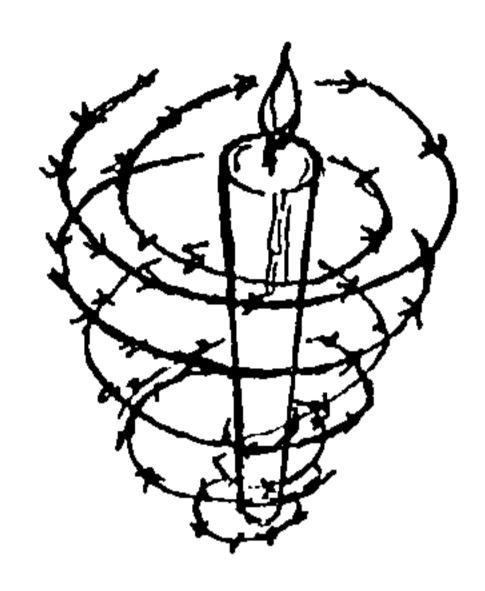
AMNESTY INTERNATIONAL

personal freedom

in western europe

report of conference november 17th 1962





AMNESTY

An international movement for freedom of opinion and religion

The Amnesty movement is composed of peoples of all nationalities, politics, religions and social views who are determined to work together in defence of freedom of the mind.

The spread of dictatorship, the tensions that have resulted from the Cold War, and the increasing cleavage between races of different colour, have combined to make state persecution of the individual the gravest social problem of the 1960's.

The principal object of Amnesty is to mobilize public opinion in desence 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.

PERSONAL FREEDOM IN WESTERN EUROPE

ing full nationhood, free of colonial tutelage, to the Convention. Leninist countries.

turned on Western Europe — a part of the individuals. 'European Convention of Human Rights'.

cognised, and even within the Council there are parties. to ratify certain parts of it.

THE EUROPEAN CONVENTION OF HUMAN RIGHTS

lucidly described by Antony McNulty, Secreconference, and in his opening speech.

This conference was the third and last in the He pointed out that the Convention was Amnesty series of conferences in 1962 on signed in 1953 and was now ratified by 15 of the 'Personal Freedom in Contemporary Society'. 16 members of the Council of Europe, the The object of the series was to consider how exception being France. The organs responfar Articles 18 and 19 of the Universal Declara-sible for working the Convention were the tion of Human Rights, conferring freedom of Human Rights Commission and the European opinion, religion and expression on all citizens, Court of Human Rights. Both of these were applied in various regions of the world. staffed by independent Jurists or lawyers The first Conference studied the position in appointed by the Council from nominations the Emergent countries — those recently achiev- supplied by those governments who are party

such as Ghana and the Sudan; the second The Commission of Human Rights has to dealt with the philosophical, practical and legal—take note of inter-state applications to it regardbackground of human rights in Marxist- ing the violation of the Convention; it may take up applications made to it by an individual, On November 17th, 1962, the spotlight was non-governmental organisation or group of

world with a long heritage of personal freedom, The European Court on the other hand has enshrined for a large majority today in the competence to decide an issue of a violation of the Convention only when the Commission, There are still nations outside the Council of having declared an application admissible, has Europe, such as Spain and Portugal, however, subsequently failed in its task of achieving a where many basic human rights are not re- friendly settlement of the matter between the

exceptions to its full ratification. France, for As an instance of the Court's jurisdiction, instance, has not ratified the Convention, and Mr. McNulty quoted the case of the alleged Britain, Greece, Italy and Turkey have failed 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 The work of the European Convention was proceedings of the court are heard in camera.

The Commission recognised, as laid down in tary of the Human Rights Commission of the the Convention, that Governments are entitled Council of Europe, in a paper* circulated to the temporarily to abrogate its Articles in cases of * Sec Appendix I

Commission decided to investigate the case, vention. nevertheless, and after intensive study agreed that a state of emergency did exist.

'One of the biggest jobs of the Commission', dividual's rights and the right of the state to of detention before, pending or after trial considered by the Commission which on prima facie evidence appeared unreasonable.

On further investigation the Commission had mostly had to admit that, because of the nature of the cases — usually conspiracy — the govern- Experts on Human Rights matters in countries belongments concerned had acted reasonably in the ing to the Council of Europe were asked to reply to a circumstances, and that the reason for the questionnaire*. These replies, combined with his prolonged detention was the difficulty of collect- own wide knowledge of Europe and human freedoms, ing evidence.

Of about 1,500 individual applications to it of the human rights position today in Western Europe. 1,100 had been dealt with; but only seven of these had been accepted; 40 had been referred * See Appendix II.

admitted emergency. He quoted the Irish case back to governments for comment. It was of Terence Lawless, which was referred to the worth remembering that the Commission could Commission after which the Eire Government not deal with any case if the desire of the promptly declared a state of emergency. The applicant was to destroy the rules of the Con-

In conclusion, Mr. McNulty said that one of the great achievements of the Commission and the Court was that it gave recognition to the Mr. McNulty said, 'is to balance the in- individual as a subject of international law. It was increasingly dealing with important aspects defend its democratic institutions'. One had to of European life and, in some cases, Belgium accept that there was a margin of assessment in and Austria were examples,—as a result of these cases that individual governments had to comment by the Commission, the law of the be left to decide. There had been several cases 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

were collated by Maurice Cranston, philosopher The Commission did not take on cases lightly. and political scientist, to produce the following survey

PERSONAL FREEDOM IN WESTERN EUROPE

By MAURICE CRANSTON

bourg, Saar, Turkey, Greece, Norway, Sweden political suffrage by secret ballot.

certain human rights.

The specific rights the signatories agreed to protect were the historic political rights1, notably the right to life, liberty and security of

The countries of Western Europe are generally person; freedom from slavery, torture and considered to be among the freest in the world. forced labour; the right on a criminal charge And with good reason. But if they are freer to a fair and public trial; the right to privacy; than other countries, they each fall short, in freedom of thought, conscience, and religion; different ways, of the principles they are sup- freedom of expression and assembly; the right posed to stand for. Let us first consider what to form trade unions; and the right to marry. those principles are. In 1950, the foreign The Protocol of 1952 gave recognition to the ministers of fifteen European States meeting right of property (subject to the right of a under the auspices of the Council of Europe at government to impose taxes and "control the Strasbourg signed a "European Covenant for use of property" as it thinks fit): the right to the Protection of Human Rights and Funda- education (the state "shall respect the right of mental Freedoms." The nations represented parents to ensure such education and teaching were the U.K., Belgium, Denmark, France, in conformity with their own religious and Western Germany, Iceland, Eire, Italy, Luxem- philosophical conviction "2); and the right to

and Holland. Austria subscribed to the This European Covenant is original and Covenant when it joined the Council of Europe important because it implies definite legal commitments and because it sets up new This Covenant resembled the Universal international legal institutions. The main Declaration of Human Rights sponsored by the innovations are the European Commission for United Nations in 1948. But it differed Human Rights and the European Court of significantly in being a Covenant, and not Human Rights, both seated at Strasbourg. These simply a manifesto of ideals and aspirations. Its two institutions are open to receive petitions purpose was not merely to name and enumerate from individuals who believe that their rights, the Rights of Man, but --- as it was stated in the as specified in the European Covenant, have Preamble to the Covenant —" to take the first been violated. The only proviso is that the steps for the collective enforcement" (my italics) of Court can deal only with petitions from people who come under the jurisdiction of govern-¹For full text see Treaty Series No. 71 (1953) CMD 8969, HMSO,

2Both the U.K. and Greece made reservations which referred

ments which recognise the authority of the "rights of the European citizen" are in fact

to consider any petition or complaint. Its Iceland, Eire, Luxembourg, Holland, Norway members are equal in number to that of the and Sweden. Contracting Parties. In order to prevent the The non-recognition of the Court by Greece authorities from having to deal with a vast and Turkey is understandable, since both their number of vexatious complaints, the Commis- governments have a great number of political sion has a sub-committee to make the pre- prisoners in their jails; it was intelligible in liminary scrutiny. When petitions are accepted the case of France during the Algerian War; as bona fide they are made to settle them by but in the case of the United Kingdom, it is friendly negotiations. If these efforts fail, the difficult to see what justifies the government's Commission has the ultimate remedy of refer- attitude, especially as a British judge (Lord ring the case to the European Court of Human McNair) is President of the European Court Rights. The Commission is only partly a and another British jurist (Sir Humphrey judicial body, having at the same time fact- Waldock) is president of the European Comfinding and diplomatic duties. It meets in mission. Evidently things are not as they private. The European Court of Human should be in any of these countries. Rights, on the other hand, is a public court of justice. Its President is Lord McNair, former Freedom Limited by the Demands of President of the International Court at The Hague and it heard its first case in October 1960. 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 — "nonsense on stilts" in Jeremy Bentham's phrase. Unfortunately, the Strasbourg story has its darker side. The great nations of Western Europe — even these who have been for centuries the outstanding champions of freedom and the Rights of Man -- have stood in the way of the full realisation of the Council of Europe's plans. The United Kingdom has declined to recognise the jurisdiction of the European Court of Human Rights, or to concede the right of individual petition. France has done the same: indeed, France has not even ratified the Covenant. Greece, Italy and Turkey have taken the same line as the United Kingdom. Thus, what are advertised as the

enjoyed in full only by the inhabitants of Of the two bodies, the Commission is the first Western Germany, Austria, Belgium, Denmark,

Security

It is a commonplace belief — or, at any rate, a belief commonly accepted — that freedom is not absolute. Even the most liberal of liberal philosophers 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 tranquillity 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 3See The Rights of the European Citizen. With a Preface by Lord McNair. (Strasbourg, the Council of Europe, 1961).

European countries and the same notion of The Tolerance of the Intolerant what constituted a legitimate limitation of freedom. In fact there is no such agreement.

(1) that the German C.P. was threatening the been convicted for "crimes of violence." Many existence of the Federal Republic, and (2) that such prisoners have been released in recent it aimed at setting aside the free democratic years. In 1950 there were 30,000 left wing order. A certain precedent was given in the prisoners in Greece. In 1958 there were 4,900. suppression, by the same Court under the same Today there are about 1,300. It is too late for law, of the Neo-Nazi Sozialistische Reichspartei any of these people to lodge appeals against (October 23, 1952). There can be no doubt their sentence, but it is possible under Greek law that circumstances peculiar to Germany led the for them to be released by the Minister of the Court to reach a decision which would be Interior as an "act of grace." regarded as monstrously illiberal in, for example, In addition to imprisonment, the Greek England. First, the existence of the German Government uses the device of exiling political Democratic Republic, which the Federal Re- offenders to certain remote regions — this is public regards as a threat to its own claim to be done by the administration without reference the only true German State, coupled with the to the courts of law. After the abolition of the fact that the West German C.P. was politically concentration camp on agios efstratios, the allied and, in a sense, subordinate to that other Greek government secured power to extend the German regime makes the constitutional position period of exile (without trial) from two years to of the German C.P. unique in Europe. Secondly, four. There are other forms of punishment. the minds of the West German leaders are No one may have a job (however humble) in naturally haunted by memories of the weak- the public service without a police "certificate nesses of the Weimar Republic, which many of social opinion." These techniques of political believe to have been undone to its own excessive tolerance of the intolerant.

It is one of the perennial problems of the free Consider the question of the limitation placed society, as to how far it should give freedom to on the right of freedom by the need to protect—those who want to destroy freedom: the West the social order. In Germany and Greece this German method is to give such people no more is held to justify the outlawing of the Communist freedom than it can help. The Greeks have an Party. In other European countries the even shorter way with the Communists than the Communist Party is not only tolerated, but Federal Germans. While the West German plays a leading part in the national political Government has been content to dissolve the life as the "official opposition." The German German C.P. and confiscate its funds, the Royal Communist Party was suppressed in the Greek Government has put Communists in Federal Republic, by a decree of August 17, concentration camps and prisons. Many Greek 1956,4 issuing from the Constitutional Court. political prisoners have now been in jails or An extremely long and detailed judgement was camps for 17 years. Their fate is the result of published by the Court (it ran to 205 printed the Civil War in Greece between the Compages) at the time it announced its findings, munists and Anti-Communists which the Antiwhich in effect upheld a plea, from the adminis- Communists won. The Greek Government, tration, that the German C.P. was illegal under unlike the West German Government, has never Article 21 of the German Federal Constitution. issued any formal legal justification of its The chief points in the Court's findings were: policy. The prisoners are usually said to have

⁴See Frede Castberg Freedom of Speech in the West (Oslo, 1962)

against the Communist opposition) despite the politan France. Revised Security Law of July, 1962, which was supposed to repeal the Emergency measures and introduce a more liberal code into Greece.

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 monopoly system of broadcasting. In France, emergency — in this case, of course, the war in under the Fifth Republic, the government has Algeria. Since the war in Algeria has ended, tightened its hold on the radio. At the time of one may hope that liberty in France is now more the Referendum on the method of electing The secure. Both the Fourth and Fifth Republic President, De Gaulle demanded something like attacked personal freedom in France, sometimes ten times as much time on the air for presenting in different ways, sometimes in the same way. the government point of view than was accorded The Fourth Republic, under the government of to the opposition. When De Gaulle spoke the Guy Mollet, was not noticeably more tender of national anthem was solemnly played at the end Civil Liberties than the Fifth Republic under of his discourse. In Austria, the two parties De Gaulle, who has, at any rate, ended the war which form the Coalition Government dominate in Algeria, given independence to the African the radio entirely. In Italy and Eire, the radio colonies and adumbrated a law for the recogni- monopoly is subject to constant pressure from tion 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 authorise government action against quasi-military fascist 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'Humanite, L'Express, L'Esprit, France Observateur, L'Avant Garde, Les Temps Modernes and Liberation. The only publication actually suppressed entirely was Alger republicain, a Commun- Europe. But certain decisions of the authorities ist Algerian paper of which the editor, Henri show that this institution can be abused to Alleg, was imprisoned. A book by Henri Alleg, suppress political nonconformity. One is the

control are still employed (mainly as weapons La Question, was later suppressed in Metro-

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 There are political prisoners in Turkey, but the army in Algeria. It was regarded as a the situation there is altogether more fluid. libel against the good name of the French Army After the revolution against the notoriously to give publicity to such allegations. Whether oppressive government of Menderes, a number they were true or not was not considered of the leaders and supporters of the Menderes relevant. However, despite the sporadic seizing regime were summarily detained. A few leaders of particular issues, the French people have were executed. But recently the present usually been able to buy from their newspaper government has released a notable proportion kiosks journals representing every shade of

Freedom and radio monopolies

Most European countries have the national 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 forbidding broadcasts on any subject to be discussed in Parliament within the following ten

Film censorship, whether official or semiofficial, is an accepted institution in Western Autant-Cava's pacifist film Thou Shalt Not Kill. brothels, the Italian authorities rigidly exclude, Another is the suppression of Bunnel's film, for example, Scandinavian nudist publications. Viridiana.

Freedom and "Public Morality"

limitations placed on personal freedom in the nowhere ideal, except in England and Eire, 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 Englishspeaking 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 penalites of a Catholic-inspired legal code.

In England, there has recently been a notable liberalisation of the law concerning obscence publications, the two significant stages in this process being the enactment of the new Obscene Publications Bill and the jury's 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

suppression in France and Italy of Claude state of the Council of Europe to close licensed

Conscientious Objectors and Religious Freedom

We have looked at the question of the The position of conscientious objectors is 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 objectors 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

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 greatest in those countries where there is a diversity of sects which have learned to live together in mutual forebearance, 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 presents

5Castberg. op. cit. p. 407.

of religious denominations.

1848. The priest was prosecuted but based his travening the Articles of the Convention. rejected it.6

years in prison for "making religious pro- elsewhere. paganda".

freethinkers complain of some measure of the powers of the police had been considerably discrimination. In Holland, for example, the extended. It was still possible to hold people Humanistisch Verbond has protested that its without charge or trial if they were thought to advisers are not given the privileges that are threaten the safely of the state. It was true, accorded to religious chaplains in the army, also, that there had been cases of police bruprisons and labour colonies. In England, free-tality, but one had to remember the continual thinkers have long felt aggrieved that their O.A.S. and Algerian bomb outrages which had point of view was being denied a hearing by the tried the police greatly, so that they were now broadcasting monopoly—in recent years some very disgruntled. time (however modest) has been allocated to There had also been a number of press the expression of such views both on sound and seizures. In passing one might perhaps note television.

FREEDOM IN FRANCE

the present situation in France.

She pointed out that even if France had

few difficulties. In France, the Republican ratified the European Convention of Human tradition of lay education comes into conflict Rights she would have been entitled under with the Catholic claim for state help in its Article 15 -- which allows a Party to the educational institutions. In England the state Convention in 'time of public emergency' to is willing to give up to 75%, but no more, take measures derogating from its obligations towards the building of local authority schools under the Convention—to curtail certain human freedoms. It could be said that for most of the Dutch law allows religious practices inside time that the Convention had been in force the buildings, but religious processions are some- Algerian war (supported by the French Comtimes forbidden in public places. In 1957 a munist Party) had threatened public safety in Catholic priest organised a procession in a town France and that the Government had thereby where these processions had been banned since been forced to take action, on occasion, con-

defence on Art. 9 of the Constitution which One could not look at France at the present guarantees religious freedom. The High Court time without some regard for its heritage from accepted his defence, but the Supreme Court the past. It had always been the case in that country that much more attention was paid to In Greece, Jehovah's Witnesses and other freedom of opinion rather than to rights of dissenters are persecuted in various ways. The individuals. Verbal attacks on Government or situation in Turkey is also disquieting. In persons were allowed much greater licence than The Times on November 8, 1962, it was reported in most other countries although a blind eye that a number of arrests had been made in was often turned to constitutional misdemean-Ankara and Istambul of foreign persons dis- ours. Yet at the same time the Civil Courts tributing Christian tracts. They were held offered greater opportunity for redress on adunder secular laws which prescribe up to seven ministrative grievances than in many cases

As a result of the emergency, France had In most European countries, humanists or now in force a Preventive Detention Act and

that Mr. Ben Bella had been only a too apt pupil in this. L'Express, which had been sympathetic to the Algerians, had been closed Mrs. Dorothy Pickles, expert in French on occasion for a day or two by the French. constitutional law, described to the Conference Mr. Bella had now closed it for a year. In 6Nederlands Tijdschrift voor Internationaal Recht (Vol. IX

France suppression had usually resulted in great publicity and increased sales.

partial. This was not anything new. All as a result. parties in power, past as well as present, had insisted on taking the lion's share of available

France differed from Britain in that Civil so that Ministers could be advised by those with Newspaper printed an article analysing German Army similar political views; public spirited lobby- manoeuvres, and gave them the lowest N.A.T.O. ing hardly existed in France, but there was much rating—for use in limited circumstances only. Nearly self-interested lobbying from specialist groups, three weeks later the Editor, Herr Augstein, and constituents, as British M.Ps. could do in Ques- this crisis. tion Time. If he wanted to raise any such First, Dr. Andrew Martin, an eminent matter he had to introduce a Bill.

Parliament and their job was kept open for and his colleagues. them. They were also free to express political He had taken action under that section of the opinions. In theory they could also strike, German Criminal Code whereby an act of but though this was neither illegal nor uncon- treason could be invoked for the publication of stitutional, they could, in fact, be disciplined if 'state secrets'. they tried.

anti-clerical prejudice, there was complete was. This was a matter for the Government freedom for Catholics to educate their children to decide in the light of given circumstances and and the State was helping finance Catholic it did not matter whether publication included schools on a scale unknown before. This was, classified or unclassified material. A lot of in part, because the the State could not at innocent information put together in a certain present do without the Catholic schools if way could be considered 'secret'. supply was to meet demand, and it was felt Dr. Martin pointed out that in Britain the that in these circumstances these schools should Official Secrets Act could also sometimes be not be allowed to fall below the normal stan- invoked in this way. dard set by the State.

torture by the French army, Mrs. Pickles said Turning to artistic and other outlets of that conditions in the Army were not satisexpression, Mrs. Pickles said that the theatre in factory; it was still in a state of potential France was quite free, although films were revolution and morale was very poor. The censored. T.V. and Radio stations were a state Church had often courageously condemned monopoly. Although supposed to allow all torture in the French Army and many priests parties time on the air, in fact the networks were and others had suffered from O.A.S. reprisals

THE SPIEGEL AFFAIR

Servants were shifted around within the Service, On October 8th, Der Spiegel, the West German e.g. Poujadists, farming and wine interests, etc. several of his co-editors were arrested in circumstances It was difficult for a Deputy to raise in the that aroused grave disquiet among the German people. Assembly any particular matter affecting his At the conference three speakers gave their views on

British barrister, outlined the legal position. High Civil Servants in France were often He pointed out that, apart from any political appointed on political grounds; this was a implications, it had been the Examining built-in part of the French system. Perhaps as Magistrate of the Federal Court at Karlsruhe a consequence they had many more political (the highest German Court) who had authorrights than in Britain. They could stand for ised warrants for the arrest of Herr Augstein

The kernel of the problem was that the Code Although there was still an intangible area of did not lay down what a 'state secret' actually

He emphasised that freedom of the Press was

recognised in the Case Law of the German but it had not been used since the war on the Courts, and it was acknowledged that it was the Press except in one small case—that of Isis. legitimate job of the Press to publish information, even about desence.

kind of thing legally were not to happen again, was to keep the Press informed of what was matters and trusting them not to publish secret information and what was not.

Mr. Harry Bohrer, 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

the police were still in control of 40% of the those who had been engaged in any protest had paper's building, and further arrests were to have 'Certificates of Social Opinion' issued expected. There were now four people in by the police in order to get work. This applied prison; two others had been held in custody, not only to work in the public service, but in one for a fortnight, the other for 24 hours. private firms as well. Ex-prisoners found it No-one yet knew of what they were accused. very difficult to find jobs without betraying The bribery charge had now been dropped their convictions. Even the children of although Dr. Adenaeur had talked about prisoners had to produce certificates if they 'people making money out of treason' in the wanted to go to University.

that there was a definite connection between man or woman in detention up to five years Herr Strauss and the treason charge; this was without trial or proper legal advice. reinforced because the information published About 60,000 political exiles have had their by Der Spiegel and already been published in citizenship taken away from them; public another paper Die Deutche Zeitung, and no meetings are restricted and the Press can be

pondent of Der Spiegel, recalled that it was true suspended because they alleged Government there had been prosecutions of the press under irregularities. the Weimar Republic, but never in circum- In Greece conscientious objectors are substances such as these. Since 1908 there had jected to very harsh regimes. been attempts to reform the law in Germany The Radio is entirely controlled by the whereby people can be held under arrest Government. pending investigation sometimes for as long as Although many prisoners have been released 17 months.

If the kernel of the problem was the decision on what or was not secret information, the This being so, the necessary corollary if this German Government could perhaps follow the British method of informing journalists on these material injurious to state security.

FREEDOM IN GREECE

should present facts, but that latterly it had Reg Sorensen, M.P., who had been to tended to launch personal campaigns, particular Greece on several occasions to make reprevictims being Dr. Adenauer and Herr Strauss. sentations about Greek prisoners, said that one He said that his lastest information was that of the worst abuses in that country was that all

Under Greek law, an individual was subject There was an unhappy feeling in Germany to arbitrary exile; it was also legal to hold a

action had been taken against it. persecuted for 'slander' — a term interpreted Finally, Dr. Alexander, London corres- very widely. Cases have been known of papers

there has been no amnesty for parties of the None of the accused had so far been able to left. He quoted the example of Manolis Glezos, speak to their Counsel alone. It was true that who, during the war, had pulled down the Nazi there was the Official Secrets Act in Britain, flag in Athens and hauled up the Greek flag. He was then acclaimed as a national hero; but Martial are very wide indeed. He himself had

normal processes of law would apply.

FREEDOM IN SPAIN

this time, even for years. Antonio Amat was Islands or going into exile. one example, arrested in 1957 he had no trial In conclusion, Mr. Davies stressed that the but was released provisionally in May 1961 and fact that observers have attended the trials, kept under continual police surveillance. His particularly from Amnesty and other organisatrial was supposed to have taken place on 6th tions, had stirred world opinion and this November, 1962, but with 50 other socialists definitely had some effect in Spain on some this was indefinitely postponed and nobody cases. It was essential to continue to put the knows when it is likely to take place. He is spotlight of publicity on these trials until there subject to being re-arrested at any time.

number of offences that can be tried by Court Mr. Davies said that, though it had originally

later, after the civil war, was held in detention attended a trial of students, charged with disfor many years for alleged espionage. He was tributing leaflets in support of a strike in 1959. finally acquitted, but is still not allowed to go They had been tortured by the police. Two months later they came before a military In reply to a question as to whether it was tribunal which sentenced them to several years' true that the Communist Party was more imprisonment. Another example of a trial of dangerous in Greece than in Britain, Mr. which he had personal knowledge was that of Sorensen suggested that suppression only made the Basque nationalists. When Franco visited for disguised and subterranean activity. It was Burgos in celebration of 25 years of power, as a far better to let the Party operate in the open; protest a train was derailed. Seven people were if individual communists behaved illegally the arrested, although only two were actually accused of the derailment. The rest were charged of 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 In Spain one could not speak about personal down to 7 years. Mr. Davies pointed out that freedom, but only about persecution, Ernest in these trials desendants were only allowed Davies told the conference. Mr. Davies was consultation with their counsel 48 hours before well-qualified to discuss conditions in Spain, the trial. Even then counsels were drawn from both as a former Under-Secretary for Foreign a list of military officers who know nothing Affairs and as one who has observed political about the individuals concerned and there was trials frequently on behalf of the Spanish, no possibility of witnesses being called in Democrats' Defence Fund. defence. A further example of the regime's He said that Spain was a police state in every repressive attitude was shown when those who sense of the word. Individuals were always in had attended a Council of Europe Conference danger of arrest if they disagreed with the at Munich (with official permission), at which a regime. Although the law provided that resolution was passed that Spain should not people could not be held for more than 72 become a member of the Council of Europe hours, before being charged with an offence, until there was a democracy in Spain, were it often happened that preliminary investigation stopped at the airport on return and given the after arrest allowed the authorities to extend choice either of being deported to the Canary

was a change in the present regime.

In Spain, Mr. Davies went on, it is impossible In reply to a question as to how far the to have a fair defence in a political trial. The Roman Catholic Church was behind the regime,

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 case. sympathy with demonstrating students, described from his own experiences the situation in Portugal. He noted that replies to the Questionnaire on the application of human rights would all be negative in Portugal. Although freedom of opinion was guaranteed in the constitution, in fact it was so qualified by legal restrictions and decree that it no longer existed. 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 seen students forcibly transferred from trains to police lorries while on a peaceful journey to a students' day in Lisbon. He had met one man who had suffered the 'statue torture, though he understood that many others had also suffered in this way.

He had been impressed by the fact that when Galvao captured the ship "Santa Maria" there was absolutely no comment about this in bars and cafes, and people flatly 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 position in Portugal see Appendix 4.

supported Franco, there was now growing hierarchy seemed now to be moving away from opposition against the regime. The Church complete support of Dr. Salazar's regime and its

> 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

> 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

APPENDIX I

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

NOTE OF APPLICATION

By A. B. MCNULTY

clauses which allow a Government to take has no such right (Arts. 44-48). measures for the protection of a domestic Two individual cases have been the subject of provide for economic or social rights as has the and De Becker against Belgium. United Nations Declaration of Human Rights. operative document.

basis, of members from each Party to the to receive applications lodged by individuals. Convention.

The Court was established on 3rd September, 1958, after its optional competence had been accepted by the necessary minimum of eight States¹. Briefly, the Court has competence to

The European Conventionon Human Rights decide the issue of a violation of the Convention came into force on 3rd September, 1953, and has only in cases where the Commission, having been ratified by 15 of the 16 Member States declared an application admissible, has sub-(all except France) of the Council of Europe. sequently failed in its task of achieving a Cyprus ratified the Convention on 6th October, friendly settlement of the matter between the parties. The Commission, a complainant State The Convention contains a list of certain or the State complained against may bring a personal and political rights and freedoms. case before the Court, but an individual who These are limitatively defined and there are has lodged an application with the Commission

society. The Convention has not attempted to decisions of the Court: Lawless against Ireland

The Commission of Human Rights has an On the other hand, unlike the United Nations obligatory competence in regard to inter-State Declaration, which remains an unimplemented applications (Art. 24) and an optional comstatement of principles, the Convention is an petence in regard to applications lodged by an individual, non-governmental organisation or It provides for the collective enforcement of group of individuals (Art. 25). This optional the rights and freedoms concerned by the competence was achieved on 5th July, 1955, establishment of a Court of Human Rights, and after the necessary minimum of six States had a Commission of Human Rights (Art. 19), declared their acceptance. To-day, ten States² which are composed, each on a slightly different have accepted the Commission's competence

The Commission sits in two instances: first, on the basis of a report of a working group of ¹Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxembourg and the Netherlands. All except Cyprus, France, Greece, Italy, Turkey and the United Kingdom.

three of its members, to decide whether an have been at once rejected. 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 Commission which makes its own report to the Committee of Ministers, including an opinion on the issue of violation of the Convention. It is then for the Court, if seized of the case or, if not, the Committee of Ministers, to decide whether or not there has been a violation of the Convention and to prescribe any measures to be taken by the respondent Government. Proceedings before the Commission are free and no formalities are imposed for the presentation of an application. 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

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

- 1. Tratione temporis: the facts concerned occurred prior to the entry into force of the Convention as regards the Government concerned;
- 2. non-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 Commission, 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;
- 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 well over 400 as opposed to 340 in 1961. The the right of the individual against the right and Commission will have had seven sessions this duty of a State to take measures as defined in year and has dealt with about 1,100 cases of most Articles, in the interest of, for example, which 7 have been declared admissible, about public safety, public morals or the protection 40 have been referred to the Government con- of the rights and freedoms of others. There are cerned for written and sometimes oral comment also two over-riding provisions allowing a State on the issue of admissibility, and the remainder to derogate from certain Articles in times of

emergency (Art. 15) and to prevent an abuse reform9. of the Convention by persons whose own object is shown to be the destruction of the rights and freedoms contained therein.

In this context, the Commission has had to collective punishment, imposed by the Cyprus vention. Government in 1955-563; the detention meamotion of the Federal German Government; at the Council of Europe. interference by the authorities with the right to family life, for example where the custody of, or access to⁵, children of divorced parents is concerned, or where deportation has been ordered⁶; cases where, under Belgian law, persons convicted of collaboration with the Nazi régime have been deprived of a wide measure of civil rights, in particular, that of freedom of expression⁷; interference by the authorities with the right to peaceful enjoyment of property for the purposes of legitimate taxation⁸ or of monetary

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 examine the following situations: the emer-limitation, it will jealously examine the justificagency laws, in particular, providing for punish- tion of any such legislative or administrative ment by whipping and for various forms of measures in relation to the terms of the Con-

A full account of the Court's and Commissures taken by the Irish Government to deal sion's jurisprudence is contained in the Yearwith suspected members of the Irish Republican book of the European Convention on Human Army4; the dissolution and proscription of the Rights and in the collection of decisions periodi-German Communist Party in 1956 on the cally published by the Commission's Secretariat

> 3Yearbook of the Convention on Human Rights, Vol. 2, pp. 175 4Yearbook of the Convention on Human Rights, Vol. 2, Yearbook of the Convention on Human Rights, Vol. 1, pp. 228-229 and Vol. 3, pp. 196-205. Wearbook of the Convention on Human Rights, Vol. 2, pp. 352-⁷Yearbook of the Convention on Human Rights, Vol. 2, pp. 214-

> BYearbook of the Convention on Human Rights, Vol. 3, pp. 394-Yearbook of the Convention on Human Rights, Vol. 3 pp. 244-

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 trail (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 (8);
- (b) Freedom of thought, conscience and religion and freedom to manifest these (9);
- (c) Freedom of expression (subject to certain 'formalities necessary in a democratic state') (10);
- 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.
- (a) What are the legal remedies formal declaration of the invalidity of a law or ordinance, release from imprisonment, damages, criminal sanctions in case

of violation of the rights mentioned in 1 and 2 above?

- (b) What, if any, are the practical difficulties in asserting the legal remedies lack of legal aid, delays in justice, other factions?
- 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 situa-

What were the measures introduced? Have they been fully or partially repealed in a more stable situation?

7. General Observations

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 other organisation by censorship or otherwise?
- 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 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?
- (b) Is there any restriction or prohibition on his owning the means of doing so, e.g. duplicating machine or private printing press, etc.
- (c) How far is it (a) permissible and (b) possible in practice for the ordinary citizen to lobby his public representatives in local or national government or on other institutions and get his views or grievances heard?
- (d) How far is it possible for a Government or Local Authority servant (including a

teacher) to express political or religious opinions?

4. Freedom of Religion

What is the position regarding the following:

- (a) Freedom to practice the religion one wants.
- Religious instruction of children.
- Training of priests.
- The right to proselytise.
- 5. Conscientious Objectors What provision is made for conscientious objection to military service?
- 6. General Observations

APPENDIX III

PERSONAL FREEDOM IN SPAIN

Spain is not a member of the Council of Liberty and Security of Person Europe, so that there is no question of her practice in Spain are in very many respects in can be issued. 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 this is not always done. imposed by a court of law after a conviction. In practice, the Police detain suspected perdeath, and, secondly, all political offences are ing that they be brought before a court. dealt with by military tribunals. 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 information about political activities, and to are tried by a military court: repress such activities and discourage the people from engaging in them. Protests 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 com-

pulsory servitude in underdeveloped areas.

Spanish law empowers civil governors to order Government adhering to the European Con-the arrest of any person for 15 days without any vention of Human Rights. Both law and explanation and every 15 days a fresh warrant

> 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

However, two factors limit the value of this safe- sons indefinitely and subject them to prolonged guard. First, a very wide range of offences, interrogations, often accompanied by torture ranging from armed rebellion to simple cri- and brutal maltreatment. Such persons have no ticism of the government, are punishable by opportunity of seeing a legal adviser or demand-

Right to a fair trial

(a) Before a military tribunal

The submission to a military tribunal of all inhuman and degrading treatment are our political offences means that a fair and imdaily bread." The Spanish police do not partial trial is impossible in Spain. By the hesitate to use brutal methods both to obtain decree of the 21st September 1961 the following

- 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 has been suspended for two years. charge against a person under this law which the government's eyes, a strike only has to have such orders as and when they choose. what the government considers a political object, and an offence has been committed.

A person detained on suspicion of a political sometimes kept or destroyed. offence may, by the decrees of the 23rd March and 23rd November, 1957, be held in custody Right to peaceful assembly and association indefinitely. He has no opportunity of consulting legal advisers. He will be told at most 24 mentioned above, ensures that any assembly hours in advance when his trial will take place. displeasing to the Government can be proceeded He has no choice of lawyer: a military officer is against under military law. allotted to him to defend him, who is very rarely place in public, but since it is not announced refuse permission without giving reasons. dance is in any event a risky matter because the by the appropriate authorities. The Penal Code

(b) Before a civil tribunal

Even before a civil court an accused does not get a fair trial. A suspect has no right to see his Freedom of means of communication lawyer until he has been formally charged before a court, and in practice he will not be formally the judge's investigation of the facts and evi- privately owned, by this body. evidence against his client.

Further, the judges are far from independent. They are appointed by and are the instruments of required, the directors are nominated by the the Executive and their conduct is subject to constant surveillance to ensure that they carry out Government policy.

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
- (b) By law an order of a court is needed will be dealt with by a military tribunal. An before a person's home can be searched, In item of news has only to be "tendentious" in practice the police carry out searches without
 - (c) Correspondence is regularly opened and read, notes or copies made of it, and letters are

The decree of the 21st September, 1960,

Further, police permission has to be obtained qualified to do so. Theoretically the trial takes for all unofficial meetings and the police can

beforehand few people know about it. Atten- Associations have to be expressly authorised police take the names of all present. The ver- punished not only unauthorised associations, dict and sentence are not usually made public. but all groupings of persons, so that a group of friends could be proceeded against as an unauthorised association.

The Press

The Spanish press is regulated by the General charged until the police have extracted from Directorate of the Press, an organ of the Ministry him all the information they require; by then of Education, established in 1940. The editors it is normally too late. Even when a lawyer has of all journals in Spain are appointed, on the been instructed he has no right to intervene in nomination of the proprietors if they are

dence. The most he can do is to adduce Pre-censorship is the norm. All periodicals must normally submit their galley-proofs to the local censorship office. In cases where this is not 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,

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religious and moral, and is extremely severe. publish one's views if there is a risk of them Any criticism of the Government is impossible.

Radio and TV

There are both state and private radio on state-licensed printers. 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 statecontrolled radio.

Publishing

All material to be published is subject to censorship. Writers are prevented from expressing views or publishing works that offend the law is severe.

A grave problem is presented by the fact that this censorship operates haphazardly, and the standards applied vary from time to time. In No provision is made by law: they remain

being offensive in the eyes of the Government.

Printing can only be undertaken with an industrial permit, so that writers are dependent

Persecution of minorities

(a) Racial

The Basques and Catalons are discriminated against in the use of their languages, which may not be used in the press or radio or in schools.

Religious **(b)**

Only the Roman Catholic religion may be practised publicly. Roman Catholic instruction is compulsory in all schools, training is provided political, moral or religious tenets of the only for Roman Catholic priests, and only the regime and the punishment for breaches of this Roman Catholic Church is allowed to prosely-

Conscientious objectors

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practice it is impossible freely to express or in jail for the period of their military service.

APPENDIX IV

PORTUGUESE REPRESSIVE LEGISLATION DECREE LAW No. 40550

By ANTONIO DE FIGUEIREDO

present Portuguese régime is in conflict with the rights specified in the Declaration of Human notions of democratic legality and standards of Rights, to which the Portuguese régime subcivic rights prevailing in most Western countries. scribed. The Government of Dr. Salazar does not derive These decree laws are essentially autocratic its powers from either a Monarchic system or a and empirical. International lawyers with a Republican Constitution, democratically ad- sense of tragic humour would find it worthwhile opted and sanctioned by the normal functioning to read Portuguese in order to appreciate the of free institutions. Established in 1926, after a immense contribution made by official Portumilitary coup d'état which suspended the guese legislators to the sophisticated terminology democratic Constitution of the First Portuguese and phrasing peculiar to the legislation of those Republic, the Dictatorship, as it was then autocratic régimes who find themselves in conofficially defined, imposed its own Constitu- flict with the most elementary notions of the tional Charter in 1933, after a plebiscite of modern rights of man. dubious validity, in which abstentions were Here is not the place to discuss at length all counted as approving votes.

While, however, the so-called Constitution Portuguese Government. itself is so worded as to recognise the equality of A brief analysis of some of the points involved the citizen before the law and generally foresees by a specific Decree Law, numbered 40550, and the principle of the right to fundamental civic dealing with the application of "security liberties, it contains a sophisticated proviso measures" is sufficient to reveal, not only the whereby the Government has self-attributed very nature of the Portuguese régime, but the powers to promulgate the "regulation" of the extent to which Portuguese legislation conflicts use of such liberties, by additional legislation. with some of the basic articles of the Declaration Portugal has, therefore, seen a number of special of Human Rights. laws, which contradict the very principles The following is a rendering of the Portuguese recognised in the so-called Constitution and, in text of Articles 7 and 8 of Decree Law No. 40550,

The very Constitutional foundation of the some cases, are utterly incompatible with those

repressive legislation promulgated by the

entire Portuguese Cabinet of the time:-Article 7—

- 1. Those (individuals) who form associations, subject. movements or groups of a communist The death penalty and life imprisonment have ments or groups, who may collaborate that they lacked a "factual basis." with them or following their instructions It claims that "(Article 7) specifies that such with or without previous agreement;
- should they continue to reveal themselves applications for extensions." dangerous."

Article 8

not proceeded with".

to hold political meetings, freedom to form and, psychological violence they had to endure. implicitly, belong to political associations and, ment).

would preclude it, there has never been any

dated the 12th of March, 1956, and duly signed public discussion in Portugal over the implicaby the President, the Prime Minister and the tions of this Decree Law. In France, where a number of Portuguese lawyers are living in exile, there has been some controversy on the

character, with the object of exercising legally been abolished in Portugal. But an subversive activities, or aiming at com- article in 'La Vie Judicaire' has recently mitting crimes against the security of the alleged that life imprisonment is now possible by state; or using terrorism as a means of the use of security measures under the Decree action; as well as those (individuals) who Law. The Portuguese Government has semimay adhere to such associations, move- officially denied these assertions on the grounds

measures may be applied for a period varying 2. Those (individuals) who consciously from six months to three years, being liable to facilitate such subversive activities either extension by successive three year periods, so by providing the place for meetings, or by long as an element of peril to the state continues subsidising (these activities) or permitting to exist. Such extensions are subject to an order their propaganda, are "Subject to security of the Court, just as are the original orders for measures of internment in an adequate the application of such measures. In the low establishment for an indefinite period of percentage of cases which involve application of time, for six months to three years, renew- security measures, the courts have shown themable for successive terms of three years, selves to be particularly cautious in considering

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 "Should the accused be charged with sentence may be applied". Presumably a man crimes against the security of the state, the subjected to internment needs to keep alive and security measures referred to in the pre- sufficiently energetic to be an "element of vious article will be applied by the peril" up to one hundred years of age, in order competent court, even if the accusation is to provide the Portuguese Government lawyers with a case where a "factual basis" would be The first point that needs to be emphasised is proved beyond all reasonable doubt. In a that these articles are contrary to the principles number of cases the "factual basis" has been specified in the 4th, 11th and 14th paragraphs provided by the fact that some of these to whom of article 8 of the Constitution (which recognise security measures were successively applied died respectively the freedom of expression, freedom prematurely in consequence of the physical and

The "factual basis" is provided in other finally, specifically forbidding life imprison- cases by the fact that a number of individuals have been released after the application of Since the Censorship Board, which is charged security measures only when it was considered with the regulation of the freedom of press that their state of health had ceased to make *February 17, 1982

of view, however, the fact that the special Courts the state." A sixpenny contribution to help to may be lenient in dealing with security cases, buy stationery for a political "group" can be is immaterial. The fact is that the law, as it regarded as a "subsidy", and so on. stands, gives the political courts the power to this, in the case of very noble individuals, may features of the Decree Law 40550. really mean their entire lives.

previous agreement", etc.). A further qualifica- further terms of imprisonment. tions of some of these phrases and words, based

It is impossible to report the many allegations

apply not only to the clandestine Communist irreversibly committed to the régime by virtue Party, but to all associations, movements or of their arbitrary acts. Such men leave no groups (without specification as to the number trace, no record and it would be extremely of people who may be regarded as a group) difficult to produce other evidence than the which adopt Marxist or socialist doctrines, al- reports published in the Portuguese opposition's though not necessarily Communist, or who may literature. be critical of the government. It is extremely identity of the accused.

stencilled piece of paper can be regarded as in their spirit."

them "dangerous". From a purely legal point "defamatory" and therefore a "crime against

Leaving aside, however, the implications of keep a man interned in an "adequate estab- the Decree Law as a repressive instrument in lishment" so long as he has the physical and itself, I would like to bring to the attention of moral energy to be thought "dangerous" and this Conference a number of further alarming

According to paragraphs 2 and 2 of Article 9, The second and extremely important point to the Director of the Policia Internacional e de consider in regard to Decree Law 40550 is that Defesa do Estado (the régime's own security the law is written with a clever ambiguity. It police) has powers to apply security measures is in the best of the regime's legislative style, the on a provisional basis (presumably for a first main characteristic of which is the constant use term of six months); it falls on the same Police of words and phrases with many and varying to submit to special political courts, through the connotations (e.g. "communist character", Directors of the internment establishments (both "subversive activities", "crime against the judges and prison directors being appointed by state", "associations, movements, or groups", the Government) proposals for a further "dangerous", "subsidising", "with or without application of security measures or renewal of

on the context of official and legal literature, made by political prisoners and their families would help to explain the real aim of this Decree about the physical and psychological treatment Law which is to intimidate the average Portu- meted out to those to whom "security measures" guese citizen, while leaving those victimised have been applied. The Portuguese security under it at the mercy of verbal interpretation. police, far from being a passive body of police "Communist character" for instance, can agents, form the hard nucleus of those who are

The law itself, however, contains a number of difficult, therefore, to ascertain the ideological disturbing passages which only reinforce one's suspicion as to its real purpose. The introduc-Deprived of any Constitutional means of tion to the Decree law says:--" The uncerbringing about the downfall of the Government tainty as to the term of imprisonment and its all Portuguese political activity is of necessity repercussions on the spirit of the prisoners, are clandestine and aims at Constitutional change. necessary evils " ".... the indefinite Since the Constitution is the embodiment of character of the internment, permits one to say the Portuguese "established order" all political to those who are subject to it, that it is in their activity can be defined as "subversive". A hands to merit freedom, and this may be an simple pamphlet, comprising no more than a effective means of prompting a healthy reaction his release by

(a) denouncing all of his co-conspirators;

(b) making an apostasy of his own beliefs.

Unless these conditions are fulfilled the security police, although indirectly, are empowered to influence decision regarding the application of "security measures" of interment for an indefinite period of time. Indeed, Government spokesmen themselves have often alleged that the extension of "security measures" has been applied to some individuals because they have refused to sign a statement betraying their ideals. In other words, the Portuguese Government, having many years ago legalised people. the denial of freedom of expression and association, in 1956 legalised the denial of freedom of thought.

Decree Law No. 40550 conflicts with Articles 2, impose a self-censorship in order not to irritate 7, 9, 18, 19, 20, 28 and 30 of the Declaration of official sources and thus safeguard the commerthe Rights of Man, I would submit to the cial interests involved. Conference the following appeal:—

- Decree Law No. 40550;
- (b) that the Conference may use all its influence to appeal to the Portuguese Government for the abolition of such Decree;
- (c) that the Conference may use all its influence to secure the immediate amnesty of all those to whom "security measures" are applied.

A NOTE ON OUTLETS OF EXPRESSION

tions are officially submitted to a censorship to outsmart the censors), but the publisher will that covers not only the contents of articles, but select his books in order to avoid frequent the typographic disposition of the texts.

It would appear, therefore, that the Govern- News or an article may be utterly or partly ment, in order to give to its security police refused, thus allowing the censor to cut off only absolute repressive powers, promulgated a what he wants but not the rest. Obviously the Decree Law whereby a prisoner can negotiate whole thinking of the author will be distorted

> No criticism is allowed at all. Besides the preventive action taken by the censorship, the Secretariado Nacional de Informacai — 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

Afraid of financial or political repressive measures the owners of newspapers generally pick up an editor known to be at least on In the circumstances, and considering that reasonable terms with the regime and ready to

Television and the main radio stations are (a) that a British lawyer be asked to study 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

> Besides the economic and social problems arising for a writer (small public, therefore small editions, then low profits and irregular ones etc.) that 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 All newspapers, magazines, regular publica- thinking (that happens of course when he tries financial losses.

Censorship of Plays

mitted to the same economical and financial sion is permitted. No one can express openly pressures and is largely controlled by the S.N.I. dissenting political opinions, specially if serving The Theatre is especially watched and there is a the State or any local authority. previous censorship for all kinds of theatrical It must never be forgotten that in a dictaproduction. Lisbon never saw Brecht, Osborne, torial regime each one tends to become a little Sartre and many others. Portuguese authors dictator in his own sphere of influence and that are discouraged from writing for the stage for this kind of behaviour along with frequent they have almost no chance of seeing their plays "acts of loyalty" is quite rewarding. So those produced. Most companies give the censors who would like to express their views always seven or eight plays to read hoping that one will think first of what will happen if they build up be authorized, but often it is not. The S.N.I. a bad record with the police. They risk gives financial help to certain theatre groups, unemployment or political repressions. but it keeps the right to have the last word on The situation can be summed up by saying they don't like in order to survive.

Other Restrictions

No duplicating machine or printing press can be sold without the knowledge of the political police. The PIDE ask the seller to give complete and detailed information about the buyer's recognised and a man objecting to military sername, address and registration number of the vice will be sent to a special disciplinary detachmachine and what is it going to be used for. ment, where he will be punished.

It is difficult for the man in the street to get an Of course, desertion is considered a crime, --- will be able to do it, but not those who have of a traitor. grievances.

Anyway there are no public meetings of The production of plays and films is sub- MP's with their "voters" and no open discus-

what they are staging and how. Actors have that catholizism being the official religion in a then to compromise and work under directors 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

interview with his "representative". Some and the situation of a conscientious objector people—in good position in the social hierarchy during wartime is considered as similar to that

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ways of helping AMNESTY

- At the present time the most urgent needs is for funds. Any individual over the age of 14 can become a member by paying the minimum subscription of \pounds_2 a year. Local organizations can affiliate for \pounds_3 a year and national organizations for \pounds_5 a year. Join yourself and try and get a local organization with which you may be connected to affiliate.
- Take the initiative in forming a group of Three or write to the central office asking for others in your area who may be interested. Three families joined together make the basis for a good group, but local organizations may also be interested in "adopting" three prisoners and their families.
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