and organisations. But I should emphasise that *in none of these areas was martial law declared to meet an immediate danger of internal disorder. . . .*

The number of wanted and arrested persons since the declaration of martial law does not exceed 200. But this number may rise to over 300⁶. 200 terrorists out of 100,000 students in Turkey cannot be considered a large number. . . .

⁵ The Turkish authorities use the term "separatist" to describe any movement tending to threaten "the integrity of the state with its territory and people" (cf. Article 11 of the Constitution). Therefore it includes any revolutionary movement as well as a separatist movement in the ordinary sense of the term (e.g. Kurdish separatism). In the present context it is clear that Mr. Erim was using this term in the wider sense.

⁶ It was reported officially on June 9, 1971, that 454 persons were still under arrest or detention in Ankara and Istanbul out of nearly 2,000 who had been detained in those two provinces alone since the declaration of martial law. The number of persons arrested and imprisoned since then far exceeds the numbers supposedly threatening the Constitution in 1971. An official communique published on April 13, 1973, declared that 1,584 persons had been convicted and 404 associations dissolved by Martial Law Courts. Over 2,000 others are still being tried or awaiting trial.

In reply to a question 'Do you think that the existence of 200 extremists could necessitate the proclamation of martial law?', he replied, 'Certainly, yes. I have just explained that martial law has not been declared in all parts of the country. In each province where it was declared there were different reasons for it. It is common knowledge that even one single saboteur can cause the most serious damage. To cause severe damage it is not necessary for there to be a large number of people.' "

It is submitted that Mr. Erim was clearly stating that the declaration of martial law was imposed to help to protect vital installations from sabotage and to control certain extremist activities, and not in order to meet an immediate danger of internal disorder. It is difficult to see how in these circumstances, the declaration can be justified under the terms of Article 124 of the Constitution and, still less, under Article 15 of the Convention. (It was not, of course, necessary to proclaim martial law in order to place military guards on vital installations).

The second confirmation comes from the decision of the First Military Court of Istanbul Martial Law Headquarters in April and May 1972 in the cases of 19 members of the Popular Liberation Army of Turkey (THKO) and of 84 young naval officers. In both cases the defendants were charged under Article 146 of the Turkish Penal Code with "trying to change the Constitution by force". This offence, which carries with it a mandatory death sentence, implies acts which fall within Article 124 of the Constitution as being an armed insurrection or uprising. The Court held that the acts of violence committed by the accused, which included kidnapping for political reasons, attacks on banks and use of explosives and firearms, were not of such a nature as to constitute the offence of "seeking to overthrow the Constitution by force" under Article 146. As these acts were typical of the violence which led to the proclamation of martial law, it is submitted that this decision provides corroboration of the thesis that the proclamation was not occasioned by an armed insurrection or uprising or by an emergency "threatening the life of the nation". The Court which gave this decision was immediately dissolved. The military prosecutor's appeal has since succeeded, and the case has been re-tried before another military court, who convicted one of the defendants under Article 146, but the fact remains that the original military court was not persuaded by the prosecutor's argument and had the courage to say so.

As has been seen, Article 124 of the Constitution has now been amended so as to permit of a declaration of martial law upon "the emergence of definite indications of widespread acts of violence . . . tending to suppress the free democratic order or the basic rights and freedoms recognised by the Constitution". This provision cannot, of course, be prayed in aid to justify the original declaration of martial law. Nor is it easy to follow how it can justify its continuance when, on the admission and claims of the Turkish authorities, hundreds of persons said to belong to dangerous organisations have been arrested and either have been or are being tried in mass trials. For approximately a year there have been little or no acts of violence of the kind relied upon to justify martial law, and one is driven to conclude that the reason for its continuance is that the military commanders are not yet willing to hand back power to the civilians and that they wish the mass

trials to continue before military courts instead of the ordinary civilian courts⁷.

Apologists for the Turkish Government argue that the continuance of martial law has been approved at two-monthly intervals by the freely elected Parliament and that there is not military rule but democracy prevailing in Turkey (cf. for example, Ambassador Suat Bilge replying to an intervention in the U.N. Commission on Human Rights, April 1973). This raises the question of the true power relationship between the military and civil authorities. It will be remembered that the change of government which preceeded the proclamation of martial law took place as a result of an unconstitutional ultimatum from the military commanders, threatening that the armed forces would take over the government if their demands were not complied with. Equally, the amendments to the Constitution were in response to a demand from the armed forces commanders. It is hardly credible in these circumstances that the declaration of martial law was not the result of pressure from the same source. Even under martial law, the military authorities continue to issue demands and threats to the politicians.

On December 11, 1972, the Secretary of the Office of the Chief of General Staff issued the following statement concerning a meeting of the self-styled Military High Command⁸ the previous day:

"The subject of political amnesty, which is largely a political and emotional problem, has been raised and intensive activity undertaken on the subject . . . The armed forces consider such political and emotional activities as contrary to the spirit of the March 12 (1971) memorandum."

(Yeni Ortam Daily, December 12, 1972)

On February 12, 1973, the same Secretary issued another statement on behalf of the Military High Command noting "with regret that misplaced statements are being made at an increasing rate in recent months by some irresponsible politicians and politicians unable to grasp the extent of their responsibilities, and by representatives of different ideologies and interest groups, paying no regard to the supreme interests of the country and taking advantage of the dignified silence of the armed forces". It went on to state that "The Military High Command, by virtue of the responsibility attributed to the armed forces by the memorandum of 12 March, and in order to save the country and the Turkish people from the threat of destruction to which they are exposed and to lead them to a secure future, demands that the disputes and provocative or disparaging declarations relating directly or indirectly to the armed forces and to the memorandum of 12 March are brought to an end . . ."

(Cumhuriyet Daily, February 22, 1973)

⁷ Prof. Peter Noll, Professor of Penal Law at Zürich University, who attended one of these trials as an Observer on behalf of the International Commission of Jurists and Amnesty International in March 1973, commented that the large number of defendants in these mass trials rendered impossible a careful appreciation of the case against each defendant and a fair judgement. In the case he attended there were 40 defendants in court; in one case there are 456 defendants.

⁸ There is no such body as the "Military High Command" under the Turkish Constitution. The term is used to refer to the Chief of General Staff, and the Army, Navy and Air Force Commanders. It was this group of officers who issued the March 1971 ultimatum.

During the constitutional crisis in March 1973 over the election of a new President to succeed President Sunay, according to a report in the *Tribune de Genève* of March 19, 1973, the new Chief of the General Staff "lost his patience with the leaders of the parliamentary groups" in face of repeated inconclusive balloting for the presidency and told them either to amend the Constitution so as to extend the term of President Sunay or "the armed forces themselves would take charge of the government in accordance with the March 12 memorandum".

It is clear from these statements that the threat by the military commanders contained in the March 1971 memorandum still continues in force. In these circumstances it cannot be accepted that the Parliament is free to terminate martial law without the consent of the Military High Command. Equally, the fact that Parliament continues to give its consent to martial law does not provide any proof that there is a real emergency situation "threatening the life of the nation".

(4) Illegal Practices Violating the European Convention

The military intervention. As has been seen, the leaders of the armed forces delivered an illegal ultimatum to the government and parliament on March 12, 1971, threatening to take over the government of the country if their demands were not satisfied. The threat in that memorandum has by implication been repeated on numerous occasions since then. It is submitted that this interference with democratic rights and freedoms falls to be considered as an "activity or . . . act aimed at the destruction of . . . the rights and freedoms set forth" in the Convention, contrary to Article 17 of the Convention.

Torture and ill-treatment of political suspects. Massive evidence is available of the torture and ill-treatment of political suspects, detainees and prisoners. A detailed report on this subject is being prepared by Amnesty International. These activities constitute, of course, a violation of Article 3 of the European Convention, from which there can be no derogation in time of public emergency under Article 15.

Illegal detention of suspects. There have been frequent reports of persons being arrested and detained by military and police authorities beyond the period permitted by law without being brought before a court. This is a violation of Article 5 of the European Convention.

Conclusions

The principal conclusions drawn from this study are:

- (1) It is doubtful whether at the time of the original proclamation of martial law in Turkey on April 26, 1971, there was any "public emergency threatening the life of the nation" as required under Article 15 of the European Convention on Human Rights;
- (2) Whatever the position in April 1971, there is no such emergency at the present time and it is difficult to see how the continuance of the state of martial law can be justified under the Convention;
- (3) The emergency measures taken under martial law seriously derogate from the obligations under the Convention;
- (4) Apart from the emergency measures, the changes which have been made to the Constitution and to the permanent laws in the last

two years conflict with the obligations contained in the Convention in numerous respects, and in particular in relation to freedom of expression, freedom of association and the right to a fair trial. Being alterations to the permanent legislation, these cannot be justified as "emergency measures" under Article 15 of the Convention.

- (5) Illegal practices are occurring in Turkey in violation of the Convention, in particular the torture and ill-treatment of political suspects, and the illegal detention of suspects.

Basic Texts

Principles of Equality in the Administration of Justice

At its 29th Session in Geneva in February-April 1973, the United Nations Commission on Human Rights approved these Principles of Equality in the Administration of Justice, contained in the Study prepared by Mohammed Ahmed Abu Rannat (Sudan), Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub 2./296/Rev. 1).

The Human Rights Commission asked the Economic and Social Council to forward them to the General Assembly with a recommendation that they be brought to the attention of governments "calling upon them to give due consideration in formulating legislation and taking other measures affecting equality in the administration of justice to the above-mentioned draft principles which may be regarded as setting forth valuable norms, with a view to arriving at an elaboration of an appropriate international declaration or instrument".

In the belief that they are a valuable statement of principles concerning the rule of law, they are published here in full.

WHEREAS the peoples of the world have, in the Charter of the United Nations, proclaimed their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, and to promote social progress and better standards of life in larger freedom,

WHEREAS the Charter sets forth, as one of the purposes of the United Nations, the promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

WHEREAS the Universal Declaration of Human Rights proclaims in its Article 2 that everyone is entitled to all the rights and freedoms set forth in that Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or the status of the territory to which he belongs,

WHEREAS the Universal Declaration proclaims in its Article 10 that everyone is entitled in full equality to a fair and public hearing by an

independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him,

WHEREAS the United Nations has already dealt with some aspects of the administration of justice in provisions of other international instruments, including Articles 9, 10, 11, 14 and 15 of the International Covenant on Civil and Political Rights, Article 5 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 16 of the Convention Relating to the Status of Refugees and Article 16 of the Convention Relating to the Status of Stateless Persons,

WHEREAS sufficient national experience has been gained in various parts of the world concerning the methods and forms of combatting the types of discrimination condemned by the Universal Declaration of Human Rights,

WHEREAS the types of discrimination in the administration of justice under consideration which still exist make it necessary to adopt an international instrument or instruments with a view to the elimination of discrimination in the administration of justice,

WHEREAS the attainment of the goal of equal rights in the administration of justice requires not only the recognition of the civil and political rights of the individual but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of the human potential and dignity,

NOW THEREFORE the following principles are proclaimed with a view to eliminating all forms of discrimination in the administration of justice:

1. General Principles

Principle 1. To the fullest extent consistent with the nature of the question, matters connected with the administration of justice shall be regulated by constitutional or statutory provisions or by rules of court, whichever may be appropriate, and not by executive decisions. Written constitutions, where they exist, shall lay down at least the basic general rules affecting the administration of justice.

Principle 2. The State shall have the exclusive power and obligation to administer justice to persons within its jurisdiction.

Principle 3. National laws concerning the rights to equal access to the courts and to equality before the law in general shall provide specifically that these rights shall be accorded to all, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 4. In the allocation of jurisdiction and determination of competence of tribunals of whatever characterisation, no such allocation or determination shall be made upon the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 5. Being essential requirements for promoting equality in the administration of justice, the independence and impartiality of members of

all levels of the judiciary shall be ensured by the laws and practices governing their training, selection, jurisdiction, oath or affirmation, privileges and immunities, tenure of office, transfer, salaries and pensions, the limitations placed on their non-judicial activities, the circumstances disqualifying them from acting in particular cases, the protection against improper influences accorded to them by the criminal law and the sanctions applicable to them in the event of their failing to display independence and impartiality in performing their functions.

Principle 6. Being essential requirements for promoting equality in the administration of justice, the independence and impartiality of jurors and assessors, where they function, shall be ensured by the laws and practices affecting their selection and compensation, their oath or affirmation, their immunities, the incompatibility of certain activities with service as juror or assessor, the challenges which may be made to their acting in particular cases, the protection against improper influences accorded to them by the criminal law and the sanctions applicable to them in the event of their failing to display independence and impartiality in performing their functions.

Principle 7. Being essential requirements for promoting equality in the administration of justice, the independence of lawyers practising before courts and their impartiality in according their services to potential clients shall be ensured by the laws and practices affecting the relationship between such lawyers and their organisations, on the one hand, and the State, on the other, the incompatibility of certain activities with the profession of the law, the circumstances under which a practising lawyer may not accept a case, the grounds on which a practising lawyer may not refuse his services to a client, the access of the individual to his lawyer and the privacy of communication between the two, the preservation of the secrecy of information received by lawyers during professional dealing with their clients, the immunities of lawyers and the sanctions applicable to them.

Principle 8. National law shall ensure that no one shall be denied equal access to the judiciary and to the legal profession, without distinction based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 9. Where the State or any other body subsidises the training of judges, lawyers and court interpreters, they shall do so without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 10. Judges, jurors, assessors, accused persons, other parties to judicial proceedings, lawyers, witnesses and interpreters shall be permitted to make an affirmation instead of taking an oath if they object to the religious character of any oath required of them in connexion with their roles in the administration of justice.

Principle 11. National laws concerning legal aid for the poor shall develop such aid to the utmost extent consistent with the economic resources of the country concerned. Needy persons shall be entitled to be relieved of all charges and expenses in judicial proceedings and to free aid for their defence.

Principle 12. Provisions shall be made through legal aid schemes or otherwise for ensuring adequate legal representation to persons whose

political opinions may otherwise be a disadvantage to them in judicial proceedings.

Principle 13. Aliens in a country shall have the benefits of legal aid to the same extent as citizens.

Principle 14. National laws concerning appeals to higher courts shall include provision for appeals on grounds of the discriminatory application of laws relating to jurisdiction and procedure as well as of substantive law.

Principle 15. With a view to eliminating discrimination arising out of the status of the territory to which a person belongs, full application shall be given to the Declaration on the Granting of Independence to Colonial Countries and Peoples, proclaimed by the United Nations General Assembly in Resolution 1514 (XV) of 14 December 1960, which proclaims the necessity of bringing to an end colonialism in all its forms.

2. Principles Relating to All Courts

Principle 16. Everyone, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, shall be guaranteed the following rights in the examination of any criminal charge against him, whether it relates to a crime falling within ordinary jurisdiction or within military or special jurisdiction, or in the determination of his rights and responsibilities through civil, administrative or other judicial proceedings:

- (i) the right to access to tribunals;
- (ii) the right to be heard by his lawful judge, that is to say, by the competent tribunal previously established by law or established under pre-existing law and not by a tribunal assigned *ad hoc* or specially set up to hear his case;
- (iii) the right to be heard by an independent and impartial tribunal;
- (iv) the right to be assisted and represented by counsel of his own choosing;
- (v) the right to a prompt and speedy hearing, subject to his being given adequate time to prepare his case;
- (vi) the right, either in person or through counsel, to present his case and to produce and examine witnesses and other evidence, or to have such witnesses or other evidence produced and examined;
- (vii) the right to a public hearing, subject to the possibility that the press and the public may be excluded from all or part of a hearing for reasons of morals, public order, or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice;
- (viii) the right to have the decision on his case based only on the evidence placed before the court and known to all the parties;
- (ix) the right to have the decision on his case rendered in public, except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children;
- (x) the right to appeal to a higher court.

Principle 17. As regards the administration of justice, married women shall be ensured the right to an independent domicile.

Principle 18. The distribution of courts within a country and the movements of itinerant judges shall be determined by the distribution of population, subject to the special needs of persons living in isolated areas.

Principle 19. In view of the hardship caused in particular to poor persons by delays in judicial proceedings, measures shall be taken, appropriate to the circumstances prevailing in each country concerned, to reduce the delays facing the courts in reaching and dealing with cases to the minimum consistent with the right of accused or other parties to judicial proceedings adequately to prepare and present their cases.

Principle 20. National laws relating to the place of hearing or trial shall provide for the change of place of hearing or trial whenever such change is necessary to ensure a fair hearing or trial.

Principle 21. Measures taken for the special protection of minors in judicial proceedings shall not diminish their right to equality in the administration of justice.

Principle 22. Whatever the jurisdiction of such religious courts as may exist in a country, civil courts shall offer a forum for the settlement of all justifiable disputes. No person shall be without a court to resort to, due to his not belonging to any of the religions whose courts have exclusive jurisdiction over the matter at issue.

Principle 23. Interpretation shall be provided free for all accused persons and other parties to judicial proceedings if they do not have a command of the language of the Court. Analogous arrangements shall be made free for accused persons and other parties to judicial proceedings who are handicapped in speech or hearing.

Principle 24. The right to a public hearing may be restricted by laws framed so as to prohibit, prior to the final decision of the court, publicity prejudicial to accused persons or other parties to judicial proceedings.

Principle 25. Courts shall be required to give their reasons when rendering judgment.

3. Principles Relating to Criminal Courts

Principle 26. Everyone against whom a criminal charge is preferred shall be guaranteed, in addition to the above-mentioned rights, the following rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status:

- (i) the right to be presumed innocent until proved guilty according to law;
- (ii) the right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (iii) the right to be informed of his right to defend himself either in person or through counsel of his choosing;

- (iv) the right to have legal assistance assigned to him in any case, if the interests of justice and of the person involved in the judicial proceedings so require, without payment if he does not have sufficient means to pay for it;
- (v) the right to compulsory representation by counsel in proceedings for crimes of a grave nature;
- (vi) the right to examine, or have examined, the witnesses and documentary evidence against him and to obtain documentary evidence and the attendance and examination of witnesses on his behalf;
- (vii) the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (viii) the right not to be compelled to testify against himself or to confess guilt.

Principle 27. Judges shall explain to accused persons their essential procedural rights during trial and their right of appeal.

Principle 28. National laws concerning provisional release from custody pending or during trial shall be so framed as to eliminate any requirement of pecuniary guarantees and shall be designed also so as to reduce detention pending or during trial to a minimum.

Principle 29. No one shall be compelled to incriminate himself. No accused person or witness shall be subject to physical or psychic pressure, including anything calculated to impair his will or violate his dignity. Evidence obtained in breach of this right shall not be admissible, and the extraction of purported confessions by means of such influences shall be an offence. No one shall be compelled to testify against his spouse, ascendants or descendants.

* * *

ICJ News

COMMISSION

Four new members have been elected:

Professor Boutros BOUTROS-GHALI (Egypt).

Professor of International Law and International Relations and Head of the Department of Economics and Political Science, Cairo University; Member of the Committee on the Application of Conventions and Recommendations of the I.L.O.

Professor Dr. Torkel OPSAHL (Norway).

Professor of Law, University of Oslo, teaching Constitutional and International Law; Member of the European Commission of Human Rights.

Professor Heleno Claudio FRAGOSO (Brazil).

Born in 1926, Professor of Penal Law 1962-1969 at Rio de Janeiro Federal University Law School, and since 1955 at Candido Mendes Law School, Rio de Janeiro. He is also a member of the Federal Council of the Brazilian Bar Association and of the Executive Committee of the International Association of Penal Law. He is the author of numerous books and articles on penal law. As an advocate he has been prominent in the defence of political prisoners, and he is widely respected for his fearless independence.

Professor Alberto Ramon REAL (Uruguay).

Born in 1917, he has been Professor of Administrative Law at the University of Montevideo since 1955, teaching Constitutional Law and Political Science. He was Dean of the Faculty of Law, 1969-1972. A member of the International Society for the Study of Comparative Law, his published works include "The Rule of Law" (1957), "General Principles of Law in the Constitution" (1958), and "Studies on Administrative Law" (1967). He has been prominent in seeking to uphold the principles of the rule of law in Uruguay.

Dr. José NABUCO (Brazil), who retired recently after many years as a full Member of the Commission, has agreed to continue as an Honorary Member.

NATIONAL SECTIONS

Austria. The Austrian Section has held a colloquium at Reykjavik jointly with the Association of Icelandic Lawyers on "Forfeiture of Fundamental Rights in Cases of Abuse"; and a meeting in Vienna on "The European Human Rights Convention and the Austrian Administration", sponsored by the Austrian Minister of Justice.

ICJ STAFF STUDIES

The Rule of Law and Human Rights

Principles of the Rule of Law defined and applied to the Individual, Society, Economic and Social Development, the Legislature, Executive, Judiciary, Legal Profession. Sources: Principal human rights Conventions, International Conferences of Jurists. Well-indexed.

Price: HARD COVER Sw. Fr. 6.75 SOFT COVER Sw. Fr. 5.60

The Events in East Pakistan, 1971

A Legal Study by the ICJ Secretariat

Part I: Introduction

Part II: Outline of Events, March-December 1971

Part III: Legal Position under Pakistan Law

Part IV: Legal Position under International Law

Part V: Right of Self-Determination in International Law

Part VI: The Role of the United Nations

Part VII: The Role of India

Price: Sw. Fr. 12.00 or Sw. Fr. 8.00 each for bulk orders of ten or more; postage free.

The Protection of Privacy

A Comparative Study
of the Legal Protection of Privacy in Ten Countries

Introduction: What is Privacy? The Impact of Technological Developments on the Right to Privacy. The General Law Relating to Privacy in Ten Countries. Intrusions into Privacy. Public Disclosure of Private Information. Conclusions.

Price: Sw. Fr. 8.00

Published by UNESCO, International Social Science Journal,
Volume XXIV, Number 3, 1972

International Commission of Jurists
109, route de Chêne
1224 Chêne-Bougeries/Geneva
Switzerland