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# THE EUROPEAN COMMISSION OF HUMAN RIGHTS: AN ANALYSIS AND APPRAISAL

*John T. Wright\**

## INTRODUCTION

During the past thirty years, the protection of human rights and fundamental freedoms has been the focus of a number of instruments promulgated by the community of nations. The Universal Declaration of Human Rights,<sup>1</sup> the International Covenant on Civil and Political Rights,<sup>2</sup> and the International Covenant on Economic, Social, and Cultural Rights<sup>3</sup> form the basis of efforts by the United Nations to secure the observance of human rights among member States. In addition to these universal documents, the countries of Europe have drawn upon their common heritage to promote the realization of human rights through the ratification of the European Convention on Human Rights and Fundamental Freedoms.<sup>4</sup> The Convention creates a Commission of Human Rights, as well as a European Court of Human Rights. This article will explore the workings of the Commission, the more active of the two bodies, and will analyze its effectiveness in establishing a standard for the observance of human rights in light of the differing political systems of the European States.

## I. BACKGROUND OF THE EUROPEAN CONVENTION

### A. *History*

The European Convention on Human Rights and Fundamental Freedoms is a post-World War II creation of the Council of Europe. Although the quest for European unity intensified in the aftermath of the two world wars, it was not unique to the twentieth century. Statesmen and philosophers of earlier eras had pleaded the cause of unification, including Jean Jacques Rous-

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1. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

2. G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966).

3. *Id.* at 49.

4. Signed Nov. 4, 1950, Europ. T.S. 5, 213 U.N.T.S. 221 [hereinafter cited as Convention], reprinted in COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS, COLLECTED TEXTS 101 (11th ed. 1976) [hereinafter cited as COLLECTED TEXTS]. See Appendix for the text of the Convention and the five Protocols.

seau, William Penn, and Immanuel Kant, who saw in the ideal of European unity the diminution of the use of force, the exaltation of individual rights, and the ascension of a new plateau in social development.<sup>5</sup>

Immediately prior to the outbreak of World War II, there was great interest in the notion of a united Europe, but a cool reception from Great Britain, indifference from non-European sources, and the emergence of Hitler's and Mussolini's nationalist movements temporarily laid to rest all concepts of peaceful unification and human rights. However, as the war drew to a close, the sentiment for unification emerged once again under the leadership of Winston Churchill, and the International Committee of Movements for European Unity was formed.<sup>6</sup> This Committee, composed of non-governmental organizations, issued a call for a Congress of Europe to be held at The Hague in 1948.<sup>7</sup> The Congress adopted a series of articles and resolutions calling for a united Europe, a Charter of Human Rights, a European Court of Human Rights, and a European Assembly.<sup>8</sup>

The British at first were wary of the proposal for a European Assembly, which was an obvious vehicle for the political integration of Europe. Ultimately, though, in deference to the depth of European feeling, the British agreed to the creation of the Assembly.<sup>9</sup> In return, the Council of Ministers, a body for governmental representation and cooperation with substantial control over the Assembly, was created.<sup>10</sup> Thus, after much compromise, the Statute of the Council of Europe was signed on May 5, 1949, and

5. I. KANT, *PERPETUAL PEACE* 23 (1972).

6. *EUROPE UNITES* 4 (1949).

7. The governments of Europe had not been idle. In the Brussels Pact of March 17, 1948, Britain, France and the Benelux States had joined in a military alliance. The Convention for European Economic Cooperation was signed April 16, 1948, and, in response to the invitation extended by the Marshall Plan, the Organization for European Economic Cooperation was created. It should be noted that the breakdown of Four-Power cooperation at the London meeting of November 1947 added impetus to the willingness to cooperate as well as turned more sympathetic ears to pleas for European union. *Id.* at 5.

8. *EUROPE UNITES*, *supra* note 6, at 94-95; *EUROPEAN MOVEMENT AND THE COUNCIL OF EUROPE* 47-48 (1950).

9. A. ZURCHER, *THE STRUGGLE TO UNITE EUROPE* 30 (1958). The proposed European Assembly became, in fact, the Consultative Assembly. *Id.*

10. For a fuller discussion of the negotiations and analysis of the positions of the parties see *EUROPEAN MOVEMENT AND THE COUNCIL OF EUROPE*, *supra* note 8, at 51-63. See also A.H. ROBERTSON, *THE COUNCIL OF EUROPE* 3-6 (1967) [hereinafter cited as *THE COUNCIL OF EUROPE*]; A.H. ROBERTSON, *EUROPEAN INSTITUTIONS* 12-17 (1973); A. ZURCHER, *supra* note 9, at 28-39.

entered into force on August 3, 1949.<sup>11</sup>

The Preamble to the Statute embodies the beliefs that bonds exist linking the cultural and political heritage of the European States and that both self-interest and moral considerations lead the States to maintain and strengthen these bonds. Article 1 of the Statute further states that "maintenance and further realization of human rights and fundamental freedoms" is a means whereby the unity of Europe is to be strengthened, the ideals of the common heritage realized, and economic and social progress facilitated. Article 3 goes even further and requires respect for and maintenance of human rights as a condition of membership.<sup>12</sup> In setting the above criteria of membership, the Council of Europe, created to further the cause of European unity, established a minimum standard for the international protection of human rights, and, of equal importance, a minimum standard of State behavior in the treatment of its nationals.<sup>13</sup>

There were two primary reasons for the importance attached to human rights. One was the conviction that, with the memories of Nazi tyranny still fresh, democracy is secure from the threat of fascism only as long as human rights are respected and protected.<sup>14</sup> In order for a representative democracy to function, to provide for orderly change, and to accommodate evolving needs and demands, the exercise of such fundamental human rights as life, liberty, and security must be unfettered.

Another factor adding impetus to the quest for the protection of human rights was the ideological conflict with Soviet communism. Human rights in the context of European unity were not merely viewed as desirable in themselves or as a barrier to the

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11. A. H. ROBERTSON, *EUROPEAN INSTITUTIONS*, *supra* note 10, at 321.

12. For an exhaustive study of the Council see *THE COUNCIL OF EUROPE*, *supra* note 10.

13. Human rights are mentioned in the Charter of the United Nations, art. 1, para. 3, but the maintenance of human rights has not been made an effective condition of membership. Nor has the Charter placed legal obligations upon member States to respect human rights. H. Kelsen, *THE LAW OF THE UNITED NATIONS* 39-41 (1966). Lauterpacht, on the other hand, maintains that a moral obligation, which he construes as a legal one, has been created. H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 145-65 (1968). It is readily apparent that there is little, if any, recognition of this supposed obligation on the part of the member States of the United Nations.

14. A.H. ROBERTSON, *HUMAN RIGHTS IN EUROPE* 5 (1963) [hereinafter cited as *HUMAN RIGHTS IN EUROPE*]. For one of the few general discussions of the relationship between democracy and human rights see D.V. SANDIFER & L.R. SCHEMAN, *THE FOUNDATIONS OF FREEDOM* (1966), where the rights of association are viewed as pivotal to the ability of the individual to participate in the political process.

resurgence of Nazism on the continent, but also as a countervailing force to the threat personified by Stalin. The fear of communism became ever greater, and the perceived threat intensified as the year between the Hague Congress and the signature of the Statute of the Council of Europe witnessed the imposition of the Berlin blockade, the Greek Civil War, and the communist coup in Czechoslovakia. Thus the desire for unity, the experience of fascism, and the specter of Soviet totalitarianism led the European States to reaffirm "their devotion to the spiritual and moral values which are the common heritage of their peoples . . . [and] which form the basis of all genuine democracy."<sup>15</sup>

On August 19, 1949, the Consultative Assembly of the Council of Europe began consideration of proposals for a European Convention on Human Rights.<sup>16</sup> Ten rights were recommended as the subjects for protection: security of the person; freedom from slavery and servitude; freedom from arbitrary arrest, detention, or exile, and the right to a fair trial; freedom from arbitrary interference in private and family life, home, and correspondence; freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of assembly; freedom of association; freedom to unite in trade unions; and the right to marry and found a family.<sup>17</sup> These rights were to be the subject of a collective guarantee implemented through the machinery of a European Commission of Human Rights and a European Court of Justice.

The British wished to set sharp limits on the extent of their commitment to the European human rights system.<sup>18</sup> They felt that precise definition of their commitment was necessary to remove all ambiguity as to the rights, duties, and obligations of all parties concerned.<sup>19</sup> The continental members, on the other hand, maintained that the rights and freedoms to be guaranteed did not require exhaustive and precise definition. It was felt that since the rights were those "defined and accepted after long usage

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15. STATUTE OF THE COUNCIL OF EUROPE, Preamble, reprinted in *MANUAL OF THE COUNCIL OF EUROPE* 299 (1970).

16. EUR. CONSULT. ASS'Y, REPORTS, 1ST SESS., at 210 (Aug. 19, 1949).

17. *Id.* at 212.

18. The British exhibited a consistent, though soft-spoken, position on European unity. They desired unity, but not unification or integration. They also opposed any alteration of traditional sovereign relations. Rather than identifying themselves as European participants of the movement toward unity, they considered themselves sympathetic supporters. A. ZURCHER, *supra* note 9, at 42.

19. Weil, *The Evolution of the European Convention on Human Rights*, 57 AM. J. INT'L L. 804, 806 (1963).

by the democratic regime," mere enumeration was more than adequate.<sup>20</sup> Furthermore, any questions that might arise could be settled by the Court.<sup>21</sup> Additional concern was expressed that under a precise definition an accidental omission would be construed as deliberate, thus foreclosing the development and extension of new rights.<sup>22</sup>

In August 1950, the Committee of Ministers adopted a compromise version of the Convention.<sup>23</sup> The revised text reflected the traditional international prerogatives of the sovereign State rather than the supranational approach of the European Movement. Acceptance of the jurisdiction of the Court of Human Rights was made optional,<sup>24</sup> rather than compulsory, as was the acceptance of the right of individuals to petition against a State.<sup>25</sup> Furthermore, there were provisions for the filing of reservations to the Convention<sup>26</sup> and for the suspension of the application of the Convention by States in times of national emergency.<sup>27</sup>

On November 4, 1950, the European Convention on Human Rights and Fundamental Freedoms [hereinafter referred to as Convention] was signed in Rome.<sup>28</sup> After additional work on three controversial rights,<sup>29</sup> agreement was reached on the First Protocol, which was signed on March 20, 1952.<sup>30</sup> The Convention entered into force on September 3, 1953, and the Protocol on May 18, 1954.<sup>31</sup>

## B. Structure

The Convention contains eleven rights<sup>32</sup> guaranteed to "everyone within the jurisdiction" of the contracting parties. The Protocol protects an additional three rights.<sup>33</sup> Enjoyment of these

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20. EUR. CONSULT. ASS'Y, DOCUMENTS, 1ST SESS., at 197, Doc. No. 77 (Sept. 5, 1949).

21. G. WEIL, EUROPEAN CONVENTION ON HUMAN RIGHTS 28 (1963) [hereinafter cited as WEIL].

22. THE COUNCIL OF EUROPE, *supra* note 10, at 164.

23. EUR. CONSULT. ASS'Y, DOCUMENTS, 2D SESS., at 600, Doc. No. 11 (Aug. 8, 1950).

24. Convention, art. 25.

25. *Id.* art. 46.

26. *Id.* art. 64.

27. *Id.* art. 15.

28. COLLECTED TEXTS, *supra* note 4, at 115.

29. They are the right to hold property, the right of parents to choose the education of their children, and a right concerning political liberties. EUR. CONSULT. ASS'Y, DOCUMENTS, 2D SESS., at 980, Doc. No. 93 (Aug. 24, 1950).

30. Europ. T.S. 5, 213 U.N.T.S. 262.

31. COLLECTED TEXTS, *supra* note 4, at 601.

32. Convention, arts. 2-12.

33. First Protocol, arts. 1-3.

rights is guaranteed under strictly-defined standards of State behavior. Individuals protected under the Convention must "have an effective remedy before a national authority" in the respective States.<sup>34</sup> Discrimination according to sex, race, or color is forbidden.<sup>35</sup> States retain the right to suspend application of the Convention under certain conditions<sup>36</sup> and to restrict the political activity of aliens.<sup>37</sup> An "anti-fascist" clause prohibits utilization of the rights protected by the Convention to violate the rights of others.<sup>38</sup> States may restrict the rights guaranteed only for the purposes stated in the Convention.<sup>39</sup>

Two organs were established by the Convention: the European Commission of Human Rights [hereinafter referred to as Commission] and the European Court of Human Rights [hereinafter referred to as Court].<sup>40</sup> The Commission<sup>41</sup> may address itself to any alleged violation of human rights brought to its attention by any contracting State<sup>42</sup> or by individuals, groups, or non-governmental organizations, provided the State in question has filed a statement declaring the Commission competent to receive such petitions.<sup>43</sup> Admissibility of such petitions is subject to certain restrictions. Anonymous petitions are inadmissible;<sup>44</sup> all domestic remedies must have been exhausted; and a time limit exists in which the petition must be submitted.<sup>45</sup>

If a petition is deemed admissible, the Commission undertakes to ascertain the facts alleged and to promote conciliation.<sup>46</sup> Upon effecting a friendly settlement, a report, stating the facts and solution arrived at, is published.<sup>47</sup> If the attempted conciliation is unsuccessful, a report giving the facts of the case, the opinion of the Commission as to the existence of a violation of the Convention, and the recommendation of the Commission,

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34. Convention, art. 13.

35. *Id.* art. 14.

36. *Id.* art. 15.

37. *Id.* art. 16.

38. *Id.* art. 17.

39. *Id.* art. 18.

40. *Id.* art. 19.

41. Articles 20 through 23 of the Convention enumerate the composition, manner of selection, term, and legal character of the Commission and its members.

42. Convention, art. 24.

43. *Id.* art. 25.

44. *Id.* art. 27.

45. *Id.* art. 26.

46. *Id.* art. 28.

47. *Id.* art. 30.

is referred to the Committee of Ministers of the Council of Europe.<sup>48</sup> This report is confidential.

If the case is not referred to the Court by the Ministers within three months, then the Ministers must determine, by a two-thirds majority vote, whether a violation of the Convention has occurred. If it is determined that a violation of the Convention has occurred, the Ministers may prescribe appropriate measures to be taken by the State concerned.<sup>49</sup>

A case may be brought before the Court, subject to a declaration of acceptance of compulsory jurisdiction by the State or States concerned, by a contracting State, or by the Commission.<sup>50</sup> Individuals may not come before the Court.<sup>51</sup> The Court may "afford just satisfaction to an injured party" if a State is found to have violated its obligations and the domestic law of the State allows only partial remuneration.<sup>52</sup> A reasoned judgment is rendered.<sup>53</sup> The judgment is final,<sup>54</sup> and the contracting States agree to abide by the decision,<sup>55</sup> supervised in execution by the Ministers.<sup>56</sup>

## II. PROCEDURE OF THE EUROPEAN COMMISSION

The Commission is established by Article 19(1) of the Convention "to ensure observance of the engagements undertaken by the High Contracting Parties." Thus, unlike most bodies created by treaty, the purpose of the Commission is not necessarily to act in the best interests of the States involved but, insofar as possible, to ensure that the obligations devolving upon States as a result of the Convention are upheld. The jurisprudence of the Commission has established that "[t]he purpose . . . in concluding the Convention was not to concede a reciprocal right . . . but to realize the aims and ideals of the Council of Europe."<sup>57</sup>

A frequent misapprehension concerning the Commission is

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48. *Id.* art. 31.

49. *Id.* art. 32.

50. *Id.* art. 48. Articles 38 through 47 of the Convention deal with the composition, term, remuneration, and jurisdiction of the European Court of Human Rights.

51. *Id.* art. 44.

52. *Id.* art. 50.

53. *Id.* art. 51.

54. *Id.* art. 52.

55. *Id.* art. 53.

56. *Id.* art. 54.

57. *Austria v. Italy*, App. No. 788/60, [1961] Y.B. EUR. CONV. ON HUMAN RIGHTS 116, 138 (Eur. Comm'n of Human Rights) (*Pfunders Case*) [hereinafter cited as Y.B.].



that its functions are those of a supreme court occupying a position over the domestic courts of the contracting parties similar to that of the United States Supreme Court in relation to American domestic courts. This notion has appeared frequently in applications before the Commission, although the Commission has been steadfast in maintaining that it "was not set up as a higher court to examine alleged errors of law or fact committed by the domestic courts of the Contracting Parties . . . but to ensure observance of the law of [the Convention]."<sup>58</sup> It should not be inferred, however, that the Commission will not concern itself with domestic law. The Commission has repeatedly taken the position that if a domestic law or legal practice appears to violate the Convention, the Commission may rule on the application and interpret the law in question.<sup>59</sup>

Just as the Commission does not view itself as the agent of the contracting parties, it refuses to see itself as an advocate for an aggrieved individual. Rather, it considers itself an agent for the Convention. Instances have arisen where both parties to a case, for reasons of their own and without coercion, have requested that the case be withdrawn. In each instance, before permitting withdrawal, the Commission examined the case to determine whether, "in the interests of safeguarding the rights guaranteed in the Convention," the case should be pursued by the Commission.<sup>60</sup>

#### A. *Composition of the Commission*

Article 20 of the Convention provides that the number of members of the Commission be equal to the number of contracting parties. Thus there are eighteen members of the Commission, each representing one of the States party to the Convention.<sup>61</sup>

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58. *X v. Federal Republic of Germany*, App. No. 254/57, [1955-57] EUR. COMM'N OF HUMAN RIGHTS 150, 152 [hereinafter cited as EUR. COMM'N].

59. *X v. Belgium*, App. No. 458/59, [1960] Y.B. 222, 232. This point is made repeatedly. See, e.g., *X v. Austria*, App. No. 5560/72, [1973] Y.B. 172, 190; *X v. Federal Republic of Germany*, App. No. 3911/69, [1969] Y.B. 324, 328; *X v. Belgium*, App. No. 1103/61, [1962] Y.B. 168, 190.

60. See, e.g., *Alois Vampel v. Austria*, App. No. 4465/70, [1971] Y.B. 476; *Rebitzer v. Austria*, App. No. 3245/67, [1971] Y.B. 160; *Wiener Städtische Wechselseitige Versicherungsanstalt v. Austria*, App. No. 2076/63, [1967] Y.B. 136; *Niekisch v. Federal Republic of Germany*, App. No. 1470/62, [1966] Y.B. 102; *Gericke v. Federal Republic of Germany*, App. No. 2294/64, [1965] Y.B. 314.

61. The current members of the Commission are: F. Ermacora, Austria; J. Custers, Belgium; M. Triantafyllides, Cyprus; C.A. Nørgaard, Denmark; R.J. Dupuy, France; J.A.

While no two members of the Commission may be nationals of the same State, there is no requirement that the members of the Commission be nationals of a High Contracting Party.<sup>62</sup> Therefore, there exists the possibility of a national of a State not party to the Convention becoming a member of the Commission. However, given the history and practice of the Commission, it is highly unlikely that this will occur.

No mention is made in the Convention of the qualifications of the members of the Commission. It might be argued that the lack of an enumerated minimal level of qualifications<sup>63</sup> affords an opportunity for mischief or at least for the selection of members unfit for such a responsible position. Nevertheless, the members, without exception, have been attorneys, former judges, legal advisors, or professors of law.<sup>64</sup> This, no doubt, results from the fact that service on the Commission does not require full-time attendance, thus enabling many competent individuals to serve.<sup>65</sup>

Article 21 distills the power of selecting members of the Commission into two processes, performed by two distinct bodies. The supranational body, the Consultative Assembly of the Council of Europe, through its Bureau,<sup>66</sup> formulates an initial list drawn from submissions by the national groups. This list serves as the pool from which the Committee of Ministers, the organ of national representation in the Council of Europe, makes its selection. In addition, the Bureau of the Consultative Assembly has taken it upon itself to make recommendations to the Com-

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Frousein, Federal Republic of Germany; G. Tenekines, Greece; G. Jorundsson, Iceland; B. Kiernan, Ireland; G. Sperduti, Italy; N. Klecker, Luxembourg; E. Busuttill, Malta; C.H.F. Polak, Netherlands; T. Opsahl, Norway; L. Kellberg, Sweden; S. Treschel, Switzerland; B. Daver, Turkey; J.E.S. Fawcett, United Kingdom. [1975] Y.B. 34.

62. See text accompanying notes 68-78 *infra*. The members of the Commission serve in their individual capacities rather than as representatives of their States.

63. Article 39(3) of the Convention gives a rather vague description of the qualities that a judge of the European Court of Human Rights should possess. No mention is made in the Convention of the qualities a member of the Commission should possess.

64. Biographies of Commission members are published in the Yearbook in the year of their election.

65. The Commission has adopted the practice of holding fixed sessions, totaling approximately two months spread over a one-year span. J.E.S. FAWCETT, *THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 323-24 (1969).

66. The Bureau of the Consultative Assembly is composed of the President and the seven Vice-Presidents of the Assembly. It is responsible for arranging the agenda as well as the timetable of debates. It always includes members from each of the four big powers and one from each of the regional groupings: Scandinavia, Benelux, Balkans, and either Ireland or Austria. *THE COUNCIL OF EUROPE*, *supra* note 10, at 52.

mittee of Ministers,<sup>67</sup> but because these are secret, it is impossible to determine whether they have been effective. What is readily ascertainable is the fact that the nationality of the Commissioners has always corresponded to the nationality of the High Contracting Parties.

Article 23 emphasizes the independence and non-representative character of the Commission. Rule 2 of the Rules and Procedures of the Commission, established pursuant to Article 36, provides that each member of the Commission take an oath prior to the assumption of duties and pledge, among other things, honorable and faithful discharge of his duties, impartiality, and conscientiousness.<sup>68</sup> Commissioners, who are elected for a period of six years,<sup>69</sup> are compensated by the Council of Europe.<sup>70</sup>

In accordance with Rule 5, the Commission elects from its members a President and a Vice-President.<sup>71</sup> An order of precedence, established according to the total period of service and age, determines the hierarchy of the Commission after the President and Vice President.<sup>72</sup> The President must relinquish his office<sup>73</sup> if he is a national of a State party to a case, or if he had been appointed to serve on a subcommission pursuant to Article 29 prior to amendment.<sup>74</sup> If upon accession to the Presidency by the Vice-President the same situation occurs, the identical procedure according to order of precedence must be followed. In the *First and Second Cyprus Cases*,<sup>75</sup> brought by Greece against the United Kingdom, both the President and Vice-President, of British and Greek citizenship, respectively, ceded their seats.

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67. EUR. CONSULT. ASS'Y, OFFICIAL REPORT OF DEBATES, 6TH SESS., at 709 (Sept. 22, 1954).

68. Rule 2, Rules of Procedure of the Eur. Comm'n of Human Rights, *reprinted in* COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS, COLLECTED TEXTS 301 (11th ed. 1976).

69. Convention, art. 22.

70. HUMAN RIGHTS IN EUROPE, *supra* note 14, at 46.

71. Election is by absolute majority, or, if necessary, by simple majority on the second ballot. Rule 5(3), *supra* note 68.

72. Rule 3, *id.*

73. Rule 9, *id.*

74. Prior to amendment by Protocol Three to the Convention, Article 29 provided for the establishment of subcommissions, consisting of seven members of the Commission, of which one was appointed by each party concerned. The purpose of the subcommission was to review the application and make a report to the full Commission.

75. Greece v. United Kingdom, App. No. 176/56, [1958-59] Y.B. 174; Greece v. United Kingdom, App. No. 299/57, [1958-59] Y.B. 178.

Members are disqualified from service if they have previously participated in the case on behalf of either side or if they had any prior occasion to render an opinion.<sup>76</sup> A member may withdraw from consideration of a particular case or the President may request that a member withdraw; in the event of a dispute over withdrawal the Commission renders a decision.<sup>77</sup>

It appears that ample safeguards have been instituted to ensure the impartiality of the Commission and to guard against the influence of members' national ties on the Commission. The question is whether the formal apparatus outlined above has the intended practical effect. This is impossible to answer since the Commission meets *in camera*.<sup>78</sup> However, there is an appearance of propriety which is a positive step in engendering public confidence in the Commission.

## B. *Prerequisites to Admissibility of Applications*

### 1. Exhaustion of Domestic Remedies

The requirement that all domestic remedies be exhausted, as provided by Article 26 of the Convention, is derived from traditional practice in international law.

It is a recognized rule that an international tribunal will not entertain a claim put forward . . . on account of a denial of justice unless the person in question has exhausted the legal remedies available to him in the State concerned. So long as there has been no final pronouncement on the part of the highest competent authority within the State it cannot be said that justice has definitely been denied.<sup>79</sup>

The question whether in a given application all domestic remedies have been exhausted has been the subject of much jurisprudence. The early practice of the Commission was that a case could not be filed prior to the domestic decision upon final appeal.<sup>80</sup> This position, however, has been abandoned. The Commission now allows an application to be filed before final domestic judgment, as long as the highest final decision of the domestic courts is reached prior to the Commission's decision as to admis-

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76. Rule 21, *supra* note 68.

77. *Id.*

78. Convention, art. 33.

79. 1 L. OPPENHEIM, INTERNATIONAL LAW 361 (8th ed. H. Lauterpacht 1955).

80. X v. Federal Republic of Germany, App. No. 276/57, [1955-57] EUR. COMM'N 171.

sibility.<sup>81</sup> This more lenient view is also shared by the European Court.<sup>82</sup>

All judgments filed before the Commission must have been final,<sup>83</sup> and all relevant and mandatory statutory time limits must have been observed.<sup>84</sup> If avenues exist for the appeal of administrative decisions, they must have been utilized and exhausted.<sup>85</sup> Moreover, all points claimed in an application must have been pleaded at the appropriate time during the appeals process.<sup>86</sup>

Rule 41 of the Rules of the Commission requires that documents be submitted showing that domestic remedies have indeed been exhausted, and provides that the burden of proof rests upon the applicant.<sup>87</sup> However, the Commission has also held that a State respondent, if claiming that an application is inadmissible due to failure to exhaust, must establish the existence of unexhausted and "effective" remedies.<sup>88</sup> An application rejected under the domestic remedies rule may, upon subsequent exhaustion, be resubmitted, with evidence of exhaustion considered as "new information." Since the Commission will view the application as "new," it will not be disqualified under Article 27(2), *i.e.*, as "being substantially the same as matters which have already been considered by the Commission."<sup>89</sup>

The phrase "according to the generally recognized rules of International Law" was inserted in Article 26 to provide for the bypassing of the domestic remedies rule if resort to domestic remedies would result in undue delay.<sup>90</sup> The Commission has held that only remedies it considers effective need be exhausted. A remedy is considered ineffective if a clear legal precedent exists

81. *Ringeisen v. Austria*, App. No. 2614/65, [1968] Y.B. 268, 304-06.

82. COUNCIL OF EUROPE, PUBLICATIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS, SER. A, at 38 (1971) (*Ringeisen Case*, Judgment of July 16, 1971).

83. *X v. Federal Republic of Germany*, App. No. 225/56, [1955-57] EUR. COMM'N 145.

84. *X v. Sweden*, App. No. 3788/68, [1970] Y.B. 548; *X v. Federal Republic of Germany*, App. No. 352/58, [1958-59] Y.B. 342.

85. *X v. Denmark*, App. No. 238/56, [1955-57] EUR. COMM'N 206.

86. *Delcourt v. Belgium*, App. No. 2689/65, [1967] Y.B. 238; *X v. Norway*, App. No. 2002/63, [1964] Y.B. 262, 266-68; *X v. Belgium*, App. No. 458/59, [1960] Y.B. 232; *X v. Federal Republic of Germany*, App. No. 263/57, [1955-57] EUR. COMM'N 146.

87. *X v. Federal Republic of Germany*, App. No. 232/56, [1955-57] EUR. COMM'N 143.

88. *Kaiser v. Austria*, App. No. 4459/70, [1971] Y.B. 446, 468; *Greece v. United Kingdom*, App. No. 299/57, [1958-59] Y.B. 186, 190-92.

89. *X v. Sweden*, App. No. 434/58, [1958-59] Y.B. 354, 376.

90. Doc. CM/WPI(50)15, at 27, *cited in* WEIL, *supra* note 21, at 105. See J. RALSTON, *THE LAW AND PROCEDURE OF INTERNATIONAL TRIBUNALS* 815 (1926); Brochard, *The Local Remedies Rule*, 28 AM. J. INT'L L. 729, 731-32 (1934).

militating against the desired conclusions of the applicant,<sup>91</sup> or if further proceedings would be repetitious.<sup>92</sup>

In addition to the international law exception to the exhaustion requirement, the Commission has developed other exceptions by construing domestic statutes as failing to provide legally enforceable rights. In one case, an individual was denied the right to work as a journalist because he was a convicted Nazi collaborator. The Commission, in ruling on admissibility, held that while the applicant could sue for reinstatement of his rights under a domestic statute, such a suit did not constitute an effective domestic remedy because its purpose would be to "obtain a favor and not to vindicate a right."<sup>93</sup> Similarly, in the case of *Lawless v. Ireland*,<sup>94</sup> the applicant had refused to sign an oath promising not to engage in certain political activities. The Irish government maintained that failure to do so was a failure to exhaust domestic remedies. The Commission held that to secure a right as fundamental as freedom by signing such a pledge was not a procedure under law and, therefore, not a domestic remedy.<sup>95</sup>

Domestic remedies under Article 26 may be either judicial or administrative, but they do not comprehend pardons<sup>96</sup> or acts of clemency.<sup>97</sup> In its ruling on the admissibility of the first Greek application against Great Britain concerning Cyprus, the Commission interpreted the domestic remedies rule to exclude the allegedly violative legislative measures and administrative practices.<sup>98</sup> In 1970, the Commission stated that the domestic remedies rule does not apply in cases which raise the question of the compatibility of legislative measures and administrative practices with the provisions of the Convention.<sup>99</sup> Similarly, decisions of the Swedish Ombudsman are not considered by the Commission as a "normal, effective and sufficient local remedy within the meaning of generally recognized International Law."<sup>100</sup>

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91. *A and Associates v. Federal Republic of Germany*, App. No. 899/60, [1962] Y.B. 136, 144.

92. *X v. Austria*, App. No. 514/59, [1960] Y.B. 196, 202.

93. *De Becker v. Belgium*, App. No. 214/56, [1958-59] Y.B. 214, 238.

94. *Lawless v. Ireland*, App. No. 332/57, [1958-59] Y.B. 308 (Lawless Case).

95. *Id.* at 326.

96. *Koch v. Federal Republic of Germany*, App. No. 1270/61, [1962] Y.B. 126, 134.

97. *X v. Belgium*, App. No. 458/59, [1960] Y.B. 222, 234.

98. *Greece v. United Kingdom*, App. No. 176/56, [1958-59] Y.B. at 182-86.

99. *Denmark v. Greece*, App. No. 4448/70, [1970] Y.B. 108, 132 (Second Greek Case).

100. *X v. Sweden*, App. No. 3893/68, [1970] Y.B. 620, 624.

The Commission has also demonstrated a salutary willingness to look beyond mere appearance and delve into the substance of "effective" remedies. In the *Greek Case* the Commission noted that, due to various laws and the suspension of constitutional provisions, the independence of the judiciary had been so interfered with that no possibility of effective remedy existed.<sup>101</sup> Such close and realistic examination is a positive indication of the diligence and sincerity of the Commission. And it is again a reminder that the traditional prerogatives of a State have become somewhat attenuated in the Convention system.

In ruling upon the admissibility of the application in *Ireland v. United Kingdom*,<sup>102</sup> the Commission differentiated between allegations of death caused by security forces and torture during interrogation. The Commission ruled that the Irish government had not demonstrated the existence of an administrative practice which caused the deaths of twenty-two individuals, and, therefore, held the portion of the application dealing with security forces inadmissible because domestic remedies had not been exhausted.<sup>103</sup> The Commission, however, in treating the portion of the application concerning torture, held that certain interrogation techniques would be considered administrative practices, and that therefore the domestic remedies rule did not apply.<sup>104</sup>

The question of the exhaustion of remedies, which is normally a preliminary phase, has occasionally been deferred for consideration along with the merits of the case. This procedure is known as "joining to the merits" and is resorted to when the merits of the case and the question of exhaustion are sufficiently involved to require consideration of both to arrive at a conclusion.<sup>105</sup> Although a time-consuming process, it allows a case to be considered on the merits as well as on admissibility rather than relegating the questions involved to a summary procedure.

The final phrase of Article 26 imposes a time limit upon the applicant. Applications must be submitted within six months of the date of the final domestic decision. The Commission has held that the date of final decision shall be considered as that date on

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101. *Denmark v. Greece*, App. Nos. 3321-23/67, 3344/67, [1968] Y.B. 690, 774 (Greek Case).

102. App. No. 5310/71, [1972] Y.B. 76.

103. *Id.* at 242.

104. *Id.* at 246.

105. *Alam v. United Kingdom*, App. No. 2991/66, [1967] Y.B. 478, 504; *Austria v. Italy*, App. No. 788/60, [1963] Y.B. 742, 766-68 (Pfunders Case).

which the applicant had "reasonably effective notice" of it.<sup>106</sup> Since the Commission must determine the date of the final decision, it also must decide in each case what constitutes the "final" decision.

In the *De Becker Case*,<sup>107</sup> the decision of the trial court was reached on June 14, 1947. As the Convention did not become effective until June 14, 1955, the application appeared obviously invalid both *ratione temporis* and under the six-month limit. De Becker, however, was not complaining of his trial but of its after-effect upon him. The Commission found that the violation of De Becker's rights was continuous and could not be vindicated by domestic remedies. Thus there could not be a date of final decision and the six-month rule did not apply.<sup>108</sup>

The Commission has held that petitions for pardon<sup>109</sup> or requests for a new trial<sup>110</sup> cannot be viewed as extending the dates of final decision in the calculation of the six-month period. As noted above, pardons are not considered effective remedies. Therefore, the date of final decision is the date of the final determination of the main case.<sup>111</sup>

In applying the six-month rule, the Commission is able to exercise a certain degree of discretion. It is lenient in determining the date of the final domestic decision and the date of receipt of the application.<sup>112</sup> Moreover, the Commission will take into consideration the realistic possibility of the applicant's ability to comply with the six-month rule.<sup>113</sup> Thus the Commission has allowed itself to operate in a very flexible manner to prevent procedural rules from operating against the thrust of the Convention.

## 2. Further Requirements

Sections one and two of Article 27 place further limitations upon the competence of the Commission in dealing with applications. Two reasons lie behind the inclusion of this article in the Convention. Legal experts wished to ease the burden on the Commission by allowing decisions to be made quickly on applications

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106. App. No. 864/60, cited in J. FAWCETT, *supra* note 65, at 305.

107. *De Becker v. Belgium*, App. No. 214/56, [1958-59] Y.B. 214.

108. *Id.*

109. *X v. Belgium*, App. No. 458/59, [1960] Y.B. 234.

110. *De Becker v. Belgium*, App. No. 214/56, [1958-59] Y.B. 214.

111. F. CASTBERG, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 51 (1974).

112. *Kaiser v. Austria*, App. No. 4459/70, [1971] Y.B. 446, 448.

113. WEIL, *supra* note 21, at 122.



obviously inadmissible,<sup>114</sup> and to ensure that interstate applications would not be rejected prior to a hearing before the Commission.<sup>115</sup>

The provision excluding anonymous applications is straightforward. The Commission, however, has determined that if an application contains any element which results in identification of the applicant, it is sufficient to avoid disqualification.<sup>116</sup> This procedure enables the Commission to deal with applications prepared by individuals lacking in education, knowledge of procedures, or natural gifts. A small service, perhaps, but a meaningful one.

In the case of applications previously rejected, additional information will be considered as "new information" by the Commission under Article 27 only if the information modifies the grounds of the previous rejection.<sup>117</sup> Exhaustion of domestic remedies, subsequent to rejection for non-exhaustion, is considered "new information" and allows the application to be eligible for reconsideration.<sup>118</sup>

The prohibition against the admissibility of a matter already submitted to another international tribunal is not absolute. The application will be declared admissible in the event the other body is unable to render a decision, indicating "due respect for the protection of human rights of the party involved."<sup>119</sup>

Pursuant to the second paragraph of Article 27, matters "incompatible with the provisions of the . . . Convention" are also considered inadmissible. This is a vague phrase and is applied in three main classes of cases. The first class is that in which the Commission does not have jurisdiction over one of the parties (*ratione personae*). The second class concerns applications which allege violation of rights not protected in the Convention (*ratione materiae*).<sup>120</sup>

The third class of cases concerns applications alleging violations of provisions covered by reservations made under Article

114. Doc. CM/WPI(50)15, at 26-27, cited in WEIL, *supra* note 21, at 123.

115. *Id.* at 28.

116. App. No. 361/58, cited in WEIL, *supra* note 21, at 123.

117. X v. Sweden, App. No. 434/58, [1958-59] Y.B. 354, 374.

118. X v. Belgium, App. No. 347/58, [1958-59] Y.B. 407, 484-86. See text accompanying note 89 *supra*.

119. WEIL, *supra* note 21, at 125.

120. See [1971] Y.B. 734 for a listing of rights not guaranteed under the Convention. See also [1970] Y.B. 1042-44.

64.<sup>121</sup> In this situation, since the reservation exempts the provision from the coverage of the Convention, an application alleging a violation of that provision is deemed incompatible with the Convention. Jurisprudence in this area deals mainly with Austrian reservations to Articles 5 and 6 of the Convention.<sup>122</sup> Two applications filed with the Commission, *Ofner v. Austria*<sup>123</sup> and *Hopfinger v. Austria*,<sup>124</sup> alleged violations by Austria of Article 5, which guarantees the right to public proceedings. Since Article 5 was covered by an Austrian reservation, the Commission was faced with the task of determining whether the reservation was specific and valid or whether it was a general reservation prohibited by Article 64(1). Although the Commission found that the reservation linked a number of laws together, it nevertheless determined that the reservation made specific reference to Article 90 of the 1920 Austrian Constitution.<sup>125</sup> Therefore, since the reservation was specific, the right guaranteed under Article 5 of the Convention was excluded from the coverage of the Convention, and the applications were deemed inadmissible.

A student of the jurisprudence of the Commission, however, maintained that according to a strict reading of Article 64, Austria's reservation should have been disqualified because Article 90 provided generally for "exceptions . . . by law." Professor Morrisson viewed the flexible interpretation of Austria's reservations under Article 64 as contrary to the purpose of the Convention. "In a Convention which is designed to safeguard human rights, any reservation from its principles should be interpreted most restrictively. Allowing any question of what the State intended to reserve but did not is very dangerous precedent."<sup>126</sup>

Applications have also been declared inadmissible as having been submitted by a party engaged in activities prohibited by Article 17, the "anti-fascist" clause."<sup>127</sup> The Commission has held<sup>128</sup> that the avowed aim of the West German Communist

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121. Convention, art. 64.

122. See [1955-57] EUR. COMM'N 40-45 and [1958-59] Y.B. 85-91 for texts of the reservations.

123. *Ofner v. Austria*, App. No. 524/59, [1960] Y.B. 322.

124. *Hopfinger v. Austria*, App. No. 617/59, [1960] Y.B. 370, 378.

125. C. MORRISSON, *THE DEVELOPING EUROPEAN LAW OF HUMAN RIGHTS* 136 (1965) (Ph.D. thesis, University of Colorado).

126. *Id.* at 140.

127. *Communist Party of Germany v. Federal Republic of Germany*, App. No. 250/57, [1955-57] EUR. COMM'N 222.

128. F. CASTBERG, *supra* note 111, at 171.

Party was to establish a dictatorship of the proletariat and that such a dictatorship would result in the suppression of various rights protected by the Convention. Therefore the Communist Party violated the terms of Article 17, and its application was considered "incompatible" with the provisions of the Convention.<sup>129</sup> This interpretation, which was undoubtedly correct in 1957, might be reconsidered in light of developments today. Any criticism of the interpretation, however, must be withheld until evidence is found indicating that the German Communists have followed the French example of abandonment of the theory of dictatorship of the proletariat.

The prohibition in Article 27 against applications "manifestly ill-founded" is as vague as "incompatibility," but differs in that it involves matters of substance rather than form. The phrase has usually been interpreted as requiring a determination by the Commissioner of the existence of a *prima facie* violation upon a preliminary examination.<sup>130</sup> The intent of the drafters in including this provision was to enable the Commission to reject those applications that are so flagrantly and obviously without merit that little time should be wasted in dealing with them.<sup>131</sup> Thus a cursory procedure was envisioned.

In practice, the Commission has repeatedly taken the position that an application cannot be declared manifestly ill-founded if it is not "obviously ill-founded."<sup>132</sup> This interpretation is meant to ensure that a case which requires determination of its merits is not summarily dismissed as a result of a preliminary examination.<sup>133</sup> Unfortunately, in some cases, the Commission has delved rather deeply into the merits of the case and then declared the application inadmissible as ill-founded. *Gudmundsson v. Iceland*<sup>134</sup> is a case in point. The case, which dealt with taxation, was exceedingly complex; seventeen pages were required for the Commission's findings on the facts. Yet this case was declared manifestly ill-founded—an instance in which the investigation necessary to arrive at a decision obviously exceeded a cursory level.

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129. *Id.*

130. *De Becker v. Belgium*, App. No. 214/56, [1958-59] Y.B. 214, 252-54.

131. Doc. CM/WPI(50)15, at 26-27, cited in WEIL, *supra* note 21, at 123.

132. *De Wilde v. Belgium*, App. No. 2832/66, *Ooms v. Belgium*, App. No. 2835/66, *Versyp v. Belgium*, App. No. 2899/66, [1967] Y.B. 420, 458 (Vagrancy Cases).

133. *X v. Federal Republic of Germany*, App. No. 5207/71, [1971] Y.B. 698, 710; *Alam v. United Kingdom*, App. No. 2991/66, [1967] Y.B. 478, 502-06.

134. App. No. 511/59, [1960] Y.B. 394.

This approach, apparently, has changed as the Commission has become institutionalized. Initially, the Commission engaged in considerable fact-finding but declared few applications admissible. As the Commission acquired more self-assurance, it modified its practice and accepted more applications. It appears that, in the early years, the Commission preferred to examine the merits quite closely as it considered the admissibility of an application, in order to both grant the applicant the benefit of Commission scrutiny and at the same time avoid admission of a large number of cases. A large number of admissions in the initial period might have unsettled member States at a time when State acceptance of the Commission was not yet an empirical fact. The wisdom or necessity of this approach today is highly questionable, and it appears the Commission has abandoned it.

An application may also be declared inadmissible under Article 27 as an "abuse of the right of petition."<sup>135</sup> Again this is a vague reference giving a degree of discretion to the Commission. The Commission has held that "persistent negligence by the applicant in responding to Commission requests for information or documents" is an abuse of the right of petition.<sup>136</sup>

Various other actions have been considered an abuse of the right to petition. The submission of repetitious applications has been considered an abuse.<sup>137</sup> In rather exasperated language the Commission has denounced as an abuse "persistent, ill-founded and querulous complaints" by the same party because they waste the Commission's time.<sup>138</sup> Applications containing scurrilous and offensive expressions aimed at individuals and not supported by facts<sup>139</sup> will be rejected unless the applicant apologizes and withdraws the objectionable statements.<sup>140</sup> It is also an abuse to mislead the Commission.<sup>141</sup>

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135. Convention, art. 27(2). An application submitted by Ilse Koch, notorious wife of a Nazi concentration camp commandant, was rejected as being flagrantly unreasonable and wholly unsupported by the Convention. *Koch v. Federal Republic of Germany*, App. No. 1270/61, [1962] Y.B. 126, 136.

136. *X v. Federal Republic of Germany*, App. No. 169/56, [1955-57] EUR. COMM'N 195, 197.

137. *X v. Federal Republic of Germany*, App. No. 1307/61, [1965] Y.B. 230, 236.

138. *X v. Federal Republic of Germany*, App. Nos. 5070/71, 5071/71, 5186/71, [1972] Y.B. 474, 482.

139. *Rafael v. Austria*, App. No. 2424/65, [1966] Y.B. 426, 434-36.

140. *Huber v. Austria*, App. No. 4517/70, [1971] Y.B. 447, 512.

141. App. No. 2625/65, 28 COLLECTED DECISIONS OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS 26 (May 1969).

The Commission has declined to consider to be an abuse a complaint motivated by political considerations or by publicity.<sup>142</sup> The government of Ireland in the *Lawless Case*<sup>143</sup> charged that application was inadmissible since Lawless, alleged to be a member of the Irish Republican Army, was politically motivated. The Commission held that while this might be true, it was insufficient to constitute an abuse.<sup>144</sup> In *Iversen v. Norway*<sup>145</sup> the Commission refused to accept Norway's contention that statements by the applicant that the governmental system was "communist" constituted an abuse.<sup>146</sup>

The Commission, by virtue of the relative vagueness of the provisions of Article 27, has been forced to make its own way and to develop doctrines and procedures in applying the Article. The Commission has done this well, and in keeping with the spirit of the Convention. Its practice with regard to the "manifestly ill-founded" doctrine initially ran counter to the intent of the drafters, but with experience, self-confidence, and an established jurisprudence to depend upon, the Commission has slowed, if not reversed, the early trend of declaring cases inadmissible after what amounted to a consideration on the merits.

The Commission originally faced a strong challenge in those cases in which political statements by the applicants were challenged as being "abusive" by the State respondents. In refusing to agree, the Commission removed a grave potential obstacle to the submission and effective consideration of individual applications. While political considerations undoubtedly exist in the work of the Commission, there is as yet no evidence of any grave miscarriage of justice or of any successful application of overt pressure.

### C. *Procedure After a Finding of Admissibility*

Article 28 entrusts the Commission with the performance of two functions when an application is declared admissible. Paragraph (a) requires that the Commission act in a manner similar to a court of law in "ascertaining the facts of the matter." In exercising this function, the Commission is empowered to request

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142. *Lawless v. Ireland*, App. No. 332/57, [1958-59] Y.B. 308 (*Lawless Case*).

143. *Id.* at 338.

144. *Id.*

145. *Iversen v. Norway*, App. No. 1468/62, [1963] Y.B. 278.

146. *Id.* at 324-26.

written pleadings<sup>147</sup> and to hold hearings<sup>148</sup> in which sworn witnesses may be questioned by both parties.<sup>149</sup> The parties may be assisted by counsel. Individuals of limited means may apply to the Council of Europe for assistance in meeting the expense of counsel and witnesses.<sup>150</sup> Unlike a court, the decision as to whether a violation of the Convention has occurred is not final; the Commission takes no action except to refer the report to the Committee of Ministers of the Council of Europe and possibly to the European Court of Human Rights as well as to the State concerned.

### 1. Friendly Settlement

Paragraph (b) of Article 28 obliges the Commission to function in a manner reminiscent of a traditional conciliation commission in order to arrive at a friendly settlement.<sup>151</sup> The Commission is free to arrive at any settlement which respects human rights as defined in the Convention. This provision was inserted to ensure that a settlement reached did not have the effect of ratifying a violation of the Convention. The report on the friendly settlement under Article 30 must contain the date on which it was drawn, the names of the Commissioners, a description of the parties, the names of the representatives of the parties, a statement of facts, and the terms of the settlement.<sup>152</sup>

Prior to an amendment effective November 21, 1970,<sup>153</sup> Article 29 provided for the establishment of a subcommission to perform the functions outlined in Article 28.<sup>154</sup> Each subcommission was composed of seven members of the Commission, and of those seven, one was appointed by each party concerned. In all cases State respondents appointed their nationals to serve on the subcommissions.<sup>155</sup>

This procedure invited much criticism because the requirement for the establishment of a subcommission for each applica-

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147. Rule 39, *supra* note 68.

148. Rule 31, *id.*

149. Rule 34, *id.*

150. Rule 1, Addendum to the Rules of Procedure of the Commission, *supra* note 68.

151. The notion of the Commission as conciliator appears in the proposal put forward by the European Movement, Doc. DH(56)18, at 1-2, *cited in* WEIL, *supra* note 21, at 127.

152. Rule 50, *supra* note 68.

153. Third Protocol to the Convention, Mar. 6, 1959, Europ. T.S. 45, 544 U.N.T.S. 294, *reprinted in* COLLECTED TEXTS, *supra* note 4, at 125-28.

154. See [1955-57] EUR. COMM'N 22 for Article 29 prior to amendment by the Third Protocol. See Rule 9, *supra* note 68.

155. WEIL, *supra* note 21, at 132.

tion was both time-consuming and clumsy.<sup>156</sup> The fact that the plenary Commission would probably review the same points covered by the subcommission was criticized as redundant. The Third Protocol to the Convention was proposed in order to speed up the procedure and to facilitate consideration of cases by the Commission.<sup>157</sup> The revised provision also enables the Commission, by unanimous vote, to reject an application already admitted. The purpose of the provision is to establish a further screening process and to take into account information not available during consideration as to admissibility. The requirement of unanimity ensures that an application deemed admissible by so slight a minority as one, will still receive a full hearing on the merits. It also provides that the entire Commission is to perform the function of attempting to reach a friendly settlement.

The Commission did not succeed in effecting a friendly settlement until 1965.<sup>158</sup> Since then nine such settlements have been arrived at,<sup>159</sup> stilling criticism that the provision for friendly settlement was a failure.<sup>160</sup>

The first instance of friendly settlement under Article 30 was reached in 1965 in *Boeckmans v. Belgium*.<sup>161</sup> This case alleged a violation of Article 6 of the Convention during an appeal to a domestic court. The judge of a Belgian appeals court characterized the defendant's defense as "lying," "scandalous," "disgraceful," "improbable," and "distasteful."<sup>162</sup> The same judge also increased the defendant's sentence by six months.<sup>163</sup> The solution reached by the Commission acknowledged that the original court's finding of guilt was valid but stated that

the remarks . . . by the President of the 14th Chamber of the Court of Appeals . . . were such as to disturb the serenity of the atmosphere during the proceedings in a manner contrary to the Convention and may have caused the Applicant a moral injury; . . . [T]he sum of 65,000 Belgian Francs would constitute adequate reparation for this inquiry . . . .<sup>164</sup>

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156. J. FAWCETT, *supra* note 65, at 317.

157. F. CASTBERG, *supra* note 111, at 184.

158. *Boeckmans v. Belgium*, App. No. 1727/62, [1965] Y.B. 410.

159. *Poerschke v. Federal Republic of Germany*, App. No. 2120/64, [1966] Y.B. 632.

160. Weil, *The Evolution of the European Convention on Human Rights*, *supra* note 19, at 819.

161. App. No. 1727/62, [1965] Y.B. 410.

162. *Boeckmans v. Belgium*, App. No. 1727/62, [1963] Y.B. 370.

163. *Boeckmans v. Belgium*, App. No. 1727/62, [1965] Y.B. at 414-16.

164. *Id.* at 422.

It is noteworthy that the Commission did not find the actions of the judge to be contrary to a specific article of the Convention, but "contrary to the Convention" as a whole.

The applicant in the second instance of friendly settlement<sup>165</sup> alleged excessive detention pending trial. The applicant withdrew the application when he was granted conditional release on probation.<sup>166</sup> The only noteworthy aspect in this case is the fact that although the applicant did not allege violation of Article 6(1), the Commission on its own invoked this section in considering the admissibility of the case.<sup>167</sup>

In a third case, *Alam v. United Kingdom*,<sup>168</sup> the question concerned the refusal by the United Kingdom to allow Khan to join his father Alam in Great Britain. The fact that Alam had taken two wives and that Kahn was born of the second was the reason for the refusal.<sup>169</sup> The solution reached involved the agreement of the government of the United Kingdom to pay the air fare for Khan from a village in Pakistan to London without any acknowledgement that the United Kingdom had modified its position as stated in the hearing.<sup>170</sup> The representative of the United Kingdom also informed the Commission that legislation conferring rights of appeal upon aliens with regard to admission to and removal from the United Kingdom would be introduced.<sup>171</sup> This undertaking indicates that the Convention may have a positive effect in bringing about the conformity of domestic law with the provisions of the Human Rights Convention.

It thus appears that the friendly settlement provision is useful, and will continue to be a basis of the Commission's work. It will obviously be more efficacious in righting wrongs than in establishing a jurisprudence on human rights.

## 2. Procedure if Friendly Settlement is Not Reached

In contrast to Article 30, Article 31 contemplates cases in which friendly settlement has not been reached. The report of the Commission under this article shall contain the date, the names of the members of the Commission taking part, a description of

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165. *Poerschke v. Federal Republic of Germany*, App. No. 2120/64, [1966] Y.B. 632.

166. *Id.* at 640.

167. *Id.* at 638.

168. App. No. 2991/66, [1968] Y.B. 788.

169. [1967] Y.B. 478-506.

170. [1968] Y.B. 790.

171. *Id.* at 794.



the parties, the names of representatives and counsel for the parties, a statement of the proceedings on the facts, a reasoned opinion as to the existence of a breach of the Convention, the numbers in the majority, and any proposals for compensation the Commission deems appropriate.<sup>172</sup> Provision for minority opinions is made both in Article 31 and in Rule 67. The report may be referred at the Commission's option to either the Committee of Ministers or to the European Court of Human Rights.<sup>173</sup> Although Article 30 provides for publication of the report of friendly settlement, Article 31 does not since, under the situation envisioned in Article 31, a satisfactory settlement of the matter has not been reached and further action is still to be taken. Since the process is not complete, confidentiality must be upheld.

While State applicants as well as State respondents receive a copy of the report under Article 31, individual applicants do not. Nor are individual applicants notified that the case has been referred to the Committee of Ministers. Thus, in this situation, the individual is in a position of inequality vis-à-vis the State. This inequality may be obviated if, under Articles 32 and 48, the matter is referred to the European Court of Human Rights. In this eventuality, Rule 61 (formerly Rule 76) requires the Commission to notify the individual applicant and, unless the Commission decides otherwise, the Secretary of the Commission is required to transmit the report of the Commission to the individual applicant.<sup>174</sup> The applicant may, within a certain time, submit to the Commission observations on the report.<sup>175</sup>

The provisions of Rule 61 came under strenuous attack before the Court in the *Lawless Case*.<sup>176</sup> Pursuant to the Rule, the Commission transmitted its report to Lawless and requested his observations. Ireland contended that in sending the report to Lawless, the Commission had placed Ireland in a position of inequality with respect to the applicant because the State was prohibited from publishing the report<sup>177</sup> while the comments of the individual had been requested. Ireland further contended that the omission of any reference in the Convention concerning the transmission of the report to individuals was intentional since the

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172. Rule 53, *supra* note 68.

173. Rule 55, *id.*

174. Rule 61, *id.*

175. *Id.*

176. *Lawless v. Ireland*, App. No. 332/57, [1960] Y.B. 474, 506-08 (*Lawless Case*).

177. Convention, art. 31.

contracting parties had not wished to grant individuals *locus standi* before the European Court of Human Rights.<sup>178</sup>

The Court held<sup>179</sup> that it was unable to determine the validity of the Rule; since the decision of the Court would bind only the parties to this case, any decision against the Rule's validity would *de facto* be an advisory opinion contrary to the Convention.<sup>180</sup> The Court further held that its primary purpose was to provide for the proper administration of justice and hence it might, if necessary to the just resolution of the issue, take into consideration the views of the applicant as expressed in written observations.<sup>181</sup>

The validity of Rule 61, the willingness of the Commission to request the observations of the individual applicant, and the willingness of the Court to apprise itself of those observations, together constitute a definite addition to the protection of human rights in the European system. The individual does not, pursuant to Article 48, have standing before the European Court of Human Rights. Only the Commission and States party to the Convention may bring a case before the Court. And were it not for Rule 61, the individual applicant would remain ignorant, until a judgment was rendered, as to the status of the application. Rule 61 not only informs the individual of the status of his application but, through written observations, provides an avenue whereby the individual may make his views known to the Court. This is admittedly no substitute for granting the individual standing before the Court, but since the Convention does not grant it, the establishment of some means for hearing the views of the applicant is a positive step. The Commission, in providing for this step, moved to fill a gap left in the Convention.

Up to this point, the Commission has performed quasi-

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178. *Lawless v. Ireland*, App. No. 332/57, [1960] Y.B. at 500-02 (*Lawless Case*).

179. COUNCIL OF EUROPE, PUBLICATIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS, SER. A, at 4, 9-10 (1961) (*Lawless Case*, preliminary objections and questions of procedure). The Greek judge, G. Maridakis, in his dissenting opinion, maintained that Rule 76 (Rule 61) was contrary to the Convention and that, although the Court could not declare it void, it could refuse to give it effect. Maridakis considered the question of whether the State had violated the Convention to be the crux of the case, rather than the wrong done the applicant. *Id.* at 17-21.

180. The Second Protocol to the Convention gave the Court the power to render advisory opinions. However, the Protocol prohibits the opinions from dealing "with any question relating to the content or scope of the rights of freedoms defined in Section 1 of the Convention and in the Protocols thereto . . ." Second Protocol, art. 1(2), Dec. 15, 1956, Europ. T.S. 44, 261 U.N.T.S. 410, reprinted in COLLECTED TEXTS, *supra* note 4, at 120-23.

181. See note 179 *supra*.

judicial,<sup>182</sup> conciliatory,<sup>183</sup> or, under Rule 61, *amicus curiae* functions. In transmitting the report to the Committee to Ministers with findings and proposals, the Commission once again exercises a quasi-judicial function. However, in determining, under Article 32, whether the matter is to be referred to the European Court of Human Rights, the Commission makes a political decision. Is the matter to be decided by a two-thirds majority of a body of governmental representatives,<sup>184</sup> or by a simple majority of an independent judiciary?<sup>185</sup> By opting for the Court, the Commission is able to ensure a balanced treatment of the case according to judicial procedure.<sup>186</sup>

If the Commission does not refer a case to the European Court, then under Article 32, the Committee of Ministers must decide whether a violation of the Convention has occurred. In actuality, however, the Committee of Ministers has had little to do under Article 32. In the *First and Second Cyprus Cases*,<sup>187</sup> the London and Zurich agreements<sup>188</sup> settling the dispute relieved the Ministers of any obligation to arrive at a decision. The Committee of Ministers has rarely rendered a decision finding the existence of violations of the Convention.<sup>189</sup> In the first of the cases in which it did find violations, the *Greek Case*, the Ministers found Greece to have violated Articles 3, 5, 6, 8, 9, 10, 11, 13, and 14 of the Convention and Article 3 of the First Protocol.<sup>190</sup> As Greece had repudiated the Convention and withdrawn from the Council of Europe, the only action the Ministers would take was to publish the Report of the Commission and to urge the Greek government to restore human rights and freedoms and to refrain from torture.

The second instance of deliberations under Article 32 concerned applications against Belgium<sup>191</sup> and involved the enforce-

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182. Convention, art. 28(a).

183. *Id.* arts. 28(b), 30.

184. *Id.* art. 32(1).

185. *Id.*

186. *Id.* art. 51.

187. [1958-59] Y.B. at 186, 196.

188. *See id.*

189. *See* Res. DH(72)1, [1972] Y.B. 694; Res. DH(70)1, [1969] Y.B., GREEK CASE 511.

190. Res. DH(70)1, para. 12A, [1969] Y.B., GREEK CASE at 512.

191. *La Haye v. Belgium*, App. No. 2251/65, *De Wilde v. Belgium*, App. No. 3155/67, *Nys v. Belgium*, App. No. 3174/67, *Swallens v. Belgium*, App. No. 3499/68, [1971] Y.B. 138.

ment of vagrancy laws. The Committee of Ministers agreed with the Commission that the Belgian law did not conform to the provisions of Article 5(4) of the Convention. Nevertheless, no action was taken since Belgium undertook legislative measures to bring the domestic law into conformity with the Convention.<sup>192</sup> On two other occasions the Ministers received reports from the Commission in which the Commission found violations of the Convention.<sup>193</sup> In both instances the State respondent, Austria, had taken steps to bring domestic law and practice into conformity with the Convention. In light of these steps the Committee of Ministers held that "no further measures need be taken . . . ."<sup>194</sup>

The Committee of Ministers has not yet been faced with the necessity of ordering a High Contracting Party to take specific measures under Article 32(2). Nevertheless, with the notable exception of the *Greek Case*, there has been de facto compliance with the Convention because member States have voluntarily revised their domestic legislation to conform with the provisions of the Convention. In the only interstate case which required a decision by the Committee of Ministers other than the *Greek Case*, *Austria v. Italy*,<sup>195</sup> the Ministers found no violation of the Convention, but recommended clemency for the applicant.<sup>196</sup> It should be noted that the Committee of Ministers has always followed the opinion of a majority of the Commission.<sup>197</sup> Thus in practice it is the Commission which determines actual violations.

### III. ARTICLE 25: INDIVIDUAL APPLICATIONS TO THE COMMISSION

Perhaps the two most significant articles of the Convention are Articles 24 and 25, which concern the right of petition by a State and by an individual. Both articles embody provisions which are novel under international law, and which significantly expand the rights of States and individuals in the international legal context.

The traditional position of the individual in international law has been that of an "object," as any inanimate object under

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192. Res. DH(72)1, [1972] Y.B. 694, 698.

193. Res. (63)DH2, [1963] Y.B. 736; Res. (64)DH1, [1964] Y.B. 434.

194. [1964] Y.B. at 440.

195. *Austria v. Italy*, App. No. 788/60, [1961] Y.B. 116 (Pfunders Case).

196. [1963] Y.B. 800.

197. See, e.g., Res. (65)DH1, [1965] Y.B. 464; Res. (67)DH1, [1967] Y.B. 694.

the jurisdiction of a State.<sup>198</sup> Today, however, the individual within the European Convention system does indeed possess rights under international law and the means whereby violations of those rights may be brought to the attention of the European community.

An historical precedent for the right of individual petition is to be found in the 1908 adoption by the Central American Peace Conference of a Convention for the Establishment of a Central American Court of Justice.<sup>199</sup> The Convention granted the individual the right to petition the Court against any member State save his own.<sup>200</sup> Although the individual was granted the right to petition directly to an international court, a right denied in the European Convention, the innovative character of the Central American Court was diminished by the fact that only five cases were submitted, and were all declared inadmissible.<sup>201</sup>

The right granted by Article 25 of the European Convention is one unparalleled in the history of international law: the right of individual petition against a sovereign State before a supranational tribunal.<sup>202</sup> In a move conveying the individual far beyond his traditional status in international law, there now exists a substantive right to act on one's behalf to defend and to vindicate one's own rights. Such vindication includes the right to demand compensation as a consequence of a violation of those rights.

The right of individual application, however, is not unequivocal. The proviso contained in Article 25(1), requiring a State's acceptance of the right, effectively conditions individual petition upon the consent of the State concerned. Such a condition may have the ultimate effect of thwarting the purpose of the Convention: the guarantee of individual human rights. History has demonstrated that the bulk of human rights violations have been committed by the State, acting against its citizens.<sup>203</sup> Thus, to impose such a condition upon the right of individual petition is

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198. P. JESSUP, *A MODERN LAW OF NATIONS* 15 (1948); 1 L. OPPENHEIM, *supra* note 79, at 346.

199. M. HUDSON, *THE PERMANENT COURT OF INTERNATIONAL JUSTICE* 35-70 (1943).

200. *Id.* at 49.

201. *Id.* at 52.

202. The phraseology "any person, non-governmental organization, or group . . ." is evocative of Article 1 in that nationality has not been made a prerequisite for coverage by the Convention, but rather that the rights of the Convention are guaranteed to any person within the borders of the State.

203. *HUMAN RIGHTS IN EUROPE*, *supra* note 14, at 51.

to exalt the formal right of petition over the practical substance of the right.

Not surprisingly, the Consultative Assembly was a fervent supporter of the right of individual petition during the debates on establishing the Convention.<sup>204</sup> On the other hand, the Committee of Ministers, the body representing member governments, naturally viewed the right with some trepidation. An attempt was made by the Consultative Assembly to require a separate declaration denying the right of individual petition instead of requiring separate declarations of acceptance.<sup>205</sup> The nationalist predispositions of the Ministers prevailed, and the right of individual petition was granted in its present form.

The provision for nonacceptance notwithstanding, the right of individual petition is a step of great importance. Heretofore a State could not be called to account for its action involving individuals within its boundaries. Now an individual may place his case, alleging a violation of his rights, before the larger community of European States. Regional institutions now exist for the redress of individual rights. The State no longer enjoys exclusive *locus standi* before international tribunals.

Unfortunately, some States have availed themselves of the opportunity to refuse to accept the right of individual application. Cyprus, Greece, Malta, France, and Turkey have not yet accepted the right of individual petition.<sup>206</sup> The United Kingdom did not accept the right until 1966 and then did so only in regard to Northern Ireland and Great Britain.<sup>207</sup> This right has since been extended to sixteen territories for which the United Kingdom is responsible in international relations. It must be noted, however, that of the eighteen members who have ratified the Convention,<sup>208</sup> thirteen have accepted the right of individual petition—in itself an achievement of note.

On May 6, 1969, a further step in the international protection of human rights was taken with the signature in London of the European Agreement Relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights.<sup>209</sup> This agreement, unique in international law, provides

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204. WEIL, *supra* note 21, at 91.

205. EUR. CONSULT. ASS'Y, OFFICIAL REPORT OF DEBATES, 2D SESS., *cited in* WEIL, *id.*

206. [1975] Y.B. 28-30.

207. *Id.* at 30.

208. *Id.* at 28-30.

209. [1969] Y.B. 2.

facilities and immunities regarding speech, correspondence, and movement to persons taking part in proceedings before the Commission or the Court. The agreement further amplifies the Article 25 requirement that contracting States refrain from hindering the effective exercise of the right of individual petition.

The rules and procedures of the Commission provide that individual applicants may have the assistance of counsel.<sup>210</sup> Applications will be considered in the order received unless the Commission determines that a case should be given precedence or that cases should be joined.<sup>211</sup> Moreover, a language other than French or English may be used.<sup>212</sup> Provision for the remuneration of witnesses and counsel is also made; witnesses called by the individual applicant will be reimbursed by the Commission for their expenses as will counsel if the applicant is unable to afford it.<sup>213</sup> An application must mention the name of the individual applicant, the State against which the claim is made, the object of the claim, the provision of the Convention allegedly violated, a statement of facts and arguments, and any pertinent documents and information showing that the conditions of Article 26 concerning admissibility have been satisfied.<sup>214</sup> If damages are claimed, the amount may be stated in the application.

Initially the rules of the Commission provided for the establishment of three-member groups as an instrument for winnowing out frivolous applications.<sup>215</sup> If the group was unanimous as to admissibility, notice was sent to the respondent; if not, the plenary Commission would either declare the application inadmissible or request the observations of the respondent State before arriving at a decision. As a result of amendments to the rules in 1973,<sup>216</sup> the three-member group was replaced by a member of the Commission acting as Rapporteur who is to examine the application, request any relevant information, and draw up a report containing the facts, issues, and a reasoned proposal as to admissibility. The Commission, upon consideration of this report, shall

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210. Rule 26, *supra* note 68.

211. Rule 28, *id.*

212. Rule 24, *id.*

213. Rule 32, *id.*

214. Rule 38, *id.*

215. Rule 34, prior to deletion by amendment in 1973, [1973] Y.B. 6.

216. *Id.* at 4.

either declare the application inadmissible<sup>217</sup> or request further information.<sup>218</sup>

From 1955, when the Commission became empowered to consider individual applications, to 1975, a total of 7,313 applications had been registered. Of these, 5,918 were declared inadmissible *de plano*, and 291 were declared inadmissible in the course of examination of the merits or after communication with the respondent State. One hundred thirty-one applications were declared admissible. Nine such applications were resolved through friendly settlement and thirty-one applications were referred to the Committee of Ministers.<sup>219</sup>

Despite the novelty of its provisions, Article 25 contains both implicit and explicit non-procedural limitations upon the right of petition in addition to the procedural ones described above. It is a principle of international law that treaties are not to be applied retroactively.<sup>220</sup> The Commission has availed itself of this rule in declaring applications inadmissible on the basis of *ratione temporis* if the actions complained of took place prior to the entry into force of the Convention with respect to State respondents, or prior to the declaration of acceptance of the right of individual petition.<sup>221</sup> As illustrated by Table I, the number of applications declared inadmissible *ratione temporis* has necessarily diminished over time. However, in the event that States not party to the Convention or not now accepting individual petition do so in the future, the question of admissibility *ratione temporis* will undoubtedly be raised again.

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217. Rules 39, 40, *supra* note 68.

218. Rule 42, *id.*

219. [1975] Y.B. 284.

220. 1 D. O'CONNELL, INTERNATIONAL LAW 246 (1965).

221. See, e.g., *De Courcy v. United Kingdom*, App. No. 2749/66, [1967] Y.B. 368; *X v. Belgium*, App. No. 347/58, [1958-59] Y.B. 407; *X v. Federal Republic of Germany*, App. No. 115/55, [1955-57] EUR. COMM'N 137.



TABLE I<sup>222</sup>

## DEVELOPMENT OF THE NUMBER OF DECISIONS AND REPORTS OF THE COMMISSION CONCERNING INDIVIDUAL APPLICATIONS

(Article 25)

	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	Total
<i>Applications registered</i>	138	104	101	96	233	291	344	442	346	293	210	303	445	449	439	375 <sup>1</sup>	603 <sup>2</sup>	644 <sup>3</sup>	442 <sup>4</sup>	445	466	7,313
<i>Decisions taken</i>	89	97	102	48	132	272	236	285	390	306	211	209	571	504	345	457	406	417	476	422	317	6,347
<i>Applications declared inadmissible or struck off the list de plano</i>	89	96	100	44	130	268	230	284	338	287	200	186	552	484	327	395	358	385	451	394	320	5,918
<i>Applications declared inadmissible or struck off the list after communication to the respondent Government</i>	1		2	2	1	1	5	1	32	10	10	18	12	18	17	29	37	20	12	22	14	291
<i>Applications declared admissible</i>																						
<i>Decisions to reject in the course of the examination of the merits (Article 29)</i>				2	1	3	1		20	9	1	5	7	2	1	33	11	12	13	6	4	131
<i>Reports to the Committee of Ministers<sup>3</sup> On the merits (Article 31)</i>																		1			7	8
<i>On friendly settlement (Article 30)</i>					1	1	1	1	2	1	1	3	3	2	1	4	2		3	5		31
<i>For information (case struck off the list)</i>											1	1	1	1				3	1	2		9
<i>Provisional reports, for information</i>												1	1	1	1		1	1	1		5	5
																		1			1	1

<sup>1</sup> Including 69 applications introduced by East African Asians against the United Kingdom.<sup>2</sup> Including 170 applications introduced by East African Asians against the United Kingdom.<sup>3</sup> Including 126 applications introduced by East African Asians against the United Kingdom.<sup>4</sup> Including 31 applications introduced by East African Asians against the United Kingdom.<sup>5</sup> One single report may cover several applications where these have been joined by the Commission.

Not all individuals may apply to the Commission. An individual applicant under Article 25 must allege to be the "victim of violation by one of the High Contracting Parties of the rights set forth in the Convention."<sup>223</sup> The Commission has stated that "Article 25 . . . refers not only to the direct victim . . . but moreover all indirect victims to which the violation would cause a prejudice."<sup>224</sup> The Commission on a subsequent application declared that an individual or financial interest in the case is sufficient to qualify the applicant as a victim.<sup>225</sup> The Commission has taken the position that a corporation is not a person guaranteed human rights by the Convention and therefore cannot be a victim.<sup>226</sup> There seems to be no definite rule as to what, besides "indirect prejudice" or a personal or financial interest, qualifies an individual as an indirect victim. The Commission might be subject to criticism for lack of precision and clarity on this point, but it appears that leaving the question open may give the Commission more room to accommodate individuals alleging to be victims.

A further non-procedural criterion of admissibility requires that the State alleged to have violated the Convention be a party to the Convention.<sup>227</sup> The great volume of litigation concerning tribunals established by United States occupation authorities to handle restitution as a result of World War II was one of the early concerns of the Commission. In each case the Federal Republic of Germany was named as the party respondent, and the issue concerned responsibility for those tribunals. The Commission held that as Germany was not responsible for these tribunals, it was not responsible for any alleged violations of rights by these tribunals.<sup>228</sup> As the tribunals were clearly not States subject to the

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223. Convention, art. 25.

224. *X v. Federal Republic of Germany*, App. No. 282/57, [1955-57] EUR. COMM'N 164.

225. *X v. Austria*, App. No. 1706/62, [1966] Y.B. 112, 114.

226. *Church of X v. United Kingdom*, App. No. 3798/68, [1969] Y.B. 306.

227. Convention, arts. 24, 25. See *X v. Federal Republic of Germany*, App. No. 262/57, [1955-57] EUR. COMM'N 170, in which the applicant accused West Germany of violating the Convention. The Commission determined that the violation had been committed by Czechoslovakia.

228. *X v. Federal Republic of Germany*, App. No. 235/56, [1958-59] Y.B. 256; *X v.*

obligations of the Convention, the applications were declared inadmissible *ratione personae*. Applications have also been filed listing individuals as parties respondent, a situation outside the scope of the Convention. These, too, have been declared inadmissible *ratione personae*.<sup>229</sup>

Numerous applications have been filed alleging violations of rights not protected by the Convention. Applications of this sort are declared inadmissible *ratione materiae*. The Commission has held that rights such as the rights to appeal, to work, to teach, and the right to remission of sentence are not rights guaranteed by the Convention.<sup>230</sup>

The Commission has shown itself unwilling to go beyond the written word of the Convention and, in the tradition of the United States Supreme Court, to develop rights as emanations of other rights. For the Commission to do so would be to court disaster. The main strength of the Commission and the Convention rests upon acceptance of their decisions by the contracting parties. To go beyond what the parties have actually consented to would be reckless and would ultimately result in a diminishing of the effectiveness of the Commission.

#### IV. ARTICLE 24: INTERSTATE APPLICATIONS TO THE COMMISSION

Article 24 provides that any contracting State may file an application charging another High Contracting Party with a breach of the Convention.<sup>231</sup> Unlike individual applications under Article 25, the State respondent is immediately and automatically notified of the allegation and is requested to transmit its views on the admissibility of the complaint. Obviously an interstate application is accorded significantly more weight than one under Article 25.

There is no mention in either Article 24 or the Commission's rules of requirements as to the nationality of individuals on whose

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Federal Republic of Germany, App. No. 182/56, [1955-57] EUR. COMM'N 167.

229. See, e.g., *De Courcy v. United Kingdom*, App. No. 2749/66, [1967] Y.B. 368; *X v. Federal Republic of Germany*, App. No. 2646/65 [1966] Y.B. 484.

230. See note 120 *supra*.

231. The reference to the Secretary-General of the Council of Europe in Article 24 emphasizes the administrative relationship between the Council and the Commission. In filing a complaint under Article 24, the parties must be represented by agents or advocates, (Rule 25); the application must be in writing and signed (Rule 37); and must provide the information necessary for the Commission to make a decision concerning the allegations, (Rule 38).

TABLE II<sup>232</sup>  
 INTERSTATE APPLICATIONS  
 (Article 24)

Case	Introduction	Decision as to the Admissi- bility	Report of the Commission
Greece v. United Kingdom (I)	May 1956	June 1956	September 1958
Greece v. United Kingdom (II)	July 1957	October 1957	July 1959
Austria v. Italy	July 1960	January 1961	March 1963
Denmark, Norway and Netherlands v. Greece (I)	September 1967 and March 1968	January 1968 and May 1968	November 1969
Denmark, Norway and Netherlands v. Greece (II)	April 1970	July 1970	October 1970
Ireland v. United Kingdom (I)	December 1971	October 1972	
Ireland v. United Kingdom (II)	March 1972	October 1972	Struck off the list
Cyprus v. Turkey (I)	September 1974	May 1975	
Cyprus v. Turkey (II)	March 1975	May 1975	

behalf the State may make allegations. Thus, in a departure from traditional practice in international law, any contracting State may champion the rights of any individual residing within the jurisdiction of any member State rather than merely acting on behalf of one of its nationals. Inherent in this article is the possibility of transforming a complaint concerning an individual into an interstate dispute. Since the entry into force of the Convention in 1953, there have been nine applications filed under Article 24, as shown in Table II. The number is deceiving, however, in that the complaints concerned only four distinct areas; certain complaints concerned the same problem.

#### A. *The First and Second Cyprus Cases*

The first two applications under Article 24 were filed by Greece, and concerned the Greek Cypriot community on Cyprus, then under British control.<sup>233</sup> The first application, filed May 7, 1965, alleged that the government of Cyprus, by promulgating certain exceptional administrative and legal measures, had breached the Convention. The fact that the United Kingdom had filed a derogation under Article 15 was not viewed by Greece as sufficient cause to justify the actions taken. The application was declared admissible by the Commission. Pursuant to Article 29, a subcommission was formed and sessions held, including hearings on Cyprus itself. Of special import is the fact that the hearings on Cyprus were held for the purpose of ascertaining the "existence and extent of the controversy."<sup>234</sup> A final report was submitted to the Committee of Ministers, pursuant to the provisions of Article 31. However, political events overtook the situation, and with the London and Zurich agreements<sup>235</sup> settling the "Cyprus question," the Greek and British governments proposed cessation of action on the application.<sup>236</sup> The Committee of Ministers of the Council of Europe thus decided that "in accordance with Article 32 . . . no further action [was] called for."<sup>237</sup>

Especially noteworthy in this case is the fact that the subcommission took upon itself the responsibility of determining the existence and extent of the emergency cited under Article 15. The

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233. *Greece v. United Kingdom*, App. No. 176/56, [1958-59] Y.B. 174; *Greece v. United Kingdom*, App. No. 299/57 [1958-59] Y.B. 178.

234. *HUMAN RIGHTS IN EUROPE*, *supra* note 14, at 59.

235. *See* [1958-59] Y.B. at 186, 196.

236. *Id.*

237. Res. (59)12, adopted Apr. 20, 1959, [1958-59] Y.B. 186.

power to determine the existence of such a state of affairs has traditionally been the prerogative of the State, one which is affirmed in Article 2, paragraph 7 of the United Nations Charter, forbidding intervention into matters "essentially within domestic jurisdiction." In this instance, however, a separate determination by a supranational body as to the existence and exigencies of a domestic emergency was made. The State in question, Great Britain, not only acquiesced but provided facilities and enacted legislation conferring diplomatic immunities and privileges upon members of the Commission acting in the exercise of their duties.<sup>238</sup> The importance of this event in terms of the extension of international control of human rights through international law, especially at that time, cannot be disregarded. It indicates that the judgment of the State regarding internal conditions may be displaced and superceded by the judgment of a supranational body, and that the decision of the latter has standing in international law.

The *Second Cyprus Case*,<sup>239</sup> involving the same parties, concerned allegations of forty-nine instances of ill-treatment or torture for which the government of Cyprus was allegedly responsible. The application was declared admissible with regard to twenty-nine of the alleged acts. However, the London and Zurich agreements were signed prior to the selection of a subcommission, and at the request of the parties, the Commission terminated the proceedings without considering the merits of the case.<sup>240</sup> The Committee of Ministers noted the action of the Commission and, as in the *First Cyprus Case*, resolved that "no further action [was] called for."<sup>241</sup>

The third interstate case was filed by Austria against Italy on July 11, 1960. This case, known as the *Pfunders Case*,<sup>242</sup> alleged maladministration of justice in the trial of six young men accused of murdering an Italian customs officer. The accused resided in the village of Pfunders in the South Tyrol. Austria had an interest in the pro-Austrian population of this region and, in this case, was undoubtedly acting to protect and further that interest.<sup>243</sup> The application alleged that irregularities in the procedures of the

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238. Statute Laws of Cyprus, No. 1 (1958), *reprinted in id.* at 198.

239. *Greece v. United Kingdom*, App. No. 299/57, [1958-59] Y.B. 178. The Commission declared portions of the application inadmissible because the applicant had failed to exhaust domestic remedies under Article 26.

240. Res. (59)32, adopted Dec. 14, 1959, [1958-59] Y.B. 196.

241. *Id.*

242. [1960] Y.B. 168. See App. No. 788/60, [1961] Y.B. 116.

243. F. CASTBERG, *supra* note 111, at 32 (1974).

trial violated the European Convention, particularly Article 6, which provides for a fair trial.

After considering the pleadings of both sides concerning admissibility, the Commission declared the application admissible with respect to Article 6(2), presumption of innocence; Article 6(3)(d), the hearing of witnesses; and Article 14, nondiscrimination.<sup>244</sup> The Commission declared inadmissible those portions of the application dealing with Article 6(1), the right to a fair hearing, holding that failure to seek a change in venue was, under the circumstances, failure to exhaust domestic remedies.<sup>245</sup>

In its report to the Committee of Ministers, the Commission held that discrimination against the defendants because of their linguistic and ethnic group was the key issue in the case. The Commission, however, found no such discrimination,<sup>246</sup> and the Committee of Ministers reached the same conclusion.<sup>247</sup>

In ruling on the admissibility of the application, the Commission had occasion to comment upon the nature of the Convention and the purposes for which it was drawn. Italy maintained that because the incidents in issue occurred prior to Austrian ratification of the Convention, the application was inadmissible *ratione temporis*, as being lodged out of time. The Commission held that reciprocity and equality of rights were not the purposes of the Convention, which sought instead the application of a collective guarantee and the protection of the public order of Europe.<sup>248</sup> This holding greatly strengthened the position of the individual in the European human rights system by removing the Convention from the traditional arena of State treaties and placing it in the sphere where individual and human rights are accorded the status of treaty subjects.<sup>249</sup>

## B. *The Greek Case*

The interstate case having the most far-reaching effect, but also the one illustrating the ultimate weakness of the Convention system arose from the military coup of April 21, 1967, which toppled the popularly-constituted Greek government. A group of

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244. [1961] Y.B. 116 (decision of the Commission as to admissibility).

245. *Id.* at 166-70.

246. [1963] Y.B. 794.

247. Res. (63)DH3, adopted Oct. 23, 1963, *id.* at 796.

248. [1961] Y.B. at 140.

249. The traditional view is that the individual has no claim as a "subject" under international law. Only States are said to be "subjects" of international law; individuals are its "objects." P. JESSUP, *supra* note 202, at 15. See also text accompanying notes 198-230 *supra* for a discussion of the right of individual petition.

military officers claiming to act in the national interest of Greece<sup>250</sup> seized the reins of government in April 1967. Immediately, provisions of the Constitution were suspended<sup>251</sup> and laws were promulgated to thwart the alleged communist threat.<sup>252</sup> As a result of these actions and in response to a torrent of reports of violations of rights guaranteed by the Convention, the Consultative Assembly of the Council of Europe, on July 23, 1967, urged member States of the Council to refer the "Greek question" to the European Commission of Human Rights.<sup>253</sup> Denmark,<sup>254</sup> Norway,<sup>255</sup> Sweden,<sup>256</sup> and the Netherlands<sup>257</sup> heeded this request and exercised their right under Article 24 to bring alleged violations of the Convention to the attention of the Commission through the Secretary-General of the Council of Europe.

The applications alleged violations of Article 5, personal liberty and security; Article 6, fair trial; Article 8, respect for private and family life; Article 9, freedom of thought, conscience, and religion; Article 11, freedom of peaceful assembly; Article 13, the right to effective legal remedies to secure rights; and Article 14, freedom from discrimination. The applications further alleged that the Greek military government had not shown that derogation from the Convention under Article 15 was justified.<sup>258</sup> Norway, Sweden, and Denmark extended their original allegations to include Articles 3 and 7 of the Convention and Articles 1 and 3 of the First Protocol.<sup>259</sup>

On January 24, 1968, the initial applications were declared admissible over the strenuous objections of the Greek military government.<sup>260</sup> The second set of applications were declared admissible on May 3, 1968, following proceedings in which the Greek government refused to participate.<sup>261</sup> The Committee of Ministers duly received the report of the Commission but was

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250. Letter of Sept. 19, 1967, to the Secretary-General of the Council of Europe from the Permanent Representative of Greece, *reprinted in* [1968] Y.B. 704-10.

251. Royal Decree No. 280, *reprinted in* [1967] Y.B. 28-36.

252. [1969] Y.B., GREEK CASE 26.

253. [1967] Y.B. 94.

254. *Denmark v. Greece*, App. No. 3321/67, [1967] Y.B. 586.

255. *Norway v. Greece*, App. No. 3322/67, *id.*

256. *Sweden v. Greece*, App. No. 3323/67, *id.*

257. *Netherlands v. Greece*, App. No. 3344/67, *id.* The Commission joined the four applications against Greece.

258. [1969] Y.B., GREEK CASE 59.

259. The extension was treated by the Commission as constituting a separate application, App. No. 4448/70, [1970] Y.B. 110.

260. *Denmark v. Greece*, App. Nos. 3321-23/67, 3344/67, [1968] Y.B. 690.

261. *Id.* at 730.



faced with a situation not envisioned in the Convention—the withdrawal of a member State against whom allegations of human rights violations had been filed.<sup>262</sup>

The withdrawal of Greece from the Convention system and from the Council of Europe rendered moot the only means of compelling compliance with the Convention: the threat of expulsion. Therefore the only alternative remaining open to the Committee of Ministers was to publish its decision finding Greece in violation of Articles 3, 5, 6, 8, 9, 10, 11, 13, and 14 of the Convention and Article 3 of the First Protocol.<sup>263</sup> This case represents the first instance of the filing of interstate applications in which the States lodging the complaints were not acting either on behalf of a national minority with which they had ties, or within the context of a contumacious political dispute. A degree of maturity and a sincere and dispassionate concern for human rights were the motivating forces.

Another aspect of the case is, however, less than positive. The Convention did not achieve one of its desired results—the prevention of the emergence of dictatorship in Europe. Although the military, in carrying out a coup d'état, would naturally disregard the law, it had been assumed that the force of the Convention would have contributed to a greater value being placed on human rights and democracy, and would have prevented such a coup. Moreover, activities by non-European entities had undoubtedly weakened the Greek democracy and supplied an implied sanction to the usurpation of power by the military.<sup>264</sup>

To a limited degree, though, the Convention served as a moderating force in Greece, not by itself but in conjunction with public pressure. Greece, albeit in a limited and begrudging fashion, responded to such pressure. In some instances torture of individuals was halted and the victims released. One such incident involved Antonios Ambetielos, leader of the Greek Communists. The very fact that a regime, whose *raison d'être* was to combat the “communist threat,” would release the leader of the “threat” indicates a certain sensitivity to public opinion.

Although the final relationship of Greece with the Commission was that of total noncooperation, the initial response fluc-

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262. Res. DH(70)(1), para. 19, adopted Apr. 15, 1970, [1969] Y.B., GREEK CASE 511, 513.

263. *Id.* at para. 12A.

264. See Karnow, *America's Mediterranean Bungle*, ATLANTIC MONTHLY, Feb. 1975, at 6.

tuated between obstruction, and hesitant and fitful cooperation. A team was dispatched by the Commission to visit Greece in order to hold on-site investigations. Greek authorities received the team reluctantly, and for a short time allowed it access only to certain witnesses.<sup>265</sup> Soon, however, even this limited cooperation ceased, but the very fact that an outside body was allowed to enter Greece for the purpose of conducting an investigation of serious allegations against the government reflects a certain disinclination on the part of Greece to reject the Convention and thereby reject the European community.

The *Greek Case* may be scrutinized from yet another perspective. Perhaps it would be too much to expect that the European Convention on Human Rights would be endowed with an aura sufficient to deter a fanatic cabal of military officers sympathetic to fascism. But rather than preventing a coup, could not the Convention serve as a moderating force, blunting the excesses of dictatorship? And through its provisions for enforcement and utilization of a form of European peer group pressure, could it not foster a minimal level of compliance with the provisions of the Convention?

In this case, unfortunately, the potency of the Convention in terms of mitigation and amelioration was meager. A formal return to minimal protection of human rights in Greece was accomplished not through the moderating force of the Convention, not by the Council of Europe or the European community, but through the shortsighted acts of a military dictator which plunged another State, Cyprus, into the abyss of occupation and dismemberment. It may be observed that the Convention works best as a legal instrument binding democratic regimes; a treaty standing alone is insufficient to stem a determined fascist minority in command of the armed might of a nation.

### C. *Ireland v. United Kingdom*

The interstate application of Ireland against Great Britain is a reversion to the previous pattern reflecting a concern with national minorities and self-interest. Ireland filed an application against the United Kingdom in order to ascertain if actions of the United Kingdom violated the Convention and to ensure compliance with the Convention.<sup>266</sup> Compensation was not an issue; the

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265. [1969] Y.B., GREEK CASE 14.

266. *Ireland v. United Kingdom*, App. No. 5310/71, [1972] Y.B. 92, 94.

government of Ireland objected to the provisions of the Special Powers Act of 1922<sup>267</sup> and the statutory rules, regulations, and orders made thereunder.<sup>268</sup> It was alleged that implementation of the Special Powers Act constituted an administrative practice involving breaches of Articles 1, 2, 3, 5, 6, and 14 of the Convention.

On June 27, 1957, the United Kingdom filed a derogation under Article 15 concerning the situation in Northern Ireland.<sup>269</sup> In a 1971 letter to the Secretary-General of the Council of Europe, it further emphasized the state of emergency and indicated that, in view of the terrorist threat, a policy of extensive detention and internment was to be implemented.<sup>270</sup>

The Commission, on October 1, 1972, declared the application inadmissible regarding the alleged violations of Articles 1, 5, 6, and 14.<sup>271</sup> That portion of the application dealing with Article 2 was also declared inadmissible.<sup>272</sup> A second application was eliminated after being withdrawn by the applicant.<sup>273</sup> This application had alleged that the Northern Ireland Act of 1972<sup>274</sup> constituted a breach of Article 1 by denying the rights guaranteed in Article 7 to the residents of Northern Ireland through the creation of an ex post facto law. The Attorney General of the United Kingdom stated at an oral hearing before the Commission that no individual would be found guilty under the 1972 Act if the act or omission did not constitute a criminal offense at the time it occurred. In light of these assurances, the government of Ireland withdrew the application and the Commission, finding no reason to the contrary, struck this second case off the list.<sup>275</sup>

The case of *Ireland v. United Kingdom* is still pending before the European Court of Human Rights. In its report, the Commission had found that five techniques of interrogation utilized by the British constituted a breach of Article 3, inhuman treatment

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267. See *Ireland v. United Kingdom*, App. No. 5310/71, REPORT OF THE COMMISSION (Jan. 25, 1976), at 15.

268. *Ireland v. United Kingdom*, App. No. 5310/71, [1972] Y.B. at 94.

269. [1955-57] EUR. COMM'N 50.

270. *Ireland v. United Kingdom*, App. No. 5310/71, [1972] Y.B. at 256.

271. *Id.* at 240, 254-56.

272. *Id.* at 254.

273. *Id.* at 254-56.

274. See *Ireland v. United Kingdom*, App. No. 5310/71, REPORT OF THE COMMISSION (Jan. 25, 1976), annex at 121.

275. *Ireland v. United Kingdom*, App. No. 5310/71, [1972] Y.B. 254.

and torture.<sup>276</sup> In proceedings before the Court, Britain conceded that the five techniques of torture had indeed been employed, and pledged that such techniques would not be used again.<sup>277</sup>

D. *Cyprus v. Turkey*

On July 15, 1974 a right-wing coup was attempted on Cyprus. Archbishop Makarios escaped assassination and fled Cyprus. In response, Turkey dispatched army units to Cyprus, ultimately taking control of forty percent of the island and causing a massive flow of refugees toward Greek Cypriot-held territory.<sup>278</sup> As a result of this action by Turkey, and in response to actions of the Turkish army and authorities taken during and following the occupation, the Republic of Cyprus (in reality the Greek Cypriot members of the Cypriot government) filed two applications against Turkey under Article 24.<sup>279</sup>

These applications alleged breaches by Turkey of Articles 1, 2, 3, 4, 5, 6, 7, 8, 13, and 17, and Article 1 of the First Protocol. In addition, Article 14 was cited, charging that all the alleged violations, such as murder, rape, arbitrary detention, torture, and robbery, were based on the ethnic origin, race, and religion of the victims.<sup>280</sup> Turkey, in the hearings on admissibility, maintained that the applications were inadmissible because the government of Cyprus was illegal;<sup>281</sup> that Turkey was not responsible for any activities on Cyprus;<sup>282</sup> that domestic remedies were available;<sup>283</sup> and finally, that the application was an "abuse of procedure of the Convention."<sup>284</sup> The Commission disputed the objections of Turkey<sup>285</sup> and "without prejudging the merits of the case" declared the applications admissible.<sup>286</sup>

The Commission has completed its report on this case, but has not yet published it. A "leaked" version appeared in London allegedly finding Turkey in violation of, *inter alia*, Articles 2, 3, and 8.<sup>287</sup> If these reports are valid, the disposition of this case will

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276. See *Ireland v. United Kingdom*, App. No. 5310/71, REPORT OF THE COMMISSION (Jan. 25, 1976), at 490, 517.

277. N.Y. Times, Feb. 9, 1977, at A3, col. 1.

278. *Cyprus v. Turkey*, App. No. 6780/74, [1975] Y.B. 82, 86.

279. *Cyprus v. Turkey*, App. Nos. 6780/74, 6950/75, *id.* at 82.

280. *Id.* at 88.

281. *Id.* at 94-96.

282. *Id.* at 98.

283. *Id.*

284. *Id.*

285. *Id.* at 114, 116, 120, 122, respectively.

286. *Id.* at 124.

287. Sunday Times (London), Jan. 23, 1977, § 1, at 10, col. 1.

undoubtedly have political repercussions on both the Convention system and the Council of Europe.

The Commission has held that the Human Rights Convention is not a treaty in the usual sense of reciprocal rights, but is a mutual guarantee,<sup>288</sup> imbedded in Article 24, of what may be termed a "reciprocal right to interfere" in the domestic affairs of the contracting States. This is a concession with far-reaching implications. The granting of a right to a State to complain to a supranational body of conditions or events within the domestic sphere of another State is indicative of the existence of a certain degree of mutual trust and sincerity as well as an affirmation that great importance is given to relations with other contracting States. It is obvious that the existence of such a "right to interfere" will tend to encourage the maintenance of amiable relations.

Indeed, such a right may be considered to be a reflection of the shared heritage, outlook, traditions, and political and social mores of the nations involved. The mere existence of such a right evidences a large degree of understanding which must precede such an undertaking. Perhaps the presence of the factors necessary for the undertaking and acceptance of Article 24 also reflects the possibility that activity under that article might be the exception rather than the rule.

## V. CONCLUSION

The Convention is a treaty signed by European States having a "common heritage of political traditions and ideals."<sup>289</sup> The scars of Nazism, the threat of Stalinism, and the desire for a united Europe were in large part the motivating factors leading those sovereign States to agree to a Convention which, it was hoped, would deter individual dictatorship and tyranny from once again taking root in European soil. These States and the Council of Europe perceived an unseverable bond between the protection of human rights and the advancement of a democratic order. The Preamble to the Convention states, *inter alia*, that the aim of the Convention is to "pursue the maintenance and further realization of Human Rights and Fundamental Freedoms."

Thus the Convention may be assessed from two perspectives. The first concerns the effectiveness of the Convention as a "higher law," or a measure by which the domestic law of the

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288. See *Austria v. Italy*, App. No. 788/60, [1961] Y.B. at 138 (Pfunders Case).

289. Preamble to the Convention.

member States may be scrutinized. From this vantage point, it is possible to observe whether the democracies of Europe are willing to abide by an international treaty even if such adherence has decidedly internal ramifications. Such ramifications may include the questioning by an individual of the validity of domestic legislation or practices before an international organ. And if the legislation or practice in question is found wanting, the State, according to the Convention, may be required to take corrective action, ranging from the payment of reparations to alteration of the law. This view may be termed the ordinary or the legal perspective.

The second perspective, which differs greatly from the ordinary or legal, concerns the usefulness of the Convention as a treaty protecting human rights in situations in which the delicate fabric of democracy is either threatened or destroyed. This admittedly extraordinary situation arises not from the day-to-day administration of the laws or the vibrant dynamics of a democratic society, but from attacks on the very order of that society.

From the ordinary vantage point, the Convention must be termed a success. Not only have eighteen States ratified the Convention, but the great majority of these States have accepted the right of individual application and the jurisdiction of the Court. The domestic laws of member States have been challenged under the Convention, and the States, by appearing before the Commission as a party to the proceedings, have accepted the Convention as superior law. In numerous instances, domestic legislation has been altered or amended to remove any conflict with the Convention. Furthermore, this realignment of domestic legislation has come about as a result of individual appeals to the Commission. The *De Becker Case*<sup>290</sup> led to a change in the Belgian law regarding denial of freedom of expression subsequent to conviction of collaboration. The *Ofner*,<sup>291</sup> *Hopfinger*,<sup>292</sup> *Pataki*,<sup>293</sup> and *Dunshirn*<sup>294</sup> cases led to changes in Austrian criminal procedure law including equality of arms on appeal (equal opportunity of the parties to present their cases) as well as modification of detention on remand. Domestic law in the United Kingdom was amended with regard to naval enlistment and period of service, and to provide for legal challenge to denials of immigrant entry.<sup>295</sup>

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290. *De Becker v. Belgium*, App. No. 214/56, [1958-59] Y.B. 214.

291. *Ofner v. Austria*, App. No. 524/59, [1963] Y.B. 676.

292. *Hopfinger v. Austria*, App. No. 617/59, *id.*

293. *Pataki v. Austria*, App. No. 596/59, [1963] Y.B. 714.

294. *Dunshirn v. Austria*, App. No. 789/60, *id.*

295. F. JACOBS, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 43 (1975).

Vagabonds in the Netherlands, as a result of the *Vagrancy Cases*,<sup>296</sup> were given the right to contest the legality of their confinement.<sup>297</sup> A further indication of the impact of the Convention upon domestic legislation is the creation of a civil service organ in the Federal Republic of Germany, charged with the duty of ascertaining whether proposed legislation is in compliance with the Convention.<sup>298</sup>

Thus it is fair to say that the Convention has had a salutary effect on domestic legislation and practice. Laws have been changed to conform with the Convention. Reparations have been paid for violations, and proposed laws are scrutinized prior to passage to ensure conformity with the Convention. On this plane, the ordinary or legal, it has proven to be an effectual dynamic body of law.

From the extraordinary vantage point, or that which transcends the purely legal and includes aspects of politics and statecraft, the picture is necessarily clouded. The *Greek Case* demonstrated the ineffectiveness of the Convention in preventing a dictatorial eruption on the European scene. The junta which seized power systematically violated the spirit, as well as the great majority of the rights protected by the Convention. To conclude from this phenomenon that the Convention is mere verbiage is to beg the question. The Convention is a treaty binding upon civilized European democracies. It guarantees rights precious to all humanity, rights which form the corpus of democracy. It is obvious, however, that the range of rights guaranteed in the Convention are susceptible to protection and promotion only in pluralistic democracies based on the rule of law.

When, therefore, the military coup occurred in Greece, an anomalous situation arose. An anti-democratic government was responsible, under the Convention, for the maintenance and protection of democratic virtues and rights. To expect compliance with the Convention in this situation is tantamount to expecting the wolf to nurture the lamb.

On the other hand, while it is unrealistic to expect the Convention to be effective after a collapse of democracy, may we not expect the Convention as an international treaty to protect de-

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296. *De Wilde v. Belgium*, App. No. 2832/66, *Ooms v. Belgium*, App. No. 2835/66, *Versyp v. Belgium*, App. No. 2899/66, [1967] Y.B. 420.

297. COUNCIL OF EUROPE, PUBLICATIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS, SER. A, at para. 79 (1971) (*Vagrancy Cases*).

298. A.H. ROBERTSON, *PRIVACY & HUMAN RIGHTS* 358 (1973).

mocracy and prevent the rise of a dictatorship? Here it appears one must acknowledge an inherent weakness of law, especially international law. Although there is no doubt that the coup in Greece violated the spirit as well as specific provisions of the Convention, little could be done within the framework of the legal system.

The Convention, as a legal instrument, is binding prospectively, but in the event of violations, it is reactive rather than preventive. With the benefit of hindsight, the only means of preventing the Greek tragedy would have been either extraordinary political measures or armed force. The Convention is merely a legal document and, in the international sphere, derives its strength from consent. Moreover, the Convention, to paraphrase Stalin, commands no divisions. Nevertheless, the actions of the complainant States in referring the *Greek Case* to the Commission, and the courage and diligence of the Commission in investigating the allegations and in arriving at the finding of violations, represent an emphatic demonstration of the willingness of the European community to protect human rights.



## APPENDIX

### CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of 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 realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;

Have agreed as follows:

#### *Article 1*

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

### **Section I**

#### *Article 2*

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

### *Article 3*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### *Article 4*

- 1. No one shall be held in slavery or servitude.
- 2. No one shall be required to perform forced or compulsory labour.
- 3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.

### *Article 5*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on

reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with the view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

### *Article 6*

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### *Article 7*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### *Article 8*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*Article 9*

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

*Article 10*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

*Article 11*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by mem-

bers of the armed forces, of the police or of the administration of the State.

#### *Article 12*

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

#### *Article 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.

#### *Article 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.

#### *Article 15*

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

*Article 16*

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

*Article 17*

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

*Article 18*

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

**Section II***Article 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 hereinafter referred to as "the Commission";
- (2) A European Court of Human Rights, hereinafter referred to as "the Court".

**Section III***Article 20*

The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same State.

*Article 21*

1. The members of the Commission shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly; each group of the Representatives of the High Contracting

Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.

2. As far as applicable, the same procedure shall be followed to complete the Commission in the event of other States subsequently becoming Parties to this Convention, and in filling casual vacancies.

#### *Article 22<sup>1</sup>*

1. The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years.

2. The members whose terms are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary-General of the Council of Europe immediately after the first election has been completed.

3. In order to ensure that, as far as possible, one half of the membership of the Commission shall be renewed every three years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than six years but not more than nine and not less than three years.

4. In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary-General immediately after the election.

5. A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6. The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

#### *Article 23*

The members of the Commission shall sit on the Commission in their individual capacity.

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1. Paragraphs 3 and 4 of this Article have been added in accordance with Article 1 of the Fifth Protocol to the Convention.



*Article 24*

Any High Contracting Party may refer to the Commission, through the Secretary-General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party.

*Article 25*

1. The Commission may receive petitions addressed to the Secretary-General of the Council of Europe 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 this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

2. Such declarations may be made for a specific period.

3. The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

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.

*Article 26*

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

*Article 27*

1. The Commission shall not deal with any petition submitted under Article 25 which

(a) is anonymous, or

(b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information.

2. The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.

3. The Commission shall reject any petition referred to it which it considers inadmissible under Article 26.

#### *Article 28*

In the event of the Commission accepting a petition referred to it:

(a) it shall, with a view of ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

(b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention.

#### *Article 29<sup>2</sup>*

After it has accepted a petition submitted under Article 25, the Commission may nevertheless decide unanimously to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 has been established.

In such a case, the decision shall be communicated to the parties.

#### *Article 30<sup>3</sup>*

If the Commission succeeds in effecting a friendly settlement in accordance with Article 28, it shall draw up a Report which

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2. Text amended in accordance with Article 1 of the Third Protocol to the Convention. The original text of Article 29 read as follows:

"(1) The Commission shall perform the functions set out in Article 28 by means of a Sub-Commission consisting of 7 members of the Commission.

(2) Each of the parties concerned may appoint as members of this Sub-Commission a person of its choice.

(3) The remaining members shall be chosen by lot in accordance with arrangements prescribed in the Rules of Procedure of the Commission."

3. Text amended in accordance with Article 2 of the Third Protocol to the Convention. The original text of Article 30 commenced with the words "If the Sub-Commission succeeds . . ."

shall be sent to the States concerned, to the Committee of Ministers and to the Secretary-General of the Council of Europe for publication. This Report shall be confined to a brief statement of the facts and of the solution reached.

#### *Article 31*

1. If a solution is not reached, the Commission shall draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the Report.

2. The Report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the States concerned, who shall not be at liberty to publish it.

3. In transmitting the Report to the Committee of Ministers the Commission may make such proposals as it thinks fit.

#### *Article 32*

1. If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the Report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.

2. In the affirmative case the Committee of Ministers shall prescribe a period during which the High Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.

3. If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph (1) above what effect shall be given to its original decision and shall publish the Report.

4. The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

#### *Article 33*

The Commission shall meet in camera.

*Article 34<sup>4</sup>*

Subject to the provisions of Article 29, the Commission shall take its decisions by a majority of the Members present and voting.

*Article 35*

The Commission shall meet as the circumstances require. The meetings shall be convened by the Secretary-General of the Council of Europe.

*Article 36*

The Commission shall draw up its own rules of procedure.

*Article 37*

The secretariat of the Commission shall be provided by the Secretary-General of the Council of Europe.

**Section IV***Article 38*

The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe. No two judges may be nationals of the same State.

*Article 39*

1. The members of the Court shall be elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by the Members of the Council of Europe; each Member shall nominate three candidates, of whom two at least shall be its nationals.

2. As far as applicable, the same procedure shall be followed to complete the Court in the event of the admission of new Members of the Council of Europe, and in filling casual vacancies.

3. The candidates shall be of high moral character and

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4. Text amended in accordance with Article 3 of the Third Protocol to the Convention. The original text of Article 34 read as follows:

"The Commission shall take its decisions by a majority of the Members present and voting; the Sub-Commission shall take its decision by a majority of its members."

must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

*Article 40<sup>5</sup>*

1. The members of the Court shall be elected for a period of nine years. They may be re-elected. However, of the members elected at the first election the terms of four members shall expire at the end of three years, and the terms of four more members shall expire at the end of six years.

2. The members whose terms are to expire at the end of the initial periods of three and six years shall be chosen by lot by the Secretary-General immediately after the first election has been completed.

3. In order to ensure that, as far as possible, one third of the membership of the Court shall be renewed every three years, the Consultative Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than nine years but not more than twelve and not less than six years.

4. In cases where more than one term of office is involved and the Consultative Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary-General immediately after the election.

5. A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6. The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

*Article 41*

The Court shall elect its President and Vice-President for a period of three years. They may be re-elected.

*Article 42*

The members of the Court shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

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5. Paragraphs 3 and 4 of this Article have been added in accordance with Article 3 of the Fifth Protocol to the Convention.

*Article 43*

For the consideration of each case brought before it the Court shall consist of a Chamber composed of seven judges. There shall sit as an *ex officio* member of the Chamber the judge who is a national of any State party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall be chosen by lot by the President before the opening of the case.

*Article 44*

Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

*Article 45*

The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it in accordance with Article 48.

*Article 46*

1. Any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

2. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.

3. These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

*Article 47*

The Court may only deal with a case after the Commission has acknowledged the failure of efforts for a friendly settlement and within the period of three months provided for in Article 32.

*Article 48*

The following may bring a case before the Court, provided that the High Contracting Party concerned, if there is only one,

or the High Contracting Parties concerned, if there is more than one, are subject to the compulsory jurisdiction of the Court or, failing that, with the consent of the High Contracting Party concerned, if there is only one, or of the High Contracting Parties concerned if there is more than one:

- (a) the Commission;
- (b) a High Contracting Party whose national is alleged to be a victim;
- (c) a High Contracting Party which referred the case to the Commission;
- (d) a High Contracting Party against which the complaint has been lodged.

#### *Article 49*

In the event of dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

#### *Article 50*

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

#### *Article 51*

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

#### *Article 52*

The judgment of the Court shall be final.

#### *Article 53*

The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

#### *Article 54*

The judgment of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution.

*Article 55*

The Court shall draw up its own rules and shall determine its own procedure.

*Article 56*

1. The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in Article 46 have reached a total of eight.

2. No case can be brought before the Court before this election.

**Section V***Article 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.

*Article 58*

The expenses of the Commission and the Court shall be borne by the Council of Europe.

*Article 59*

The members of the Commission and of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

*Article 60*

Nothing in this Convention shall be constructed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

*Article 61*

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.



*Article 62*

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

*Article 63*

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals in accordance with Article 25 of the present Convention.

*Article 64*

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.

*Article 65*

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on

which it became a Party to it and after six months' notice contained in a notification addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3. Any High Contracting party which shall cease to be a Member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 63.

#### *Article 66*

1. This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary-General of the Council of Europe.

2. The present Convention shall come into force after the deposit of ten instruments of ratification.

3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

4. The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be affected subsequently.

Done at Rome this 4th day of November 1950 in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatories.

## Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November, 1950 (hereinafter referred to as "the Convention");

Have agreed as follows:

### *Article 1*

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### *Article 2*

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

### *Article 3*

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

### *Article 4*

Any High Contracting Party may at the time of signature or

ratification or at any time thereafter communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with Paragraph (1) of Article 63 of the Convention.

#### *Article 5*

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

#### *Article 6*

This Protocol shall be open for signature by the Members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all Members of the names of those who have ratified.

**Protocol No. 2**  
**To the Convention for the**  
**Protection of Human Rights and**  
**Fundamental Freedoms,**  
**Conferring Upon the European**  
**Court of Human Rights Competence**  
**To Give Advisory Opinions**

The member States of the Council of Europe signatory hereto,

Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention") and, in particular, Article 19 instituting, among other bodies, a European Court of Human Rights (hereinafter referred to as "the Court");

Considering that it is expedient to confer upon the Court competence to give advisory opinions subject to certain conditions;

Have agreed as follows:

*Article 1*

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section 1 of the Convention and in the Protocols thereto, or with any other question which the Commission, the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a two-thirds majority vote of the representatives entitled to sit on the Committee.

*Article 2*

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its consultative competence as defined in Article 1 of this Protocol.

*Article 3*

1. For the consideration of requests for an advisory opinion, the Court shall sit in plenary session.
2. Reasons shall be given for advisory opinions of the Court.
3. If the advisory opinion does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
4. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

*Article 4*

The powers of the Court under Article 55 of the Convention shall extend to the drawing up of such rules and the determination of such procedure as the Court may think necessary for the purposes of this Protocol.

*Article 5*

1. This Protocol shall be open to signature by member States of the Council of Europe, signatories to the Convention, who may become Parties to it by:

(a) signature without reservation in respect of ratification or acceptance;

(b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Protocol shall enter into force as soon as all States Parties to the Convention shall have become Parties to the Protocol, in accordance with the provisions of paragraph 1 of this Article.

3. From the date of the entry into force of this Protocol, Articles 1 to 4 shall be considered an integral part of the Convention.

4. The Secretary-General of the Council of Europe shall notify the member States of the Council of:

(a) any signature without reservation in respect of ratification or acceptance;

(b) any signature with reservation in respect of ratification or acceptance;

(c) the deposit of any instrument of ratification or acceptance;

(d) the date of entry into force of this Protocol in accordance with paragraph 2 of this Article.

**Protocol No. 3  
To the Convention for the  
Protection of Human Rights and  
Fundamental Freedoms, Amending  
Articles 29, 30 and 34 of the  
Convention**

The member States of the Council of Europe, signatories to this Protocol,

Considering that it is advisable to amend certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention") concerning the procedure of the European Commission of Human Rights;

Have agreed as follows:

*Article 1*

1. Article 29 of the Convention is deleted.
2. The following provision shall be inserted in the Convention:

"Article 29

After it has accepted a petition submitted under Article 25, the Commission may nevertheless decide unanimously to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 has been established.

In such a case, the decision shall be communicated to the parties."

*Article 2*

In Article 30 of the Convention, the word "Sub-Commission" shall be replaced by the word "Commission".

*Article 3*

1. At the beginning of Article 34 of the Convention, the following shall be inserted:

"Subject to the provisions of Article 29 . . ."

2. At the end of the same Article, the sentence "the Sub-

Commission shall take its decisions by a majority of its members” shall be deleted.

#### *Article 4*

1. This Protocol shall be open to signature by the member States of the Council of Europe signatories to the Convention,<sup>1</sup> who may become parties to it either by:

(a) signature without reservation in respect of ratification or acceptance, or

(b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Protocol shall enter into force as soon as all States Parties to the Convention shall have become Parties to the Protocol, in accordance with the provisions of paragraph 1 of this Article.

3. The Secretary-General of the Council of Europe shall notify the member States of the Council of:

(a) any signature without reservation in respect of ratification or acceptance;

(b) any signature with reservation in respect of ratification or acceptance;

(c) the deposit of any instrument of ratification or acceptance;

(d) the date of entry into force of this Protocol in accordance with paragraph 2 of this Article.

#### **Protocol No. 4 To the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention And In The First Protocol Thereto**

The Governments signatory hereto, being Members of the Council of Europe,

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1. The words “signatories to the Convention” did not appear in the original English text of Article 4. This technical error was corrected by a certificate of correction of the Secretary-General of 14th April 1967.



Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952;

Have agreed as follows:

#### *Article 1*

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

#### *Article 2*

1. Everyone lawfully within the territory of a State shall, within that territory have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of "ordre public", for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

#### *Article 3*

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

#### *Article 4*

Collective expulsion of aliens is prohibited.

*Article 5*

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

*Article 6*

1. As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

2. Nevertheless, the right of individual recourse recognised by a declaration made under Article 25 of the Convention, or the acceptance of the compulsory jurisdiction of the Court by a declaration made under Article 46 of the Convention, shall not be effective in relation to this Protocol unless the High Contracting Party concerned has made a statement recognising such right, or accepting such jurisdiction, in respect of all or any of Articles 1 to 4 of the Protocol.

*Article 7*

1. This Protocol shall be open for signature by the Members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratifica-

tion of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all Members of the names of those who have ratified.

**Protocol No. 5**  
**To The Convention For The**  
**Protection of Human Rights and**  
**Fundamental Freedoms, Amending Articles**  
**22 and 40 Of The Convention**

The Governments signatory hereto, being members of the Council of Europe,

Considering that certain inconveniences have arisen in the application of the provisions of Articles 22 and 40 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention") relating to the length of the terms of office of the members of the European Commission of Human Rights (hereinafter referred to as "the Commission") and of the European Court of Human Rights (hereinafter referred to as "the Court");

Considering that it is desirable to ensure as far as possible an election every three years of one half of the members of the Commission and of one third of the members of the Court;

Considering therefore that it is desirable to amend certain provisions of the Convention;

Have agreed as follows:

*Article 1*

In Article 22 of the Convention, the following two paragraphs shall be inserted after paragraph (2):

"(3) In order to ensure that, as far as possible, one half of the membership of the Commission shall be renewed every three years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than six years but not more than nine and not less than three years.

(4) In cases where more than one term of office is involved

and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary-General, immediately after the election."

#### *Article 2*

In Article 22 of the Convention, the former paragraphs (3) and (4) shall become respectively paragraphs (5) and (6).

#### *Article 3*

In Article 40 of the Convention, the following two paragraphs shall be inserted after paragraph (2):

"(3) In order to ensure that, as far as possible, one third of the membership of the Court shall be renewed every three years, the Consultative Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than nine years but not more than twelve and not less than six years.

(4) In cases where more than one term of office is involved and the Consultative Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary-General immediately after the election."

#### *Article 4*

In Article 40 of the Convention, the former paragraphs (3) and (4) shall become respectively paragraphs (5) and (6).

#### *Article 5*

1. This Protocol shall be open to signature by Members of the Council of Europe, signatories to the Convention, who may become Parties to it by:

(a) signature without reservation in respect of ratification or acceptance;

(b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Protocol shall enter into force as soon as all Contracting Parties to the Convention shall have become Parties to

the Protocol, in accordance with the provisions of paragraph 1 of this Article.

3. The Secretary-General of the Council of Europe shall notify the Members of the Council:

(a) any signature without reservation in respect of ratification or acceptance;

(b) any signature with reservation in respect of ratification or acceptance;

(c) the deposit of any instrument of ratification or acceptance;

(d) the date of entry into force of this Protocol in accordance with paragraph 2 of this Article.