Santa Clara University
School of Law

Santa Clara Law Review

Volume 4 | Number 1 Article 3

1-1-1963

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THE EUROPEAN BILL OF RIGHTS: THE FIRST DECADE OF INTERNATIONAL PROTECTION OF HUMAN RIGHTS†

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> The rights of individuals and the justice due to them are as dear and precious as those of States. Indeed the latter are founded upon the former; and the great end and object of them must be, to secure and support the rights of individuals, or else, vain is government.
>
> Justice Cushing in *Chisholm v. Georgia*, 2 Dall. 419, 468 (1793)

INTRODUCTION

The history of events leading to the Second World War reveals one of the most alarming aspects of our times, the ease with which allegedly civilized governments imperceptibly succeeded in stripping human beings of all subjective rights and finally of life. This they achieved primarily by doing away with the very idea that man could possess any imprescriptible rights not granted to him by the supreme arbitrary authority of the state.

In contrast to this concept of unlimited sovereignty, the world community reaffirmed through the United Nations Charter and the Nuremberg trials "faith in fundamental human rights, in the dignity and worth of the human person"[1] and acceptance of the principle that the individual is a subject of international rights and duties to

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† Research preliminary to this paper and personal consultations with Human Rights experts were made possible through a Howard University Faculty Research Grant. The author is also deeply indebted to the Honorable G. Balladore-Pallieri and H. Rolin, Judges of the European Court of Human Rights [hereinafter referred to as the Court], to Messrs. Fawcett, Sperduti and other members of the European Commission on Human Rights [hereinafter referred to as the Commission] and in particular to Mr. A. B. McNulty, Secretary to the Commission, and Mr. H. Golsong, Registrar of the Court, for the time and expertise they put at her disposal during her stay in Europe in July-August 1963.

For a complete current bibliography on the European Convention on Human Rights and Fundamental Freedoms [hereinafter referred to as the Convention] see the YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS [hereinafter cited as the YEARBOOK], vols. 1-4, Nijhoff, The Hague (1955-1961).

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[1] U.N. CHARTER, Preamble.

be recognized in international law. In the European Convention on Human Rights, fifteen countries gave legal sanction to such recognition, establishing in a solemn, binding form a guarantee of collective enforcement of human rights at the international level as a means of preserving world peace. In the words of Mr. Elwyn Jones before the House of Commons:

> As a result of these and other developments in international law, the individual human person now everywhere has acquired a new status and stature, whether he is a man of the Clapham omnibus, a detainee in Nyasaland, a prisoner in the Hola camp, a political prisoner in Spain or a political prisoner in Hungary. To use the eloquent phrase of Sir Hersch Lauterpacht, . . . "the individual has been transformed from an object of international compassion into a subject of international right."[2]

Cornerstone of European Unity

The Convention, first treaty entered into by the united states of Europe, came into existence ten years ago.[3] It signified to the West and to the East that the European union was built on the principle of "the maintenance and further realization of Human Rights and Fundamental Freedoms . . . which are the foundation of justice and peace in the world . . . ."[4]

The objectives pursued by the Convention are indeed predominantly of a political nature.[5] As early as September 1949, in the

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[2] House of Commons, Weekly Hansard, No. 462, June 25, 1959, col. 1546-47.

[3] The Convention was signed in Rome on November 4, 1950, by all of the Member States of the Council of Europe; it came into force on September 3, 1953, upon ratification by the tenth State, Luxembourg. 1 YEARBOOK 96, 102 (1955). It is now binding upon fifteen European countries: Austria, Belgium, Cyprus, Denmark, The German Federal Republic, Greece, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Sweden, Turkey and the United Kingdom.

[4] Preamble to the Convention, 1 YEARBOOK 4 (1955). The language of the Preamble is directly derived in form and substance from the Statute of the Council of Europe signed in London on May 5, 1949, which provided under Article 3: "Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. . . ." 1 YEARBOOK 2 (1955). Commenting on Article 3 of the Statute, the French Delegate to the Consultative Assembly of the Council of Europe, M. Teitgen, stated on August 19, 1949, during a general debate on the drafting of a Convention on Human Rights: "This fundamental affirmation is thus inscribed at the very foundation of our union. . . . All the States that have taken part in drawing up, signing and promulgating our Statute have bound themselves to respect the fundamental rights of the human individual. They have accepted the principle of a collective guarantee of fundamental freedoms." CONSULTATIVE ASSEMBLY REPORTS, 1st Sess. 404 (1949).

On the close relationship between the Convention and the Statute of the Council of Europe, see also Modinos, *La Convention européenne des droits de l'homme*, 1 EUROPEAN YEARBOOK 141 (1955).

[5] The Preamble to the Convention considers that the aim of the Council of

course of debates before the Consultative Assembly of the Council of Europe, Lord Layton commented thus on the draft Convention:

> What we are proposing to do by this first specific act of the Council of Europe . . . is to define and guarantee the political basis of this association of European nations. What the members of this association are saying, if this proposal materialises, is that the maintenance of certain basic democratic rights in any one of our countries is not the concern of that country alone but is the concern of the whole group. Therefore we propose that if a complaint is made that this minimum standard is not in fact being realised, the country concerned will, subject to proper safeguards which are set out here in this Declaration, permit the complaint to be submitted to impartial inquiry and if necessary to the judgment of the European Tribunal.[6]

And M. Teitgen, the French Rapporteur, added on that same occasion:

> When we wish to guarantee and protect the freedoms of Europe it does not mean diminishing the sovereignty of one State in relation to another State or giving predominance to one State over another. It is a question of limiting State sovereignty on behalf of the law and for that purpose all restrictions are permitted.[7]

A Legally Binding Instrument

The United Nations Declaration of Human Rights[8] had proclaimed to the world in 1948 the universal nature of human rights for all men, at all times, in all countries. It was an inspiring act of faith, a "statement of general principles . . . of the highest moral authority."[9] It was not a legal instrument binding upon the adopting states; it could not "strictly speaking, be said to constitute part of international law or of any municipal law."[10]

Europe is the achievement of greater unity between its Members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms. 1 YEARBOOK 2 (1955).

See on this point Vasak, *Cour et Commission des droits de l'homme*, JURIS-CLASSEUR DE DROIT INTERNATIONAL, Fasc. 155F, 1, 4 (1961).

[6] CONSULTATIVE ASSEMBLY REPORTS, 1st Sess. 118 (1949).

[7] *Id.* at 1160.

[8] Adopted by the United Nations General Assembly, December 10, 1948; U.N. GEN. ASS. OFF. REC. 3d Sess. (I), resolutions at 71 (A-810) (1948).

[9] *The Universal Declaration of Human Rights: a Standard of Achievement*, U.N. PUBL. No. 62.I.9, at 13.

[10] *Ibid.* See also Castanos and Sidjanski, *La Convention européenne des droits de l'homme*, JOURNAL DU DROIT INTERNATIONAL 580 (1955). Heumann, *Les droits garantis par la Convention*, in LA PROTECTION INTERNATIONALE DES DROITS DE L'HOMME DANS LE CADRE EUROPÉEN 145 (1961); Tammes, *The Obligation to Provide Local Remedies* in VOLKENRECHLIJKE OPSTELLEN 152, 158 (1962). In Sei Fujii v. California, 217 P.2d 481, 488 (Dist. Ct. App. Cal. 1950), the California District Court of Appeal found invalid the State Alien Land Law in direct conflict with the United Nations Charter "which, as a treaty, is paramount to every law of every state in conflict with it," and incompatible with the Declaration of Human Rights which it defined as a

The Preamble to the European Convention acknowledges its two main ideological sources, the Universal Declaration and the Statute of the Council of Europe. But in the Convention each member state assumed a formal international law obligation[11] by consenting to the creation of a system of collective enforcement of Human Rights at the international level, surrendering for that purpose such traditional strongholds of state sovereignty as the unlimited and exclusive power to control the rights of individuals within its own boundaries.[12] This legal instrument expresses the determination of fifteen states to submit to a common discipline and a mutual control in the interest of effectively ensuring the respect of individual freedoms.

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document that "implements and emphasizes the purposes and aims of the United Nations and its charter." The California Supreme Court, however, 38 Cal. 2d 718, 242 P.2d 617 (1952), without any reference to the Universal Declaration, reversed the decision of the court below on the ground that the provisions of the United Nations Charter are not self-executing, so that the treaty could not automatically supersede state legislation. It found instead the statute invalid as in conflict with the Fourteenth Amendment.

In France the Universal Declaration was published on January 9, 1949, in the JOURNAL OFFICIEL (p. 1859) where all legislation and ratified treaties are entered, giving it, thus, a closer similarity to international conventions. But see JOURNAL OFFICIEL, *Debats Parlementaires, Assemblée Nationale*, p. 1171 (1952). A conflicting interpretation was given by the French courts to the legal implications of such procedure. The Court of Paris interpreted such publication as sufficient to give the Declaration the same status of "a law of the French State" to be directly enforced by the French courts. 1st Chamber, April 29, 1959 [1959] Gazette du Palais; May 23, 1959 REVUE DU DROIT PUBLIQUE 820 (1959). Conversely, the highest administrative tribunal, the Conseil d'Etat, in two separate decisions, in 1951 and in 1960, rejected the contention that the mere publication of the Declaration in the JOURNAL OFFICIEL could give it rank and dignity equal to ratified international treaties. *Elections de Nolay*, April 18, 1951, and *Sieur Car*, May 11, 1960, JOURNAL DU DROIT INTERNATIONAL 404 (1961). See also Pinto, LES ORGANISATIONS EUROPÉENNES 81 (Paris 1963).

The Town Court of Reykiavik, Iceland, on June 28, 1960, dismissed the complaint of Arni Olafson which challenged the validity of a 1957 Icelandic law taxing large property, as contrary to the European Convention and to the Universal Declaration of Human Rights, on the following grounds: "It is true that the United Nations Declaration of Human Rights has been published in the country in the periodical 'Andvari' but it cannot be seen that it has received any ratification here. For that reason alone it cannot be taken into consideration as Plaintiff's legal basis in this tax action of his.

"Insofar as the European Convention on the Protection of Human Rights and Fundamental Freedoms is concerned, Althing has by a parliamentary resolution of 19th December 1952 granted authority to the government to become a party to it, and on the part of Iceland a document of ratification was delivered on the 29th of July 1953. On the other hand, this Convention has not been legalized in this country, neither as general law nor as constitutional law." 3 YEARBOOK 642, 646 (1960).

11 VERDROSS, VÖLKERRECHT 498ff. (1959).

12 In deciding application No. 434/58, the Commission stated on June 30, 1959: ". . . a State which signs and ratifies the European Convention . . . must be understood as agreeing to restrict the free exercise of its rights under general international law . . . to the extent and within the limits of the obligations which it has accepted under the Convention; . . ." 2 YEARBOOK 354, 372 (1958-59).

The European Convention introduced into the Law of Nations the novel principle that the legal protection of human rights could no longer be left to the exclusive domestic jurisdiction of states. It started from the premise that not only nationals of the High Contracting Parties but every person subject to their jurisdiction,[13] citizen, alien or stateless, was to be guaranteed the peaceful enjoyment of his fundamental freedoms without discrimination by reason of sex, race, religion, or national and social origin.[14]

EFFECTIVE INTERNATIONAL CONTROL

Upon this structural foundation the Convention established a threefold system of collective guarantees of those rights under the international control of two supra-national organs,[15] the European Commission and the European Court of Human Rights.

The first obligation assumed by the fifteen ratifying states entails the effective implementation of the provisions of the Convention within their domestic systems of law.[16] It includes the duty to

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[13] Art. 1. "The High Contracting Parties shall secure *to everyone within their jurisdiction* the rights and freedoms defined in Section I of this Convention." (Emphasis added.)

In its decision of January 11, 1961, as to the admissibility of Application No. 788/60 (Austria v. Italy), the Commission stated, ". . . the system of international protection provided in the Convention extends to the nationals of the State which is alleged to have violated the law of the Convention and to stateless persons, as well as to nationals of other States; . . . [it] is founded upon the concept of a collective guarantee of the rights and freedoms contained in the Convention. . . ." 4 YEARBOOK 116, 148-150 (1961).

[14] Art. 14. "The enjoyment of the rights and freedoms set forth in this Convention shall be secured 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 other status."

[15] Art. 19. "To ensure the observance of the engagements undertaken by the High Contracting Parties in the Present Convention, there shall be set up: (1) A European Commission of Human Rights . . . ; (2) A European Court of Human Rights. . . ."

[16] The French text of Art. 1 (see *supra* note 13) uses only the term *"reconnaissent"* (Tr. ". . . the High Contracting Parties recognize . . .") as compared to "shall secure" in the English text. Since both texts are authentic, they shall be read jointly to establish the extent of the states' obligation. In addition, a study of the Preparatory Works of the Convention discloses that in the course of the final debates in the European Consultative Assembly on August 25, 1950, the word *"reconnaissent"* was proposed by M. Henri Rolin, the distinguished Belgian delegate, now judge of the European Court of Human Rights. It was adopted by the Assembly as an amendment to the text of the Draft Convention which read, *"s'engagent à reconnaître"* (Tr. "agree to recognize"). CONSULTATIVE ASSEMBLY REPORTS, 2d Sess. 915 (1950). After the Convention entered into force on Sept. 3, 1953, M. Rolin again stated at the 5th Session of the Consultative Assembly: "According to Art. 1 . . . the States did not 'agree to recognize' in their legislation, they 'recognized': there is all the difference. After this Convention is approved by our Parliaments and ratified, there follows that without the passing of further legislation our courts are fully empowered to enforce the provisions of the Convention." CONSULTATIVE ASSEMBLY REPORTS, 5th Sess. 341 (1953).

provide effective remedies at the national level to everyone whose fundamental freedoms are violated.[17]

Secondly, each signatory state agreed to become a guardian of the rights guaranteed by the Convention as against violations by other member states, and to refer any alleged breach to an international body, the European Commission of Human Rights,[18] charged with preliminary judicial and conciliatory functions. If necessary, the state would then refer the case to the European Court of Human Rights for a final adjudication of the dispute.[19] This obligation vested upon each member state is a real power delegated by the community of signatory states. It is, therefore, free from the traditional restrictions of international law which prohibit the intervention of one state into the domestic affairs of another or require, in the case of state claims on behalf of individuals, a nationality tie between the party who is victim of the violation and the complaining state.[20]

On the self-executing nature of Art. 1, see also Süsterhenn, *L'application de la Convention sur le plan du droit interne*, LA PROTECTION INTERNATIONALE DES DROITS DE L'HOMME DANS LE CADRE EUROPÉEN 303, 305 (1961); Comte, *The Application of the European Convention on Human Rights in Municipal Law*, 4 JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS 94 (1962).

17 Art. 13. "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Rhineland-Palatinate Constitutional Court held that under German law compliance with this provision did not require the establishing of a right of individual petition before that tribunal when other channels for relief were open in the ordinary judiciary and administrative courts. 2 YEARBOOK 598 (1958).

18 Art. 24. "Any High Contracting Party may refer to the Commission . . . any alleged breach of the provisions of the Convention by another High Contracting Party."

19 The acceptance of the general jurisdiction of the Commission is obligatory upon signatory states, but acceptance of the jurisdiction of the Court is optional. Eight states, Austria, Belgium, Denmark, the German Federal Republic, Iceland, Ireland, Luxembourg and The Netherlands have filed declarations recognizing the compulsory jurisdiction of the Court. Hence, pursuant to Art. 48, within three months after filing of the Commission's report with the Committee of Ministers, the Commission and petitioner or respondent state may bring the case before the Court. The final decision as to the existence of a breach of the law of the Convention rests therefore either with the Committee of Ministers (Art. 32) or with the Court (Art. 50) which are vested with the duty to provide compensation to the injured party.

20 Panevezys-Saldutiskis Railway Co. Case (Esthonia v. Lithuania), P.C.I.J. ser. A/B, No. 76, at 16 (1939); Nottebohm Case (Liechtenstein v. Guatemala) [1955] I.C.J. Rep. 4. In finding admissible the petition of Austria against Italy in Application No. 788/60 (see *supra* note 3) the Commission stated: ". . . it clearly appears from these pronouncements [the Preamble to the Convention] that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realize the aims and ideals of the Council of Europe, as expressed in its Statute, and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law; . . . it follows that the obligations undertaken by the

INDIVIDUAL V. STATE

It is, however, the third protective feature, the recognition of the right of individual petition, that really opens new horizons to the world of international law. The Convention established that any person whose fundamental rights have allegedly been violated by any of the signatory states may directly petition the European Commission for relief and through it the European Court of Human Rights.[21] For the first time in the history of international law, any private individual, irrespective of nationality ties, was by agreement of sovereign states, given the right of access to an international body vested with judicial functions.[22]

The novelty of the remedy and its outstanding significance are stressed by the records of the Commission and of the Court. In its first ten years of life only three petitions were lodged with the Commission by a state against another member state,[23] while over 2000

High Contracting Parties in the Convention are essentially of an objective character, being designed rather to protect the fundamental rights of individual human beings from infringement by any of the . . . Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves; . . ." 4 YEARBOOK, 138-40 (1961).

[21] Art. 25 (1) "The Commission may receive petitions . . . from any person, nongovernmental 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 this Convention, provided that the High Contracting Party . . . has declared that it recognises the competence of the Commission to receive such petitions."

. . . .

(4) The Commission shall only exercise the powers provided for in this Article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs."

The optional feature of this novel procedure of individual petition has assured ratification of the Convention by all members of the Council of Europe except France. It was the result of pragmatic action on the part of the Committee of Ministers in amending the original draft Convention submitted to it by the Assembly. See comments by the Irish delegate, Mr. McBride, in CONSULTATIVE ASSEMBLY REPORTS, 2d Sess. 282 (1950).

Ten states, Austria, Belgium, Denmark, the German Federal Republic, Iceland, Ireland, Luxembourg, The Netherlands, Norway and Sweden have recognized the right of individual petition.

[22] The Central-American Court of Justice established in 1908 under the Washington Convention of December 20, 1907, by the states of El Salvador, Costa Rica, Nicaragua, Honduras, and Guatemala was also accessible to individuals provided, however, they were nationals of a member state and their petition was *not* directed against their own state. That Court in its ten years of life received only five individual petitions and did not find any admissible for trial on the merits. See HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE 41, 79 (1936).

[23] Two petitions were filed by Greece against the United Kingdom in 1956-57 with regard to alleged violations of the Convention in Cyprus and were later withdrawn when the Zurich and London agreements brought about a final settlement in the Cyprus question. The *Pfunders* case was filed with the Commission by Austria against Italy in 1960 as to alleged violations of the Convention in certain criminal proceedings before the Italian courts in South Tyrol.

After extensive hearings at which even the Italian Public Prosecutor was called to testify, the Commission on May 24, 1963, transmitted its report to the Committee

petitions were filed by individuals against various member states alleging a breach of obligations under the Convention. The Court, which came into existence in 1959, has rendered two decisions, in 1961 and 1962, both on cases of individual petitions.[24]

A Code of Human Rights

The authors of the Universal Declaration, well aware of the fact that they were drafting not an instrument of binding force but a political manifesto included in it a wide variety of rights of a personal, social, economic and cultural nature defined in such broad and noncommittal terms that even states of deeply divergent political philosophies could subscribe to them.[25] On the contrary, the fourteen rights and freedoms guaranteed in the European Convention[26] are the object of specific obligations undertaken by the signatory states, including direct implementation at the national level of the protection of those rights by their legislative, executive and judicial departments.[27] Before reaching the international level, the

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of Ministers; on the basis of that report, on October 23, 1963, the Committee decided by Resolution No. (63)3DH that no violation of the Convention was found in the case.

[24] *Lawless* case, decided July 1, 1961, 4 YEARBOOK 430 (1961); *De Becker* case, decided March 27, 1962, COUNCIL OF EUROPE DOCS. A. 69.821.

[25] Fifteen years later the signatory states of the Universal Declaration are still unable to reach an agreement on the specific definition of the rights to be guaranteed. Thus, the Convention which would bind all states to provide effective protection and enforcement of those rights is still in the drafting stage. For a complete study of the United Nations efforts in this direction see Cassin, *Reflections on the Rule of Law*, 4 JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS, 224 (1963). For an excellent comparison between Declaration and Convention see Pelloux, *Précédents et caractères généraux de la Convention Européenne*, in LA PROTECTION INTERNATIONALE DES DROITS DE L'HOMME 59 (1961).

[26] They are set out in Section 1 of the treaty and in Articles 1-3 of the 1952 Protocol which entered into force May 18, 1954. 2 YEARBOOK 92 (1958-59). On the self-executing nature of Section I of the Convention see Süsterhenn, *Die Europaïsche Konvention zum Schutze der Menschenrechte und Grundfreiheiten*, DEUTSCHE VERWALTUNGSBLATT, 753 (1955) and Golsong, *The European Convention for the Protection of Human Rights and Fundamental Freedoms in a German Court*, BRIT. YB. INT'L L. 317, 319 (1957).

[27] Art. 57. "On receipt of a request from the Secretary-General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention."

In the *De Becker* case, Application No. 214/56, decided by the Commission on June 9, 1958 (2 YEARBOOK 214) and later referred to the Court for adjudication, the Commission stated: ". . . in accordance with the general principles of international law, borne out by the spirit of the Convention as well as by the preliminary works, the Contracting Parties have undertaken . . . to ensure that their domestic legislation is compatible with the Convention and, if need be, to make any necessary adjustments to this end, since the Convention is binding on all the authorities of the Contracting Parties, including the legislative authority"; *Id.* at 234. See also *La Convenzione Europea dei diritti dell'uomo*, COUNCIL OF EUROPE 38 (Strasbourg 1962).

enforcement of the principles of the Convention is entrusted to the national courts of each state. Hence, the Convention was conceived and drafted in the nature of a code of legally binding norms which define with statutory precision the contents and the breadth of the freedoms guaranteed.[28]

The rights defined in the Convention represent, in fact, the minimum common denominator of personal rights which each member state guarantees within its domestic legal system as the traditional freedoms of democratic countries. They may be grouped into six classes:[29]

1. Right to life and physical integrity, including the outlawing of torture, inhuman punishment and slavery.[30]

2. Right to personal liberty and security under civil and criminal due process principles inherent in a fair administration of justice, including right to counsel, habeas corpus proceedings, presumption of innocence, freedom from ex post facto laws and from unlawful arrest.[31]

3. Right to private and family life which embraces the privacy of home and correspondence and the freedom to marry and form a family.[32]

4. The intellectual freedoms of thought, conscience, religion and expression, extended to include the right of parents to provide their children's education according to their religious and philosophical convictions.[33]

5. The right of peaceful assembly and association, to join trade unions and to vote in free political elections.[34]

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[28] Two opposite alternatives confronted the drafters of the Convention: one school of thought advocated a comprehensive enumeration of general principles to be later implemented by each member state in accordance with its domestic system of laws and jurisprudence; the other stressed the importance of spelling out in precise definitions the substance, scope and limit of permissible restrictions of each right and freedom guaranteed to the individual. It was the second view that prevailed. See M. Teitgen's comments on Report 77 of the Committee on Legal and Administrative Questions to the Consultative Assembly on Sept. 4, 1949, CONSULTATIVE ASSEMBLY REPORTS, 1154 (1949); *The Rights of the European Citizen*, COUNCIL OF EUROPE, 22 (Strasbourg 1961); Vasak, *supra* note 5, at 5; Liebscher, *Austria and the European Convention for the Protection of Human Rights*, 4 JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS 282, 293 (1963).

[29] Héraud, *Droits garantis par la convention* in LA PROTECTION INTERNATIONALE DES DROITS DE L'HOMME 107 (1961).

[30] Arts. 2-4.

[31] Arts. 5-7.

[32] Arts. 8 and 12.

[33] Arts. 9-10 and Art. 2 of Protocol.

[34] Art. 11 and Art. 3 of Protocol.

6. The right of property defined as "the peaceful enjoyment of possessions."[35]

Personal Liberties and National Security

The delicate task of balancing freedoms with the exigencies of public interest was met realistically by the drafters of the Convention through a system of permissible restrictions. Some restrictions of a general nature represent the necessary counterpart of the rights reserved to the individuals as they affect public order in a democratic society.[36]

Article 17 specifically forbids such perverted use of the freedoms guaranteed in the Convention as may be attempted by groups or persons engaging in activities aimed at destroying those freedoms. In 1957 the German Communist Party, dissolved by the Federal Constitutional Court of Germany as unconstitutional under Article 21 of the Basic Law (*Grundgesetz*), filed an application with the Commission alleging violations of Articles 9, 10 and 11 of the Convention. The Commission, however, declared the application inadmissible on the ground that the operation of the Party was within the purview of Article 17, designed to safeguard the free operation of democratic institutions by preventing totalitarian groups from "exploiting in their own interests the principles enunciated by the Convention."[37] It added that the traditional objective of the Communist Party was the establishing of a dictatorship of the "proletariat", which implied destruction of many of the rights guaranteed by the Convention.[38]

Other limitations are closely connected with the traditional sovereign rights of states: such is the right of specific reservation to any provision of the treaty which right a member state may exercise at the time of signing or of ratifying "to the extent that any law then in force in its territory is not in conformity with the provision."[39] Thus Norway ratified the Convention with a reservation as to Article 9 (freedom of religion) in that Article 2 of her Constitution, declaring that the Evangelical Lutheran religion is the official religion of the state, forbade the admission of Jesuits on her territory. However,

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35 Art. 1 of Protocol.

36 The lawful exercise of police power justifies the death penalty (Art. 2), forced labor of prisoners, and compulsory military service (Art. 4). Public order and national security permit limitations to the publicity of trials (Art. 6), the privacy of home and correspondence (Art. 8), the exercise of intellectual freedoms (Art. 9) and of the right of assembly (Art. 11).

37 Consultative Assembly Reports, 1st Sess. 1235 (1949).

38 Application No. 250/57, 1 Yearbook 222 (1957).

39 Art. 64. General Reservations are forbidden.

on November 1, 1956, the constitutional provision was repealed with specific reference in the repealing statute to the obligation contracted under the Convention.[40]

The most significant among permissible restrictions is the right of derogation whereby a state in time of war or public emergency may take measures which temporarily suspend certain freedoms, serving notice upon the Secretary-General of the Council of Europe of the measures taken and the reasons therefor.[41] The inherent sovereign power to protect public order is thus counterbalanced by a strict control at the international level on the justifications for applying the right of derogation.[42]

IMPLEMENTATION OF THE CONVENTION WITHIN DOMESTIC JURISDICTIONS

The substantive right of individual petition inserted by the Convention into the international system of protection of Human Rights stands as a symbolic landmark at the center of the European Charter. Nevertheless, ten years of the Commission's practice and jurisprudence clearly indicate that the real influence and the living extension of the principles and obligations set forth in the Convention were meant to be and have been felt primarily at the national level, within the natural legal habitat of the individual. Structural and procedural emphasis was placed on events occurring within the domestic jurisdiction of states. Member states have undertaken to conform with the principles of the Convention and to provide relief for violations even in instances where traditionally the "raison d'Etat" would furnish sufficient justification for the violation.[43] On the other hand, individuals are bound to exhaust all local remedies

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[40] U.N. YEARBOOK OF HUMAN RIGHTS 169 (1956).

[41] Art. 15. No derogation is permitted as to the right to life, and the freedom from torture, degrading punishment, slavery and the operation of any ex-post facto law.

[42] In the words of the Secretary to the Commission: "A jurisprudence is being created and . . . a consistent attitude of the Commission has emerged in the sense that, although it concedes to a State a margin of appreciation in applying the provisions of the Convention which limit the rights or freedoms guaranteed to an individual, the Commission will jealously examine the justification of any such limitations imposed by either a legislative or executive measure." McNulty, *European Convention on Human Rights: Relationship Between the Individual and the State*, p. 2, COUNCIL OF EUROPE Docs. A. 73.607 (1963).

See Applications No. 176/56 Greece v. United Kingdom, 2 YEARBOOK 175, 182 (1958), No. 214/56 (De Becker v. Belgium), 2 YEARBOOK 214 (1958), No. 322/57 (Lawless v. Ireland), 2 YEARBOOK 308 (1958), No. 493/59, 4 YEARBOOK 302 (1961) and the first case decided by the European Court, the *Lawless* case, 4 YEARBOOK 438 (1961). See also Lauterpacht, *European Convention on Human Rights: Suspension of its application in Cyprus*, INT'L & COMP. L.Q., 432 (1956).

[43] See note 17 *supra*, Article 13.

under the "generally recognized rules of international law" before their applications may be dealt with by the Commission.[44] In addition, between the findings of admissibility and the conclusions on violations there is a vast field of the Commission's activity which is primarily conciliatory, "with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights."[45] Often the persuasive and diplomatic approach of the Commission in negotiating with states as to alleged violations of individual rights has produced far greater results than antagonistic procedures or repressive measures could. In pursuance of this aim, the Convention has provided that "the Commission shall meet in Camera."[46]

In the first two interstate petitions filed with the Commission by Greece against the United Kingdom, the principle of derogation under Article 15 was in issue and there were allegations of torture and inhuman treatments in Cyprus. A sub-commission of the European Commission conducted a field investigation on the island in January 1958 which resulted in the lifting of certain British punitive restrictions and ultimately brought about the political settlement leading to the full independence of the Republic of Cyprus.[47]

In the case of *De Becker v. Belgium*[48] the Commission found that Article 123 Sexies of the Belgian Criminal Code, which imposed an inflexible lifetime deprivation of freedom of expression upon persons convicted of treason in time of war, was contrary to Article 10

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44 Art. 26. Noncompliance with the requirement to exhaust all domestic legal remedies has been the most frequent basis of rejection of individual petitions by the Commission.

45 Art. 28. The complex functions entrusted to the Commission in the processing of petitions encompass three distinct phases of activities. At the initial stage, when admissibility of the petition is in issue, the Commission is unquestionably a judicial body with final decision as to compliance wth jurisdiction (*ratione personae, ratione materiae, ratione temporis, ratione loci*), procedure of application and other prerequisites set down in the Convention.

Once the petition has been found admissible, the Commission turns to pretrial duties of an inquisitorial and arbitral nature becoming at once *juge d'enquête* and the arbitrator of international law. Thus it holds hearings, summons witnesses, gathers facts, hears evidence and above all places its services at disposal of the parties to reach a settlement of the dispute "on the basis of respect for Human Rights as defined in this Convention." Art. 28.

In the event no settlement is reached, it is the Commission's duty to act as advisor and auxiliary to either of the adjudicating bodies, the Court or the Committee of Ministers. It draws up a report of the facts ascertained and gives its opinion as to whether or not those facts amount to violation of the duties assumed under the Convention. If within three months after transmittal of the report, the Commission decides to transfer the dispute to the Court, it then becomes an assistant to the Court in the performance of its duties, similar to a *magistrat de parquet* of civil law systems.

46 Art. 33.

47 Cyprus is now a member of the Convention from which it borrowed the entire section on human rights of its constitution. See *infra* note 89.

48 Application No. 214/56, 2 YEARBOOK 214 (1958).

of the Convention. It then filed its report and referred the case to the Court, but even before the first hearing of the Court, the respondent state amended its legislation in compliance with the findings.[49]

Another instance of the far-reaching influence of the Commission's work has occurred in recent months. A large number of individual petitions were filed with the Commission by inmates of Austrian prisons alleging that their rights guaranteed by Article 6 of the Convention had been violated in the course of trial. They specifically challenged the Austrian Code of Criminal Procedure which made no provision for their representation by counsel at certain appellate hearings.[50] The Commission found some petitions admissible[50a] and rejected others at the preliminary stage. As a result of Commission conferences and exchange of views with the Austrian Government, the Austrian Parliament enacted legislation effective in September 1962 amending section 33 of the Code of Criminal Procedure to provide equal representation of prosecution and accused at the appellate level. On March 28, 1963, further legislation was passed giving all persons convicted under the old code the right to seek a rehearing within the next six months provided that their petitions be found admissible by the Commission.[51]

THE CONVENTION IN THE NATIONAL COURTS

The necessary limitations of this article prevent us from coming to grips at this time with such complex theoretical questions as whether and to what extent specific provisions of the Convention may be considered as self-executing,[52] or whether the principle of supremacy of international law over municipal law transforms the

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[49] Thus the Court on March 27, 1962, ordered the case stricken from the rolls. See *supra* note 24.

[50] Under the Austrian Code of Criminal Procedure (sec. 3) the position of the state prosecutor is defined as an objective one which demands that he take equally into account circumstances favorable and unfavorable to the defendant. Secs. 33 and 282-83 of the Code give him the power to file in the defendant's interest objections to erroneous or harsh judgments and to report thereon to the Chief Prosecutor. Under this procedure hearings are conducted in the absence of counsel for defense. This procedure was alleged by petitioners to be in violation of Art. 6 of the Convention which guarantees the right to a fair hearing and to representation by counsel. See also Liebscher, *supra* note 28.

[50a] Applications No. 596/59 Pataki v. Austria, 3 YEARBOOK 356 (1960) and Dunshirn v. Austria, No. 789/60, 4 YEARBOOK 186 (1961) were transmitted to the Committee of Ministers on May 6, 1963. In October 1963 the Committee decided that no further action was required in view of the new legislative measures enacted by Austria. Council of Europe News, 1-2 (November 1963).

[51] See McNulty, *Convention for the Protection of Human Rights*, 5 COUNCIL OF EUROPE DOCS. A. 76.956 (1963). Over 140 applications were filed with the Commission by Austrian citizens as a result of the passing of this law.

[52] OPPENHEIM, INTERNATIONAL LAW 44 (8th ed. 1955); for an excellent review of Dualistic and Monistic doctrinal approaches see Comte, *supra* note 16 at 96-99.

Convention, upon ratification, into domestic law of the member states.[53] It is possible, however, to cast sufficient light on the subject of whether or not the Convention is directly enforceable in the domestic order of each member state through a study of constitutional and legislative provisions, parliamentary debates and court decisions in point. Thus under current international practice it appears that, through ratification, the Convention was integrated into the domestic system of laws of Austria,[54] Belgium,[55] the German Federal Republic,[56] Greece,[57] Italy[58] and the Netherlands[59] while it did not acquire the force and effect of domestic law in Ireland,[60] Iceland,[61] Luxembourg[62] and the United Kingdom.[63] The

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53 Comte, *supra* note 16, at 115.

54 There is conflict of opinion as to the rank to be granted the Convention in Austria but it is unquestionable that it has status at least equal to domestic statutory law. The Austrian Constitutional Court on June 27, 1960, held that "as a consequence of its approval by the National Council . . . and its publication in the Federal Official Gazette . . . the Convention became a source of law, inasmuch as it is a provision equivalent to a Federal Law, and its compulsory force in domestic law . . . is indisputable." 3 YEARBOOK 620 (1960).

55 Court of Cassation of Belgium, Sept. 21, 1959, 3 YEARBOOK 625 (1960); Council of State decision of March 24, 1961 No. 8050.

56 When the *Bundestag* consented to ratification of the Convention, it ordered it published as "having force of law." Act of Aug. 17, 1952, BUNDESGESETZBLATT II 685. Hence the Münster Higher Administrative Court in its judgment of Nov. 25, 1955, held that the Convention has become a part of municipal law, and therefore of directly enforceable law. 2 YEARBOOK 572, 578 (1958). The Court of Appeal of Bremen on Feb. 17, 1960, stated specifically: "The Convention has the status of an ordinary Federal law (*den Rang eines einfachen Bundesgesetzes*)." 3 YEARBOOK 634 (1960).

57 Decision of the Arios Pagos, Supreme Court of Greece, No. 386/1955 (1955) INT'L L. REP. 168; 2 YEARBOOK 606 (1958); also Council of State decisions of December 5, 1960 and February 8, 1961, Nos. 35/1961, 182/1961.

58 Mr. G. Sperduti, a member of the Commission, in his preface to *La Convenzione Europea dei diritti dell'uomo*, COUNCIL OF EUROPE 25 (Strasbourg 1962) states: "In those States in which the Convention has acquired force of law, as in Italy (by law of August 4, 1955 No. 848 which authorized ratification and made it executory) the rights and freedoms guaranteed in the Convention enjoy the same judicial and administrative protection which the domestic order bestows upon the rights and freedoms it recognizes independently of the international order." (Translation by the author.)

In the *Pfunders* case the pleadings of the Italian Government, as incorporated in the decision of the Commission on the admissibility of the Austrian application, specifically stated that "since the date of ratification by Italy (Oct. 26, 1955) the Convention constitutes an integral part of the Italian legal system, because Article 2 of the law No. 848 of August 4, 1955 makes it compulsory to observe the Convention and to cause it to be observed as the law of the land." 4 YEARBOOK 154 (1961).

59 The Netherlands, by virtue of a constitutional amendment of 1956, placed all treaties above municipal law, including even constitutional law and laws of a later date. See decision of the Court of Arnheim (March 8, 1961) and of the Supreme Court (Jan. 19, 1962) 4 YEARBOOK 630-650 (1961).

60 Art. 29 (6) of the Constitution of Ireland provides "No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas (the Parliament)." In the *Lawless* case habeas corpus proceedings brought under the law of the Convention before the Supreme Court of Ireland were dismissed in 1957 on the ground that the Irish Parliament (*Oireachtas*) had not determined that the Convention was part of the domestic law. The Court accordingly cannot

remaining countries, Cyprus, Denmark, Norway, Sweden and Turkey are still uncommitted as to constitutional or statutory provisions or judicial interpretation on this question.[64]

The availability of a remedy before national courts under the provisions of the Convention remains the most striking and effective feature of its implementation at the domestic level. The courts of member states have been confronted with individual challenges to existing legislation as contrary to the principles of the Rome treaty.[65] Even where no violation was found, the law of the Convention has thus become a living reality, beaming to all persons its message of a common legal standard in human rights for the Western World.

PROTECTION OF FAMILY LIFE

The right to respect for private and family life guaranteed by Article 8 of the Convention came in issue before the Federal Administrative Court of Germany in 1956 as opposed to State power to expel undesirable aliens.[66] A Belgian citizen, former prisoner of war, was appealing an order of expulsion from Germany imposed upon him under a 1938 ordinance for conviction of a crime committed in that country. After conviction he had married a German citizen, the mother of two illegitimate children, who later bore him a child. Since the illegitimate children were German nationals and as such would not be readily accepted for admission by a foreign country, the high Court found that the order of expulsion would have forced the wife to choose between parting from her husband or from her children, contrary to the individual rights guaranteed by Article 8 of the Convention. It thus annulled the order of expulsion.[67]

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accept the idea that the primacy of domestic legislation is displaced by the State becoming a party to the Convention. 2 YEARBOOK 608 (1958).

[61] See decision of the Town Court of Reykjavik cited *supra* note 10.

[62] In its decision of October 24, 1960, the Luxembourg Court of Summary Jurisdiction stated: ". . . It appears . . . that the rights and principles described in the Convention may not, under the terms of the Convention, be appealed against or invoked directly before national courts but may only be the subject of international appeals as laid down and stipulated in the Convention." 4 YEARBOOK 628-30 (1961).

[63] The traditional position of the British Government is that only the government should decide how to fulfill its international obligations; and that only by enactment of a bill may an international agreement be transformed into a rule of domestic law. See debates in the House of Commons on Nov. 26, 1958, and June 25, 1959, as to the optional right of individual petition. 2 YEARBOOK 546 (1958), 3 *Id.* 598 (1960).

[64] As to Norway see *infra* note 86.

[65] For the interpretation of the provisions of the Convention under municipal law see Comte, *supra* note 16, at 121.

[66] *Deutsche Verwaltungsblatt* 57 (1957); 2 YEARBOOK 584 (1958). This decision was followed by the Higher Administrative Court of Münster on November 21, 1958, II, A. 1439/57 and on August 2, 1960, 4 YEARBOOK 618 (1961).

[67] The opposite conclusion was reached by the Supreme Court of Belgium in

FREEDOM OF WORSHIP

The requirement that construction and use of buildings for religious worship of all denominations be subject to authorization by the civil authorities under penalty of fine was found by the Supreme Court of Greece not to be contrary to freedom of religion in that it was required in public interest for the protection of health and safety of the citizens.[68]

The Court of Cassation of the Netherlands[69] held that the imposing of a general, compulsory old age insurance law requiring church ministers to pay contributions did not encroach upon freedom of religion as protected by Article 9 of the Convention. Commenting on this point the Court stated:

> Thus the obligation to pay contribution which in principle falls upon all, independent of religious belief, does not in any way affect the individual's right to freedom of thought, conscience or worship.
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> . . . the freedom to manifest one's religion or beliefs herein guaranteed is not the same thing as freedom to oppose one's own religious ideas or beliefs to the provisions of the law, and . . . therefore, the provision of the Convention under which the appeal is lodged does not mean that anyone may be free to evade the enforcement of laws even when they have nothing to do with the manifestation of religion or beliefs by alleging the nullity or irrelevance of such laws because of religious ideas or beliefs that do not accord with them. . . .[70]

On January 19, 1962, the Supreme Court of the Netherlands[71] upheld the law of September 10, 1853, which made it unlawful to hold religious services in public places outside of buildings dedicated to religious worship thus reversing the decision of the Court of Appeals of Arnheim.[72] The latter had ruled that the limitations of the right to publicly manifest one's religious beliefs guaranteed by Article 9 of the Convention were only those necessary for public safety and order in a democratic society but did not apply in modern times to the holding of a religious procession hardly to be regarded as prejudicial to public health or morals. The Claims Commission of the National Employment Office of Brussels in its decision of

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1959 as to a German woman married to a Belgian who, after being expelled, had illegally re-entered Belgium to join her husband. The reason of *"ordre publique"* necessary in a democratic society was given as overruling the individual right to respect for family life. JOURNAL DES TRIBUNAUX 573 (1960), 3 YEARBOOK 624 (1960).

68 [1955] INT'L L. REP. 168; 2 YEARBOOK 606 (1958).

69 Nederlandse Jurisprudentie 993 (1960); 3 YEARBOOK 648 (1960).

70 3 YEARBOOK 658, 668-70 (1960).

71 4 YEARBOOK 640 (1961).

72 4 YEARBOOK 630 (1961).

March 13, 1962,[73] declared admissible the petition of an orthodox Jew who claimed exemption from being compelled to attend a strikers control assembly on Saturdays on the ground that his freedom of religion was guaranteed by the Constitution and by Article 9 of the Convention.

DUE PROCESS

The German courts have developed a substantial jurisprudence on the application of Articles 5 and 6 of the Convention. Failure to pronounce public judgment, when a Military Government ordinance did not so require was found by the Münster Higher Administrative Court not to be in violation of Article 6 of the Convention.[74] The same conclusion was reached by the Federal Court of Justice in 1957 as to written proceedings before an Appellate Court where notice to the parties replaced public pronouncement of judgment under provision of the German Code of Criminal Procedure.[75]

Preventive detention pending trial or appeal may take on connotations of penal imprisonment when there is a case of denial of application for conditional release. The Federal Constitutional Court of Germany held, however, that it is within the jurisdiction of ordinary courts to determine whether or not the duration of detention, to be inferred from the nature of the charges, is in proportion to the penalty which was imposed later. An appeal could not be taken to the Constitutional Court on this issue, on the ground of violation of the Convention.[76] The Court of Appeals of Bremen on February 17, 1960, held that Article 5 of the European Convention, which has the status of ordinary Federal law, does not preclude keeping an accused under arrest, provided he is brought to trial within a reasonable time or released pending trial.[77] "Reasonable time" being a question of fact, the Court found no violation of the Convention in the case of an accused with previous convictions who had escaped into the Soviet zone, was arrested on his return to

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[73] JOURNAL DES TRIBUNAUX 267 (1962).

[74] Judgment of November 25, 1955, NEUE JURISTISCHE WOCHENSCHRIFT 1374 (1956); 2 YEARBOOK 572 (1958). "The fact that the Convention is part of municipal law does not mean that the obligation to pronounce judgment publicly, in accordance with Art. 6, applies to administrative courts; that clause refers only to the determination by a tribunal of 'civil rights and obligations or of any criminal charge . . .' not administrative courts which determine disputes of public law." *Id.* at 580.

[75] NEUE JURISTISCHE WOCHENSCHRIFT 1480 (1957); 2 YEARBOOK 596 (1958). A similar ruling was given by the European Commission on July 7, 1959, as to Application No. 423/58 on the interpretation of Art. 6. See also Velu *Le problème de l'application aux jurisdictions administratives des règles de la Convention Européenne des droits de l'homme*, REVUE DE DROIT INTERNATIONAL ET COMPARÉ (Brussels) 129 (1961).

[76] Decision of January 14, 1960, 3 YEARBOOK 628 (1960).

[77] 3 *Id.* 636 (1960).

Berlin and placed in preventive detention for a period not exceeding the limits of the maximum penalty that could be imposed upon him at trial.

The Constitutional Court of Austria in two instances, on June 27, 1960,[78] and on October 14, 1961,[79] held that restrictions of liberty without an arrest warrant in the course of administrative action under the Criminal Finance Laws were not contrary to Article 6 of the Convention in that the latter was not self-executing but contained only principles requiring further interpretation by the national Legislature. The Court stated in the first instance:

> As a consequence of its approval (*Genehmigung*) by the National Council . . . and its publication in the Federal Official Gazette . . . the Convention became a source of law, inasmuch as it is a provision equivalent to a Federal Law, and its compulsive force in domestic law . . . is indisputable.
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> . . . The Convention and its Protocol require the Austrian legislature to adapt municipal law to the provisions of the Convention insofar as it does not already conform thereto and insofar as it does not already guarantee rights more far-reaching than those protected by the Convention or Protocol . . . .
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> . . . Article 6 contains only principles constituting a programme, which must undoubtedly be put into effect and respected by the legislator, but which do not in themselves constitute an immediately applicable body of law. The validity of Austrian law has not been altered by the mere publication of the Convention in the Federal Official Gazette.[80]

While the Constitutional Court of Austria had found that the Austrian reservation to Article 5 of the Convention applied only to measures restrictive of liberty provided by laws of administrative procedure, excluding therefore the Criminal Finance laws, the European Commission[81] held that the Austrian reservation applied to all laws in force at the time of ratification concerning administrative questions which give administrative authorities the power to impose penalties of imprisonment for violations.

Freedom of Residence and Profession

The right to a free choice of residence within the national territory was held by the Greek Council of State to be subject to public se-

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[78] 3 *Id.* 616 (1960).
[79] 4 *Id.* 604 (1961).
[80] 3 *Id.* 620-622 (1960).
[81] Application No. 1047/61, 4 Yearbook 356 (1961).

curity measures without violation of Article 5 of the Convention.[82] In two later decrees[83] the same Court found that relocation measures were not among the cases specified in that article as permissible limitations of individual freedoms but justified them as application of the right of derogation permitted by Article 15. However, no evidence has been found of any notice of derogation by Greece under Article 15.

As to the right of residence on territory subject to a foreign jurisdiction, the Münster Higher Administrative Court found that such right was not protected by the Convention.[84]

On September 27, 1960, the Administrative Court of Appeal of Berlin ruled that a deportation order against an Eastern European refugee repeatedly convicted of crimes in Germany was not inhuman treatment contrary to Article 3 of the Convention, although the deportee claimed that if deported to his native Czechoslovakia he would be sentenced to death for espionage or desertion.[85] On December 16, 1961, the Supreme Court of Norway rejected the appeal of a dentist, Dr. Iversen, sentenced to pay a fine for refusing to practice his profession for one year in the northern section of the State as ordered by the Secretary of Social Affairs pursuant to a 1958 Statute on Civil service for dentists. The appellant had claimed that the Secretary's decision was in violation of Article 4 of the Convention which prohibits forced and compulsory labor. The Supreme Court found that the complaint was without legal foundation, impliedly applying the law of the Convention.[86]

MESSAGE TO THE FREE WORLD

The African and Asian nations which have recently gained their independence or are preparing to do so are still hesitantly facing the many ways of life open before them. To these nations the problem of establishing the position of the individual *vis-à-vis* society and state is very real and immediate. A number of these countries

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[82] [1955] INT'L L. REP. 168.

[83] Decrees No. 35/1961 of December 5, 1960, and No. 182/1961 of February 1, 1961.

[84] [1954] INT'L L. REP. 209.

[85] 3 YEARBOOK 640 (1960).

[86] Dr. Iversen later filed application for relief with the European Commission, which has his case under study. See McNulty, *The Convention for the Protection of Human Rights*, COUNCIL OF EUROPE DOCS. A. 76.956 p. 5 (1963). Under the Norwegian legal system a treaty creates obligations and rights only as to states with effects limited to the international legal order. However, by means of national legislation a treaty may be accepted and incorporated into the domestic system of law. Norway has not enacted any such law as to the Convention.

searched the Law of Nations for a pattern and found the new formulation of the rights of free peoples and a system of effective protection in the language and practice of the European Convention.

On May 23, 1960, Mr. Kershaw in the House of Commons, called the attention of the British Government to the fact that Dr. Hastings Banda, the leader of Nyasaland's independence movement, had entered into negotiations with the Icelandic Government. Dr. Banda attempted to persuade Iceland to file with the European Commission on Human Rights a petition against the United Kingdom alleging that his imprisonment was in violation of the law of the Convention as applied to overseas dependent territories of the United Kingdom.[87] It appears that Dr. Banda's delegate, Mr. Kangama Chiume found very favorable and sympathetic reception on the part of the Icelandic Secretary of State. The Government thereafter initiated steps to enroll the support of the other Scandinavian countries, but before any formal action could be taken with the Commission, Dr. Banda was released.[88] Whatever may be the implications of those events, it is beyond question that a number of newly emerging nations have received the message of the Convention and have followed its guidelines in their systems of law.

The Republic of Cyprus, which became independent in 1960, has incorporated into its Constitution almost verbatim Articles 2-14 of the Convention and Article 1 of the Protocol.[89]

The Commission created by the British Government in 1958 to study the problems of national, racial and religious minorities in Nigeria, proposed to incorporate Articles 2-14 of the European Convention into the draft Constitution of the Federation of Nigeria. These articles now constitute the entire Sixth Schedule of the Nigerian Constitution under the title "Fundamental Rights."[90] Already the High Court of Kano, Nigeria, has been called upon to decide on December 15, 1959, whether certain sections of the 1958 Law on Children and Young Persons, forbidding political activities of juveniles, were void as in conflict with the human rights provisions

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87 House of Commons, Weekly Hansard, May 23, 1960, Col. 173.

88 VASAK, DE LA CONVENTION EUROPÉENNE À LA CONVENTION AFRICAINE DES DROITS DE L'HOMME 64 (1962) quoting the Guardian, February 19, 1960; News Chronicle, February 22, 1960; N.Y. Herald Tribune April 2, 1960.

89 For the text of Acts. 6-23 of the Constitution of Cyprus see 3 YEARBOOK 678 (1960).

90 For the text of the Constitution of Nigeria see *Id.* at 706. For further details as to the African legislative developments see Elias, *The New Protection of Human Rights*, 2 JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS 30 (1959); Modinos, *Les enseignments de la Convention* in LA PROTECTION INTERNATIONALE DES DROITS DE L'HOMME 343 (1960); McNulty, *Influences directes exercées hors d'Europe par la Convention Européenne, Id.* at 377.

of the Constitution. It found that they were not.[91] Kenya,[92] Sierra Leone,[93] Southern Rhodesia, Nyasaland and Uganda thereafter patterned their Constitutional provisions on human rights on the Nigerian Constitution.[94]

When the Belgian Congo was approaching the time of its independence, its Minister submitted to the Belgian senate a bill on fundamental freedoms with sustaining comments referring particularly to the Universal Declaration and to the European Convention. This bill was enacted on June 17, 1960, and under the Constitution of Congo became Congolese Law as of the date of its independence, July 1, 1960.[95]

The regional solution proposed in the European Convention for the protection of human rights, an intermediate step between the limitations of domestic jurisdiction and the unsurmountable barriers of theoretical conflicts at the world level, is now offering inspiration to the African jurists who, looking beyond their national borders, are attempting to place the problems of the protection of fundamental freedoms on the international level. The 194 jurists, from twenty-three African and nine other countries, who convened at Lagos, Nigeria, in January 1961 to attend the first Congress of African Jurists, proposed there the drafting of an African Convention on Human Rights which, like the European Convention, would specifically provide for the creation of a special Court and of forms of relief open to all persons under the jurisdiction of the signatory States.[96] At the conferences of African Chiefs of State, which met at Monrovia in May 1961 and at Addis Ababa in May 1963, the project of an African Convention on Human Rights patterned on the European Convention was again discussed.[97] The importance of approv-

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91 3 YEARBOOK 724 (1960). See also decisions of the Supreme Federal Court of April 6, 1961, and October 27, 1961.

92 Came into force on December 7, 1960.

93 Came into force on April 27, 1961.

94 4 YEARBOOK 656 (1961). See also VASAK, *supra* note 88, at 73-74.

95 McNulty, *supra* note 90, at 383.

96 *The Law of Lagos*, African Congress on the Rule of Law, INTERNATIONAL COMMISSION OF JURISTS 9 (Geneva 1961).

The jurist from Togo, Mr. M. F. Amorin submitted to the Congress a draft resolution on a Convention on Human Rights in the following terms: "The commission, taking into consideration the Universal Declaration of Human Rights of 1948 and . . . particularly the European Convention of 1950 and the draft Inter-American Convention, . . . recommends that this Congress invite the African Governments to study the possibility of adopting an African Convention of Human Rights providing specifically for the creation of a proper judicial body accessible to all individuals who are victims of a violation of their rights." *Id.* at 112.

97 See address by Mr. P. Pflimlin, President of the Consultative Assembly of the Council of Europe at the September 1963, Ceremonial Sitting in Strasbourg commemorating the tenth anniversary of the entry into force of the Convention, COUNCIL OF EUROPE DOCS. A. 83.247 p. 19.

ing an African Convention on Human Rights was also stressed by Dr. Nnamdi Azi Kiwe, the Governor General of Nigeria, in his speech on the future of Pan-Africanism delivered in London on August 12, 1961.[98]

On the American continent the European Convention has also projected its message. In August 1959 the Consultative Conference of Ministers of Foreign Affairs of the Organization of American States at its 5th meeting in Santiago, Chile, undertook the drafting of an Inter-American Convention for the Protection of Human Rights. This Convention incorporates, like its European blueprint, a system of guarantees in the form of an Inter-American Commission and Court of Human Rights.[99] Thus the Council of the Organization on May 25, 1960, approved the Statute of the Inter-American Commission on Human Rights.[100]

CONCLUSION

The European Bill of Rights, which issued of a common heritage largely but not exclusively European in its origin, is truly the ideological cornerstone of a modern united Europe, erected in self-defense against all open or disguised attempts to make the welfare of the individual subservient to that of the state. It has established by treaty a real and effective control system whereby for the first time in the history of international law human rights and fundamental freedoms are internationally guaranteed in one part of the world.

In its varied and rich practice the Commission is actively developing from the nucleus of the Convention new principles of jurisprudence on individual rights and duties in international law. The European Court of Human Rights, at the center of the structure of the Convention, may well become the model for an International Court of Human Rights, which jurists of our time find long overdue.[101] From the viewpoint of its immediate and direct applicability to individuals, the system works and can serve as a pattern for new and richer experiences toward the recognition of the private individual in international law.

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98 4 YEARBOOK 656, note 5 (1961).

99 *Inter-American Commission on Human Rights—Basic Documents*, PAN AMERICAN UNION OEA/ser. L/V/I. 4 p. 28 (1960).

100 *Id.* at 9.

101 Supreme Court Justice Arthur J. Goldberg in a recent address at the Jewish Theological Seminary strongly advocated the establishing of an International Court of Human Rights on the successful example of the European Court. N.Y. Times, November 18, 1963, p. 26.