AMNESTY
INTERNATIONAL
personal freedom
in western europe

report of conference
november 17th 1962
This conference was the third and last in the Amnesty series of conferences in 1962 on 'Personal Freedom in Contemporary Society'. The object of the series was to consider how far Articles 18 and 19 of the Universal Declaration of Human Rights, conferring freedom of opinion, religion and expression on all citizens, applied in various regions of the world.

The first Conference studied the position in the Emergent countries — those recently achieving full nationhood, free of colonial tutelage, such as Ghana and the Sudan; the second dealt with the philosophical, practical and legal background of human rights in Marxist-Leninist countries.

On November 17th, 1962, the spotlight was turned on Western Europe — a part of the world with a long heritage of personal freedom, enshrined for a large majority today in the 'European Convention of Human Rights'.

There are still nations outside the Council of Europe, such as Spain and Portugal, however, where many basic human rights are not recognised, and even within the Council there are exceptions to its full ratification. France, for instance, has not ratified the Convention, and Britain, Greece, Italy and Turkey have failed to ratify certain parts of it.

The principal object of Amnesty is to mobilize public opinion in defence of those men and women who are imprisoned because their ideas are unacceptable to their governments. It has been formed so that there should be some central, international organization capable of concentrating efforts to secure the release of these "Prisoners of Conscience". Essentially an impartial organization as regards religion and politics, it aims at uniting groups in different countries working towards the same end — the freedom and dignity of the human mind.

He pointed out that the Convention was signed in 1953 and was now ratified by 15 of the 16 members of the Council of Europe, the exceptions being France. The organs responsible for working the Convention were the Human Rights Commission and the European Court of Human Rights. Both of these were staffed by independent Jurists or lawyers appointed by the Council from nominations supplied by those governments who are party to the Convention.

The Commission of Human Rights is to take note of inter-state applications to it regarding the violation of the Convention; it may take up applications made to it by an individual, non-governmental organization or group of individuals.

The European Court on the other hand has competence to decide an issue of a violation of the Convention only when the Commission, having declared an application admissible, has subsequently failed in its task of achieving a friendly settlement of the matter between the parties.

As an instance of the Court's jurisdiction, Mr. McNulty quoted the case of the alleged murder by Austrians of an Italian Customs official, which both countries agreed should be referred to the Court. The case was to be heard on November 21st, in Paris, and the Court were calling eight witnesses, four nominated by the governments of either side. All proceedings of the court are heard in camera.

The Commission recognized, as laid down in the Convention, that Governments are entitled temporarily to abrogate its Articles in cases of...
admitted emergency. I refer the Irish case of Terence Lawless, which was referred to the Commission after which the Eire Government promptly declared a state of emergency. The Commission decided to investigate the case, nevertheless, and after intensive study agreed that a state of emergency did exist. Mr. McNulty said, 'is to balance the individual's rights and the right of the state to defend its democratic institutions'. One had to accept that there was a margin of assessment in these cases that individual governments had to be left to decide. There had been several cases of detention before, pending or after trial considered by the Commission which on prima facie evidence appeared unreasonable. On further investigation the Commission had found this to be so. Of about 1,500 individual applications to it 1,100 had been dealt with; but only seven of these had been accepted; 40 had been referred back to governments for comment. It was worth remembering that the Commission could not deal with any case if the desire of the applicant was to destroy the rules of the Convention.

In conclusion, Mr. McNulty said that one of the great achievements of the Commission and the Court was that it gave recognition to the individual as a subject of international law. It was increasingly dealing with important aspects of European life and, in some cases, Belgium and Austria were examples,—as a result of comment by the Commission, the law of the land had been amended to bring it more into line with the spirit of the European Convention.

A SURVEY OF HUMAN RIGHTS IN WESTERN EUROPE

Experts on Human Rights matters in countries belonging to the Council of Europe were asked to reply to a questionnaire*. These replies, combined with his own wide knowledge of Europe and human freedoms, were collated by Maurice Cranston, philosopher and political scientist, to produce the following survey of the human rights position today in Western Europe.

The countries of Western Europe are generally considered to be among the freest in the world. And with good reason. But if they are freer than other countries, they each fall short, in different ways, of the principles they are supposed to stand for. Let us first consider what those principles are. In 1950, the foreign ministers of fifteen European States meeting under the auspices of the Council of Europe at Strasbourg signed a "European Covenant for the Protection of Human Rights and Fundamental Freedoms." The nations represented were the U.K., Belgium, Denmark, France, Western Germany, Iceland, Ireland, Italy, Luxem-

bourg, Saar, Turkey, Greece, Norway, Sweden, and Holland. Austria subscribed to the Covenant when it joined the Council of Europe in 1956. This Covenant resembled the Universal Declaration of Human Rights sponsored by the United Nations in 1948. But it differed significantly in being a Covenant, and not simply a manifesto of ideals and aspirations. Its purpose was not merely to name and enumerate the rights of Man, but — as it was stated in the Preamble to the Covenant — "to take the first steps for the collective enforcement" of certain human rights.

The specific rights the signatories agreed to protect were the historic political rights, notably the right to life, liberty and security of person; freedom from slavery, torture and forced labour; the right on a criminal charge to a fair and public trial; the right to privacy; freedom of thought, conscience, and religion; freedom of expression and assembly; the right to form trade unions; and the right to marry. The Protocol of 1952 gave recognition to the right of property (subject to the right of a government to impose taxes and "control the use of property") as it thinks fit; the right to education (the state "shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions") and the right to political suffrage by secret ballot.

This European Covenant is original and important because it implies definite legal commitments and because it sets up new international legal institutions. The main innovations are the European Commission for Human Rights and the European Court of Human Rights, both seated at Strasbourg. These two institutions are open to receive petitions as specified in the European Covenant, have been received. The only proviso is that the Court can deal only with petitions from people who come under the jurisdiction of governments.

By MAURICE CRANSTON

* See Appendix H.
ments which recognize the authority of the Court.

Of the two bodies, the Commission is the first to consider any petition or complaint. Its members are equal in number to that of the Contracting Parties. In order to prevent the authorities from having to deal with a vast number of vexatious complaints, the Commission has a sub-committee to make the preliminary scrutiny. When petitions are accepted as bona fide they are made to settle them by friendly negotiations. If these efforts fail, the Commission has the ultimate remedy of referring the case to the European Court of Human Rights. The Commission is only partly a judicial body, having at the same time fact-finding and diplomatic duties. It meets in private. The European Court of Human Rights, on the other hand, is a public court of justice. Its President is Lord McNair, former President of the International Court at The Hague and it heard its first case in October 1953. It has since heard three or four other cases: the Commission has been concerned with considerably more.3

These institutional developments at Strasbourg must give great satisfaction to all who wish to see the historic Rights of Man made positive rights by international enforcement. For without enforcement the Rights of Man can easily appear to be no more than myths. Fortunately, the Strasbourg story has its darker side. The great nations of Western Europe — even these who have been fortunate enough to enjoy in full only by the inhabitants of Western Germany, Austria, Belgium, Denmark, Ireland, Luxemburg, Holland, Norway and Sweden. The non-recognition of the Court by Greece and Turkey is understandable, since both their governments have a great number of political prisoners in their jails; it was intelligible in the case of France during the Algerian War; but in the case of the United Kingdom, it is difficult to see what justifies the government's attitude, especially as a British judge (Lord McNair) is President of the European Court and another British jurist (Sir Humphry Waldock) is president of the European Commission. Evidently things are not as they should be in any of these countries.

Freedom Limited by the Demands of Security

It is a commonplace belief — or, at any rate, a belief commonly accepted — that freedom is not absolute. Even such liberal philosophers as Jeremy Bentham have agreed that one man's right to liberty must be limited by others' rights. No one can be allowed with impunity to injure his neighbour or imperil the safety and tranquility of the social order. Unfortunately, these generally accepted limitations on the principles of freedom are all too readily invoked by anxious governments to justify almost any violations of the principle of freedom.

In the Preamble to the European Covenant of Human Rights there is a reference to the European countries being "like-minded" and having a common heritage of political traditions, ideals, freedom and the rule of law. This is unfortunately not altogether true. The political tradition of Turkey is very different from that of England, and that of Germany is different from both. If there were a common European heritage and common values, we should expect the same concept of liberty to prevail in all these European countries and the same notion of what constituted a legitimate limitation of freedom. In fact there is no such agreement.

Consider the question of the limitation placed on the right of freedom by the need to protect the social order. In Germany and Greece this is held to justify the outlawing of the Communist Party. In other European countries the Communist Party is not only tolerated, but plays a leading part in the national political life as the "official opposition." The German Communist Party was suppressed in the Federal Republic, by a decree of August 17, 1956, issuing from the Constitutional Court. An extremely long and detailed judgement was published by the Court (it ran to 205 printed pages) at the time it announced its findings, which in effect upheld a plea, from the administration, that the German C.P. was illegal under Article 21 of the German Federal Constitution.

The chief points in the Court's findings were: (1) that the German C.P. was threatening the existence of the Federal Republic, and (2) that it aimed at setting aside the free democratic order. A certain precedent was given in the suppression, by the same Court under the same law, of the Neo-Nazi Social-Democratic Reichspartei (October 23, 1932). There can be no doubt that circumstances peculiar to Germany led the Court to reach a decision which would be regarded as monstrous illiberal in, for example, England. First, the existence of the German Democratic Republic, which the Federal Republic regards as a threat to its own claim to be the only true German State, coupled with the fact that the West German C.P. was politically allied and, in a sense, subordinate to that other German regime, makes the constitutional position of the German C.P. unique in Europe. Secondly, the minds of the West German leaders are naturally haunted by memories of the weakness of the Weimar Republic, which many believe to have been undone to its own excessive tolerance of the intolerant.

The Tolerance of the Intolerant

It is one of the perennial problems of the free society, as to how far it should give freedom to those who want to destroy freedom: the West German method is to give such people no more freedom than it can help. The Greeks have an even shorter way with the Communists than the Federal Germans. While the West German Government has been content to dissolve the German C.P. and confiscate its funds, the Royal Greek Government has put Communists in concentration camps and prisons. Many Greek political prisoners have now been in jail or camps for 17 years. Their fate is the result of the Civil War in Greece between the Communists and Anti-Communists which the Anti-Communists won. The Greek Government, unlike the West German Government, has never issued any formal legal justification of its policy. The prisoners are usually said to have been convicted for "crimes of violence." Many such prisoners have been released in recent years. In 1950 there were 30,000 left wing prisoners in Greece. In 1958 there were 4,900. Today there are about 1,300. It is too late for any of these people to lodge appeals against their sentence, but it is possible under Greek law for them to be released by the Minister of the Interior as an "act of grace."2

In addition to imprisonment, the Greek Government uses the device of exiling political offenders to certain remote regions — this is done by the administration without reference to the courts of law. After the abolition of the concentration camp on April 25, 1952, the Greek government secured power to extend the period of exile (without trial) from two years to four. There are other forms of punishment. No one may have a job (however humble) in the public service without a police "certificate of social opinion." These techniques of political

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control are still employed (mainly as weapons against the Communist opposition) despite the Revised Security Law of July, 1962, which was supposed to repeal the Emergency measures and introduce a more liberal code into Greece.

There are political prisoners in Turkey, but the situation there is altogether more fluid. After the revolution against the notoriously oppressive government of Menderes, a number of the leaders and supporters of the Menderes regime were summarily detained. A few leaders were executed. But recently the present government has released a notable proportion of its political prisoners.

Freedom and the "National Emergency"

France is a country where personal freedom has been invaded as a result of a political emergency - in this case, of course, the war in Algeria. Since the war in Algeria has ended, one may hope that liberty in France is now more secure. Both the Fourth and Fifth Republics attacked personal freedom in France, sometimes in different ways, sometimes in the same way. The Fourth Republic, under the government of Guy Mollet, was not noticeably more tolerant of Civil Liberties than the Fifth Republic under De Gaulle, who has, at any rate, ended the war in Algeria, given independence to the African colonies and abrogated a law for the recognition of conscientious objection.

The Press has been through several critical times in France in the past ten years. A law enacted on January 10, 1936, to authorize government action against quasi-military secret bodies was invoked in Algeria in September, 1955, to suppress the Communist Party. It was invoked at different times to justify police seizures of such newspapers and magazines as L'Humanité, L'Express, L'Express, France Soir, L'Assiette Gourmande, Les Temps Modernes and Libération. The only publication actually suppressed entirely was Alger Républicain, a Communist Algerian paper of which the editor, Henri Alleg, was imprisoned. A book by Henri Alleg, La Question, was later suppressed in Metropolitan France.

It is important to notice the reason for which these particular papers were seized. They drew attention to allegations of the use of torture by the army in Algeria. It was regarded as a libel against the good name of the French Army to give publicity to such allegations. Whether they were true or not was not considered relevant. However, despite the sporadic seizing of particular issues, the French people have usually been able to buy from their newspaper kiosks journals representing every shade of opinion.

Freedom and radio monopolies

Most European countries have the national monopoly system of broadcasting. In France, under the Fifth Republic, the government has tightened its hold on the radio. At the time of the Referendum on the method of electing the President, De Gaulle demanded something like ten times as much time on the air for presenting the government point of view than was accorded to the opposition. When De Gaulle spoke the national anthem was solemnly played at the end of his discourse. In Austria, the two parties which form the Coalition Government dominate the radio entirely. In Italy and Eire, the radio monopoly is subject to constant pressure from clerical quarters. In Holland, basic control of the radio stations is systematically divided between the main communities. In England, where the BBC is justly proud of its independence, government interference is by no means unknown. One example is the notice given by the Postmaster General to the BBC in 1955 for broadcasting on any subject to be discussed in Parliament within the following ten days.

Film censorship, whether official or semi-official, is an accepted institution in Western Europe. But certain decisions of the authorities show that this institution can be abused to suppress political nonconformity. One is the suppression in France and Italy of Claude Autant-Louis's pacific film Thun Shall Not Die. Another is the suppression of Bunuel's film, Viridiana.

Freedom and "Public Morality"

We have looked at the question of the limitations placed on personal freedom in the name of the security of the social order. There is another important class of limitation on freedom, namely those which are justified by an appeal to public morality. Here, again, the standards which obtain in different European countries vary greatly.

An extreme case in this respect is Eire. In Eire there is even a Board of Censors for Literature and a great number of books that are freely circulated in the rest of the English-speaking world are banned on its instructions. Certain English newspapers have also been excluded from Eire. The Irish censorship is not political. Anything which is obscene (a very wide-ranging category in Eire) or which advocates family planning is forbidden. Italy resembles Eire in certain respects. There is no Board of Censors of Literature. But being subject to similar clerical pressures, Italy has forbidden the sale of contraceptives and its legal code admits no divorce. Catholic jurists justify the denial of divorce as a means of upholding the "rights of the family". Protestant, Jewish, and free-thinking residents of Eire and Italy have, however, to suffer the penalties of a Catholic-inspired legal code.

In England, there has recently been a notable liberalization of the law concerning obscene publications, the two significant stages in this process being the enactment of the new Obscene Publications Bill and the jury verdict on the Lady Chatterley's Lover case. In France, on the other hand, there has been a tightening of the legal pressure in this respect, especially against books published in France in English. Italy is also among the most Puritanical of European countries. Although it was the last member state of the Council of Europe to close licensed brothels, the Italian authorities rigidly exclude, for example, Scandinavian nudist publications.

Conscientious Objectors and Religious Freedom

The position of conscientious objectors is nowhere ideal, except in England and Eire, where there is no compulsory military service. Jehovah's Witnesses seem in general to be the class of objector least tolerated. In France several conscientious objectors are still in prison (although in the case of France, reform of the law is promised). In Greece the situation is far worse. One man was sentenced in 1961 to 20 years imprisonment for refusing to bear arms. In Holland, a new and more liberal law on conscientious objection is expected soon to be enacted. In Scandinavian countries, alternative civil work of an acceptable kind is provided for conscientious objectors. In Austria, objectors are obliged to serve in non-combatant units of the army for three months longer than ordinary conscripts. In Western Germany provision is also made for different forms of alternative service for pacifists, which is of a kind "to promote tasks concerning the general welfare."

Religious freedom in Western Europe is so much greater than it is behind the Iron Curtain, that few Churches feel they have any reason to complain of their situation. In general it might be said that religious freedom is greater in those countries where there is a diversity of sects which have learned to live together in mutual forbearance, or in places where the temperature of religious fervour burns fairly low. On the other hand, in such a place as Northern Ireland, where religious sentiments are inflamed and sectarian divisions embittered, religious freedom is always more or less imperilled. In predominantly Catholic countries, such as Eire, Austria and Italy, the use of public funds for sectarian religious education proselytizes.
few difficulties. In France, the Republican tradition of lay education comes into conflict with the Catholic claim for state help in its educational institutions. In England the state is willing to give up to 75%, but no more, towards the building of local authority schools of religious denominations. Dutch law allows religious practices inside buildings, but religious processions are sometimes forbidden in public places. In 1848 a Catholic priest organised a procession in a town where these processions had been banned since 1818. The priest was prosecuted but based his defence on Art. 9 of the Constitution which guarantees religious freedom. The High Court accepted his defence, but the Supreme Court rejected it.6

In Greece, Jehovah's Witnesses and other dissenters are persecuted in various ways. The situation in Turkey is also disquieting. In Ankara and Istanbul of foreign persons disapproved of for their religious views, e.g. Poujadists, farming and wine interests, etc. It was difficult for a Deputy to raise in the Assembly any particular matter affecting his constituents, as British M.P.s. could do in Question Time. If he wanted to raise any such matter he had to introduce a Bill. High Civil Servants in France were often appointed on political grounds; this was a built-in part of the French system. Perhaps as a consequence they had much more political rights than in Britain. They could stand for Parliament and their job was kept open for them. They were also free to express political opinions. In theory they could also strike, but though this was neither illegal nor unconstitutional, they could, in fact, be disciplined if they tried.

Although there was still an intangible area of anti-clerical prejudice, there was complete freedom for Catholics to educate their children and the State was helping finance Catholic schools on a scale unknown before. This was, in part, because the state could not present do without the Catholic schools if supply was to meet demand, and it was felt that in these circumstances these schools should not be allowed to fall below the normal standard set by the State.

Referring to a question about the use of torture by the French army, Mrs. Pickles said that conditions in the Army were not satisfactory; it was still in a state of potential revolution and morale was very poor. The Church had often courageously condemned torture in the French Army and many priests and others had suffered from O.A.S. reprisals as a result.

THE SPIEGEL AFFAIR

On October 6th, Der Spiegel, the West German Newspaper printed an article analysing German Army manoeuvres, and gave them the lowest N.A.T.O. rating—for use in limited circumstances only. Nearly three weeks later the Editor, Herr Augustin, and several of his co-editors were arrested in circumstances that aroused grave disquiet among the German people. At the conference three speakers gave their views on this crisis.

First, Dr. Andrew Martin, an eminent British barrister, outlined the legal position. He pointed out that, apart from any political implications, it had been the Examining Magistrate of the Federal Court at Karlsruhe (the highest German Court) who had authorised warrants for the arrest of Herr Augustin and his colleagues. He had taken action under that section of the German Criminal Code whereby an act of treason could be invoked for the publication of "state secrets".

The kernel of the problem was that the Code did not lay down what a "state secret" actually was. This was a matter for the Government to decide in the light of given circumstances and it did not matter whether publication included classified or unclassified material. A lot of innocent information put together in a certain way could be considered "secret". Dr. Martin pointed out that in Britain the Official Secrets Act could also sometimes be invoked in this way.

He emphasised that freedom of the Press was...
recognized in the Case Law of the German Courts, and it was acknowledged that it was the legitimate job of the Press to publish information, even about defence.

This being so, the necessary corollary if this kind of thing legally were not to happen again, was to keep the Press informed of what was secret information and what was not.

Mr. Harry Bokrer, who had helped found Der Spiegel under the Control Commission after the war, then recounted some of his early associations with the paper. He said that the original aim of the founders was the paper that normal processes of law would apply. The bribery charge had now been dropped against them.

He also said that his lastest information was that the police were still in control of 40% of the paper's building, and further arrests were expected. There were now four people in prison; two others had been held in custody, one for a fortnight, the other for 24 hours. No-one yet knew of what they were accused.

The bribery charge had now been dropped although Dr. Adenauer had talked about 'people making money out of treason' in the Bundestag.

There was an unhappy feeling in Germany that there was a definite connection between Herr Strauss and the treason charge; this was reinforced because the information published by Der Spiegel and already been published in another paper Die Deutsche Zeitung, and no action had been taken against it.

Finally, Dr. Alexander, London correspondent of Der Spiegel, recalled that it was true there had been prosecutions of the press under the Weimar Republic, but never in circumstances such as these. Since 1930 there had been prosecutions of the press under the Nazi regime, and the Press has been held accountable for its actions.

About 60,000 political exiles have left their citizenship taken away from them; public meetings are restricted and the Press can be prosecuted for 'slander' - a term interpreted very widely. Censorial powers have been used to suppress free speech.

Mr. Davies pointed out that, though it had originally been the wish of the founders to keep the Press informed of what was secret information and what was not, it had not been used since the war on the Press except in one small case—that of Zio.

If the kernel of the problem was the decision on what was secret information, the German Government could perhaps follow the British method of informing journalists on these matters and trusting them not to publish material injurious to state security.

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**FREEDOM IN GREECE**

Reg Sorensen, M.P., who had been to Greece on several occasions to make representations about Greek prisoners, said that one of the worst abuses in that country was that all those who had been engaged in any protest had to have 'Certificates of Social Opinion' issued by the police in order to get work. This applied not only to work in the public service, but in private firms as well. Ex-prisoners found it difficult to find jobs without betraying their convictions. Even the children of prisoners had to produce certificates if they wanted to go to University.

Under Greek law, an individual was subject to arbitrary exile; it was also legal to hold a man or woman in detention up to five years without trial or proper legal advice.

About 60,000 political exiles have had their citizenship taken away from them; public meetings are restricted and the Press can be prosecuted for 'slander' - a term interpreted very widely. Censorial powers have been used to suppress free speech.

So far as the Greek Red Army is concerned, the Government has a fair defence in a political trial. The number of offences that can be tried by Court Martial are very wide indeed. He himself had attended a trial of students, charged with distributing leaflets in support of a strike in 1959. They had been tortured by the police. Two months later they came before a military tribunal which sentenced them to several years' imprisonment. Another example of a trial of which he had personal knowledge was that of the Basque nationalists. When Franco visited Burgos in celebration of 25 years of power, as a protest a train was derailed. Seven people were arrested, although only two were actually accused of the derailment. The rest were charged with owning Basque flags. At the trial the defence tried to raise the question of torture of the defendants, but the judge would not allow any discussion in the court. For these offences, sentence has ranged from 20 years down to 7 years. Mr. Davies pointed out that in these trials defendants were only allowed consultation with their counsel 48 hours before the trial. Even then counsels were drawn from a list of military officers who know nothing about the individuals concerned and there was no possibility of witnesses being called in defence. A further example of the regime's oppressive attitude was shown when those who had attended a Council of Europe Conference at Munich (with official permission), at which a resolution was passed that Spain should not become a member of the Council of Europe until there was a democracy in Spain, were stopped at the airport on return and given the choice either of being deported to the Canary Islands or going into exile.

In conclusion, Mr. Davies stressed that the fact that observers have attended the trials, particularly from Amnesty and other organizations, had stirred world opinion and this definitely had some effect in Spain on some cases. It was essential to continue to put the spotlight of publicity on these trials until there was a change in the present regime.

In reply to a question as to how far the Roman Catholic Church was behind the regime, Mr. Davies said that, though it had originally
supported Franco, there was now growing opposition against the regime. The Church had come out strongly in support of the Asturian miners during recent strikes.

A note on the legal position in Spain is in Appendix 3.

FREEDOM IN PORTUGAL

Albert Lodge, formerly lecturer in English at Lisbon, who was expelled for expressing sympathy with demonstrating students, described from his own experiences the situation at Lisbon, who was expelled for expressing his own experiences the situation at Lisbon. He had seen with his own eyes a professor left lying bleeding on the ground after a clash with the police on the University campus. He had met one man who had suffered the statue's torture, though he understood that many others had also suffered in this way. He had been impressed by the fact that when Galvão Captured the ship "Santa Maria" there was absolutely no comment about this in bars and cafés, and people hastily refused to discuss this matter. Yet, at the same time, demonstrations, which by law are disallowed, could on occasion suddenly take place against the British and USA Embassies. There was an overwhelming atmosphere of fear throughout the country. As in Spain, the Roman Catholic hierarchy seemed now to be moving away from complete support of Dr. Salazar's regime and its repression.

Mr. Antonio de Figueiredo, himself a political refugee from Portugal, pointed out in a paper to the conference that Decree Law No. 40550, introduced on the 12th March, 1956, was instrument by which this fear was imposed. This Decree enabled the police to arrest any person alleged to be involved in movements of a Communist character or who aimed at committing crimes against the security of the state. Both of these were interpreted very widely, and the government had complete power as to the interpretation that should be given in any particular case.

In Portugal all newspapers and magazines are officially submitted to a censorship that covers not only the contents of articles, but the lay-out of the texts. The Government Information Department has a tight control over all media of information and keeps a careful watch on what is being produced in the arts, such as the theatre, cinema, painting, etc.

No duplicating machine or printing press can be sold without the knowledge of the political police. The Secret Police asked the seller to give complete and detailed information about the buyer's name, address and registration number of the machine and what it is going to be used for.

Roman Catholic is the official religion, and many difficulties are put in the way of forming any other religious group. Conscientious objectors are not officially recognised, and a man objecting to military service is sent to a special disciplinary detachment for punishment.

For background note on the present legal position in Portugal see Appendix 4.

APPENDIX I

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

NOTE OF APPLICATION

By A. B. McNulty

The European Convention on Human Rights came into force on 3rd September, 1953, and has been ratified by 13 of the 16 Member States (all except France) of the Council of Europe. Cyprus ratified the Convention on 6th October, 1962.

The Convention contains a list of certain personal and political rights and freedoms. These are limitatively defined and there are clauses which allow a Government to tolerate measures for the protection of a domestic society. The Convention has not attempted to provide for economic or social rights as has the United Nations Declaration of Human Rights. On the other hand, unlike the United Nations Declaration, which remains an unimplemented statement of principles, the Convention is an operative document.

It provides for the collective enforcement of the rights and freedoms concerned by the establishment of a Court of Human Rights, and a Commission of Human Rights (Art. 19), which are composed, each on a slightly different basis, of members from each Party to the Convention.

The Court was established on 3rd September, 1958, after its optional competence had been accepted by the necessary minimum of eight States. Briefly, the Court has competence to decide the issue of a violation of the Convention only in cases where the Commission, having declared an application admissible, has subsequently failed in its task of achieving a friendly settlement of the matter between the parties. The Commission, a complainant State or the State complained against may bring a case before the Court, but an individual who has lodged an application with the Commission has no such right (Arts. 44-46).

Two individual cases have been the subject of decisions of the Court : Lawless against Ireland and De Becker against Belgium. The Commission of Human Rights has an obligatory competence in regard to inter-State applications (Art. 24) and an optional competence in regard to applications lodged by an individual, non-governmental organisations or group of individuals (Art. 25). This optional competence was achieved on 5th July, 1955, after the necessary minimum of six States had declared their acceptance. To-day, ten States have accepted the Commission's competence to receive applications lodged by individuals.

The Commission sits in two instances : first, on the basis of a report of a working group of

2 Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxembourg and the Netherlands.

3 All except Cyprus, France, Greece, Italy, Turkey and the United Kingdom.
three of its members, to decide whether an application is, prima facie, admissible; secondly, where an application is declared inadmissible, to ascertain the full facts and attempt to achieve a friendly settlement between the parties. The second stage is carried out by a Sub-Commission of seven members. If a friendly settlement is reached, a brief report is made by the Sub-Commission to the Committee of Ministers of the Council of Europe. If it is not reached, a comprehensive report of the case is made by the Sub-Commission to the Committee which makes its own report to the Committee of Ministers, including an opinion on the issue of admissibility, and the total for 1962 will probably be over 400 as opposed to 340 in 1961.

The second stage is carried out by a Sub-Commission to the Commission which makes its own report to the Committee of Ministers, including an opinion on the issue of admissibility, and the remainder for written and sometimes oral comment. The Court and Commission have each established their own rules of procedure.

Three inter-State applications have been lodged with the Commission. Two were brought in 1956-57 by Greece against the United Kingdom in regard to alleged violations of the Convention in Cyprus and were later withdrawn by mutual agreement. The third case, brought in 1960 by Austria against Italy, is in respect of alleged violations of the Convention arising out of certain criminal proceedings in courts in South Tyrol. This case is still pending before the Commission.

As regards individual applications, about 1,500 have now been registered with the Commission and the total for 1962 will probably be over 400 as opposed to 340 in 1961. The Commission will have had seven sessions this year and has dealt with about 1,100 cases of which 7 have been declared admissible, about 90 have been referred to the Government concerned for written and sometimes oral comment on the issue of admissibility, and the remainder have been at once rejected.

It is not appropriate to include full notes on the Commission's jurisprudence, but the following are the principal grounds of inadmissibility:

1. **Locii temporis**: the facts concerned occurred prior to the entry into force of the Convention as regards the Government concerned;

2. **Exhaustion of domestic remedies**: it is an established rule of international law and there is also a provision of the Convention (Art. 26) that all effective domestic remedies should be exhausted before the Convention, as an international tribunal, can be seized of a complaint; the application must also be lodged within six months of the final domestic decision, if any;

3. **Incompatibility with the Convention**: the responsibility of the State complained against is not involved, e.g. the allegations concern a right or freedom which is not contained in the Convention;

4. **Manifestly ill-founded**: no prima facie violation of the Convention. A large group of cases, for example, are those in which convicted persons allege that they have been the victims of erroneous proceedings. The Commission has frequently stated that it is not a court of appeal to examine alleged mistakes of law or fact committed by national tribunals but is only competent to consider whether there has been a breach of the provisions regarding a proper administration of justice (Art. 6).

Perhaps the most important class of cases with which the Commission is called upon to deal are those where it has, as it were, to balance the right of the individual against the right and duty of a State to take measures as defined in most Articles, in the interest of, for example, public safety, public morals or the protection of the rights and freedoms of others. There are also two over-riding provisions allowing a State to derogate from certain Articles in times of emergency (Art. 15) and to prevent an abuse of the Convention by persons whose own object is shown to be the destruction of the rights and freedoms contained therein.

In such cases, a line of thought emerges from the Commission's jurisprudence to the effect that, although it concedes to a State a margin of appreciation in applying these provisions of limitation, it will jealously examine the justification of any such legislative or administrative measures in relation to the terms of the Convention.

A full account of the Court's and Commission's jurisprudence is contained in the Yearbook of the European Convention on Human Rights and in the collection of decisions periodically published by the Commission's Secretariat at the Council of Europe.
APPENDIX II
PERSONAL FREEDOM IN WESTERN EUROPE
QUESTIONNAIRE FOR CONTRIBUTORS TO CONFERENCE

This questionnaire falls into two parts. Part I considers relevant Articles of the European Convention of Human Rights and asks contributors to discuss how far their country fully implements the declarations made therein. (Most countries concerned are members of the Council of Europe and have signed the Convention.) Part II is designed to cover aspects of personal freedom not specifically mentioned in the Convention.

PART I
EUROPEAN CONVENTION OF HUMAN RIGHTS
1. Articles 2-7 deal with the rule of law as it affects the individual, including his right to be protected by the law (1), his non-subjection to torture or "degrading treatment", slavery or compulsory labour (2 and 3), his right to liberty and security of person and fair trial (5 and 6) and the safeguard that he shall not be punished under any retro-active law.
To what extent and in what form are these provisions complied with both in theory and in practice in your country?
2. Articles 8-11 confer certain inalienable rights of personal freedom on the individual. These are:
(a) The right to respect for his private and family life, his home and his correspondence (5);
(b) Freedom of thought, conscience and religion and freedom to manifest these (5);
(c) Freedom of expression (subject to certain "formalities necessary in a democratic state") (10);
(d) Freedom of peaceful assembly, including the right to join a Trade Union (11);
To what extent are these rights written into the law of the land, or accepted by custom and usage as inalienable rights and fully implemented?
3. Article 13 provides that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority.
To what extent is it possible to criticise the Government's action? Has the Government at any time since the Convention was signed used Article 15 to justify certain measures restricting personal freedom? Could these measures be said to have been strictly required by the exigencies of the situation?
4. Article 14 declares that the rights and freedoms of the Convention shall be enjoyed without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status.
To what extent in practice does this Article apply?
5. Article 25 enables the Commission to receive petitions from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting parties of the rights set forth in the Convention (provided that the said Contracting Party has declared that it recognises the competence of the Commission to receive such petitions).
Article 48 (providing it has been ratified by the Contracting Party) enables cases to be brought before the European Court. If your country has not ratified these Articles, what reasons does the Government give?
If it has, how far has the right of appeal been used by individuals and groups in your country?
6. Article 15 enables a signatory to the Convention, in time of war or other public emergency threatening the life of the nation, to take measures "derogating from its obligations under the Convention" to the extent strictly required by the exigencies of the situation.
Has the Government at any time since the Convention was signed used Article 15 to justify certain measures restricting personal freedom? Could these measures be said to have been strictly required by the exigencies of the situation?

PART II
OUTLETS FOR EXPRESSION
1. The Press and other communications
(a) To what extent is it possible to criticise the Government and State institutions in national and local newspapers?
(b) Are any restrictions imposed on publications by any religious, political or other organisation by censorship or otherwise?
(c) Who owns the radio and television stations? What safeguards exist for ensuring a balanced presentation of news and views on radio and television?
(d) Even though constitutionally there may be provision for complete freedom in the use of all media of communication, in practice are there social, economic or other more subtle pressures that mitigate against full freedom of expression?
2. Writers and artists
(a) Apart from the demands of particular publishers, are there any restrictions or difficulties placed in the way of writers in publishing their books?
(b) Does a censorship of any kind exist regarding the publication of books and articles?
(c) Is there any restriction in the production of plays and films? Does a state or voluntary censorship exist regarding staging or exhibiting? If so, how does it operate?
3. Freedom of ordinary people to express their views
(a) Is there any restriction or prohibition on
a citizen writing, publishing and distributing literature and pamphlets on his own account?

4. Freedom of Religion
What is the position regarding the following:
(a) Freedom to practice the religion one wants.
(b) Religious instruction of children.
(c) Training of priests.
(d) The right to proselytise.

5. Conscientious Objection
What provision is made for conscientious objection to military service?

APPENDIX III

PERSONAL FREEDOM IN SPAIN

Spain is not a member of the Council of Europe, so that there is no question of her Government adhering to the European Convention of Human Rights. Both law and practice in Spain are in very many respects in clear violation of the principles laid down in the Convention and of other aspects of personal freedom.

The Death Penalty
By Spanish law, the death penalty can only be imposed by a court of law after a conviction. However, two factors limit the value of this safeguard. First, a very wide range of offences, ranging from armed rebellion to simple criticism of the government, are punishable by death, and, secondly, all political offences are dealt with by military courts. The effect of this will be dealt with in the section on fair trials.

Protection from Torture
In the words of a Spaniard "Torture and inhuman and degrading treatment are our daily bread." The Spanish police do not hesitate to use brutal methods both to obtain information about political activities, and to repress such activities and discourage people from engaging in them. Protest against such practices are useless and even dangerous. The police act as the agent of the government and exercise their power arbitrarily without fear of reproof.

Slavery
Slavery does not exist in Spain, but some people feel that in practice there may be compulsory servitude in underdeveloped areas.

Liberty and Security of Person
Spanish law empowers civil governors to order the arrest of any person for 15 days without any explanation and every 15 days a fresh warrant can be issued.

Persons detained on a charge that comes within the jurisdiction of the military courts can be detained indefinitely without trial.

In other cases persons arrested must, by law, be brought before a court within 72 hours, but this is not always done.

In practice, the Police detain suspected persons indefinitely and subject them to prolonged interrogation, often accompanied by torture and brutal maltreatment. Such persons have no opportunity of seeing a legal adviser or demanding that they be brought before a court.

Right to a fair trial
(a) Before a military tribunal
The submission to a military tribunal of all political offences means that a fair and impartial trial is impossible in Spain. By the decree of the 21st September 1961 the following are tried by a military court:
1. Those who spread false or tendentious rumours designed to cause breaches of public order or international conflict or to bring the State or any of its institutions into contempt.
2. Those who write, conspire or take part in meetings or demonstrations with any of the above objects. Strikes, acts of sabotage and similar acts are deemed to come within this definition when they have
political purpose or cause serious breaches of public order.

It is not difficult for the authorities to bring a charge against a person under this law which will be dealt with by a military tribunal. An item of news has only to be "tendentious" in the government's eyes, a strike only has to have what the government considers a political object, and an offence has been committed.

A person detained on suspicion of a political offence may, by the decree of the 23rd March and 22nd November, 1957, be held in custody indefinitely. He has no opportunity of consulting legal advisers. He will be told at most 24 hours in advance when his trial will take place. He has no choice of lawyer: a military officer is allotted to him to defend him, who is very rarely qualified to do so. Theoretically the trial takes place in public, but since it is not announced beforehand few people know about it. Attendance is in any event a risky matter because the police take the names of all present. The verdict and sentence are not usually made public.

Right to peaceful assembly and association

The decree of the 21st September, 1960, mentioned above, ensures that any assembly displeasing to the Government can be proceeded against under military law.

Further, police permission has to be obtained for all unofficial meetings and the police can refuse permission without giving reasons. Associations have to be expressly authorised by the appropriate authorities. The Penal Code punished not only unauthorised associations, but all groupings of persons, so that a group of friends could be proceeded against as an unauthorised association.

Freedom of means of communication

The Press

The Spanish press is regulated by the General Directorate of the Press, an organ of the Ministry of Education, established in 1940. The editors of all journals in Spain are appointed, on the nomination of the proprietors if they are privately owned, by this body.

Pre-censorship is the norm. All periodicals must normally submit their galley-proofs to the local censorship office. In cases where this is not required, the editors are nominated by the Government, and carry out self-censorship.

For any breach of the law, editors, directors and proprietors are answerable not to the courts but to the General Directorate. Journalists have to have an official permit, which is only granted to graduates of the official State Schools of Journalism.

The censorship of the press is political, religious and moral, and is extremely severe. Any criticism of the Government is impossible.

Radio and TV

There are both state and private radio stations. The former are used as means of propaganda by the Government. The directors of the latter are nominated by the Government, have to submit their scripts to censorship and can only retransmit news from the state-controlled radio.

Right to privacy

There are many restrictions on a Spaniard's freedom to order his life peacefully and without interference.

(a) He cannot choose freely where to live: By an order of the 8th June, 1962, this freedom has been suspended for two years.

(b) By law an order of a court is needed before a person's home can be searched. In practice the police carry out searches without such orders as and when they choose.

(c) Correspondence is regularly opened and read, notes or copies made of it, and letters are sometimes kept or destroyed.

Religious and moral...

Religion

Only the Roman Catholic religion may be practised publicly. Roman Catholic instruction is compulsory in all schools, training is provided only for Roman Catholic priests, and only the Roman Catholic Church is allowed to proselytise.

Conscientious objectors

No provision is made by law: they remain in jail for the period of their military service.
The very Constitutional foundation of the present Portuguese regime is in conflict with the notions of democratic legality and standards of civic rights prevailing in most Western countries. The Government of Dr. Salazar does not derive its powers from either a Monarchic system or a Republican Constitution, democratically adopted and sanctioned by the normal functioning of free institutions. Established in 1926, after a Republic, the Dictatorship, as it was then officially defined, imposed its own Constitutional Charter in 1933, after a plebiscite of dubious validity, in which abstentions were counted as approving votes.

By providing the place for meetings, or by subsidising (these activities) or permitting their propaganda, are "Subject to security measures" under the Decree-Law promulgated by the Portuguese Government.

A brief analysis of some of the points involved by a specific Decree Law, numbered 40550, and dealing with the application of "security measures" is sufficient to reveal, not only the very nature of the Portuguese regime, but the extent to which Portuguese legislation conflicts with some of the basic articles of the Declaration of Human Rights.

The following is a rendering of the Portuguese text of Articles 7 and 8 of Decree Law No. 40550, dated the 12th of March, 1956, and duly signed by the President, the Prime Minister and the entire Portuguese Cabinet of the time —

1. Those (individuals) who form associations, movements or groups of a communist character, with the object of exercising subversive activities, or aiming at committing crimes against the security of the state; or using terrorism as a means of action; as well as those (individuals) who may adhere to such associations, movements or groups, who may collaborate with them or following their instructions with or without previous agreement;

2. Those (individuals) who commonly facilitate such subversive activities either by providing the place for meetings, or by subsidising (these activities) or permitting their propaganda, are "Subject to security measures of internment in an adequate establishment for an indefinite period of time, for six months to three years, renewable for successive terms of three years, should they continue to reveal themselves dangerous."

Article 8

Should the accused be charged with crimes against the security of the state, the security measures referred to in the previous article will be applied by the competent court, even if the accusation is not proceeded with.

The first point that needs to be emphasised is that these articles are contrary to the principles specified in the 4th, 11th and 14th paragraphs of article 6 of the Constitution (which recognize respectively the freedom of expression, freedom to hold political meetings, freedom to form and, implicitly, belong to political associations and, finally, specifically forbidding life imprisonment).

Since the Censorship Board, which is charged with the regulation of the freedom of press would preclude it, there has never been any public discussion in Portugal over the implications of this Decree Law. In France, where a number of Portuguese lawyers are living in exile, there has been some controversy on the subject.

The death penalty and life imprisonment have legally been abolished in Portugal. But an article in "La Vie Judiciaire" has recently alleged that life imprisonment is now possible by the use of security measures under the Decree Law. The Portuguese Government has semi-officially denied these assertions on the grounds that they lacked a "factual basis."

It claims that "(Article 7) specifies that such measures may be applied for a period varying from six months to three years, being liable to extension by successive three year periods, so long as an element of peril to the state continues to exist. Such extensions are subject to an order of the Court, just as are the original orders for the application of such measures. In the low percentage of cases which involve application of security measures, the courts have shown themselves to be particularly cautious in considering applications for extensions."

It is difficult to understand how the Portuguese Government can support the view that there is no factual basis for the charge that a life sentence may be applied. Presumably a man subjected to internment needs to keep alive and sufficiently energetic to be an "element of peril" up to one hundred years of age, in order to provide the Portuguese Government lawyers with a case where a "factual basis" would be proved beyond all reasonable doubt. In a number of cases the "factual basis" has been provided by the fact that some of those to whom security measures were successively applied died prematurely in consequence of the physical and psychological violence they had to endure.

The "factual basis" is provided in other cases by the fact that a number of individuals have been released after the application of security measures only when it was considered that their state of health had ceased to make
them "dangerous". From a purely legal point of view, however, the fact that the special courts have the power to keep a man interned in an "adequate establishment" as long as he has the physical and moral energy to be thought "dangerous" and this, in the case of very noble individuals, may really mean their entire lives.

The second and extremely important point to consider in regard to Decree Law 40550 is that the law is written with a clever ambiguity. It is in the best of the regime's legislative style, the main characteristic of which is the constant use of words and phrases with many and varying connotations (e.g. "communist character", "subversive activities", "crime against the state", "associations, movements, or groups", "dangerous", "§ubtitle", "with or without previous agreement", etc). A further qualification of some of these phrases and words, based on the context of official and legal literature, would help to explain the real aim of this Decree Law.

Leaving aside, however, the implications of the Decree Law as a repressive instrument in itself, I would like to bring to the attention of this Conference a number of further alarming features of the Decree Law 40550.

According to paragraphs 2 and 2 of Article 9, the Director of Police Internaciono e de Defesa do Estado (the vigilante's own security police) has powers to apply security measures on a provisional basis (presumably for a first term of six months). It falls on the same Police to submit to special political courts, through the Directors of the internment establishments (both judges and prison directors being appointed by the Government) proposals for a further application of security measures or renewal of further terms of imprisonment.

It is impossible to report the many allegations made by political prisoners and their families about the physical and psychological treatment meted out to those to whom "security measures" have been applied. The Portuguese security police, far from being a passive body of police agents, form the hard nucleus of those who are irreversibly committed to the régime by virtue of their arbitrary acts. Such men leave no trace, no record and it would be extremely difficult to produce other evidence than the reports published in the Portuguese opposition's literature.

The law itself, however, contains a number of disturbing passages which only reinforce one's suspicions as to its real purpose. The introduction to the Decree Law says: "...The uncertainty as to the term of imprisonment and its repercussions on the spirit of the prisoners, are necessary evils ..." "...the indefinite character of the internment, permits one to say to those who are subject to it, that it is in their hands to merit freedom, and this may be an effective means of prompting a healthy reaction in their spirit."

It would appear, therefore, that the Government, in order to give to its security police absolute repressive powers, promulgated a Decree whereby a prisoner can negotiate his release by (a) divorcing all of his co-conspirators; (b) making an apology of his own belief. Unless these conditions are fulfilled, they have refused to sign a statement betraying their ideals. In other words, the Portuguese Government, having many years ago legalised the denial of freedom of expression and association, in 1956 legalised the denial of freedom of thought.

In the circumstances, and considering that Decree Law No. 40550 conflicts with Articles 2, 7, 9, 18, 20, 28 and 30 of the Declaration of the Rights of Man, I would submit to the Conference the following appeal — (a) that a British lawyer be asked to study Decree Law No. 40550; (b) that the Conference may use its influence to appeal to the Portuguese Government for the abolition of such Decree; (c) that the Conference may use its influence to secure the immediate amnesty of all those to whom "security measures" are applied.

A NOTE ON OUTLETS OF EXPRESSION

All newspapers, magazines, regular publications are officially admitted to a censorship that covers not only the contents of articles, but the typographic disposition of the texts. News or an article may be utterly or partly refused, thus allowing the censor to cut out only what he wants but not the rest. Obviously the whole thinking of the author will be distorted this way.

No criticism is allowed at all. Besides the preventive action taken by the censorship, the Secretaria Nacional do Infornamento — S.N.I. (Government Information Dept.) has a hold and tight control over all media of information, by controlling press, radio and TV conferences, issuing official interpretation of events, watching what is being done in the fields of music, painting, theatre, cinema, giving financial aid to political friends and co-operating with the censorship and the secret police in eliminating the possibility of work for politically independent people.

Afraid of financial or political repression measures the owners of newspapers generally pick up an editor known to be at least on reasonable terms with the regime and ready to impose a self-censorship in order not to irritate official sources and thus safeguard the commercial interests involved.

Television and the main radio stations are state-owned and therefore government controlled. The private radio stations have the same commercial problems and live under the same political and police repression and vigilance.

Besides the economic and social problems arising for a writer (small public, therefore small editions, then low profits and irregular ones etc.) there are many texts which make it impossible for anyone to live by the pen, there are the political restrictions.

There is no censorship on books but they may be apprehended after being published if found against the official line of thought (and this classification is wide enough). Not only the author will tend either to omit or distort his thinking (that happens of course when he tries to please those who are against the censor), but the publisher will select his books in order to avoid frequent financial losses.
Censorship of Plays

The production of plays and films is submitted to the same economical and financial pressures and is largely controlled by the S.N.I. Anyway there are no public meetings of MP's with their "voters" and no open discussion is permitted. No one can express openly dissenting political opinions, specially if serving the State or any local authority.

It must never be forgotten that in a dictatorial regime each one tends to become a little dictator in his own sphere of influence and that this kind of behaviour along with frequent "acts of loyalty" is quite rewarding. So those who would like to express their views always think first of what will happen if they build up a bad record with the police. They risk unemployment or political repression.

The situation can be summed up by saying that catholicism being the official religion in a dictatorship like the Portuguese one, all difficulties are put in the way—from open to the most subtle and sophisticated restrictions—of any other religious groups.

Conscientious Objectors

Conscientious Objectors are not officially recognised and a man objecting to military service will be sent to a special disciplinary detachment, where he will be punished.

Of course, desertion is considered a crime, and the situation of a conscientious objector during wartime is considered as similar to that of a traitor.
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