

CHAPTER II

ARTICLES 5, 6, 8, 9, 10, 11, 13 AND 14 OF THE CONVENTION AND ARTICLE 3 OF THE FIRST PROTOCOL

A.

Introduction

240. As stated above,¹ the four applicant Governments alleged violations by the respondent Government of Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention, and the first three applicant Governments also alleged a violation of Article 3 of the First Protocol to the Convention. The respondent Government contested these allegations and referred in this connection to the clauses in some of the above Articles which authorise restrictions of the rights guaranteed. It further contended that, in any event, its measures were justified under Article 15 of the Convention ².

The Commission will now examine the above allegations irrespective of the question of the applicability of Article 15.

241. The first three applicant Government's further allegations under Article 7 of the Convention and Article 1 of the First Protocol will be examined in Chapter III and those under Article 3 of the Convention in Chapter IV of the present Report.

242. With regard to its establishment of the facts under Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 3 of the Protocol, the Commission recalls³ that, by letters of 12th March, 1st May and 21st May, 1969, the respondent Government was invited to submit the complete text of the emergency legislation in force in Greece, insofar as it affects the rights guaranteed in the above Articles. However, it will be seen below⁴ that, with regard to most of these Articles, the information received from the respondent Government is incomplete.

¹ Paragraphs 40, 43 and 49.

² Paragraphs 44, 47 (Nos. 5 and 6) and 49 above.

³ Cf. paragraph 80 above (footnote).

⁴ See paragraphs 264, 315 (footnote 159), 361 (footnote 251) and 362 (footnote 253) below.

B.

Deprivation of liberty in relation to Article 5 of the Convention

I. SUBMISSIONS OF THE PARTIES

1. *Applicant Governments*

243. The applicant Governments stated generally that, by certain legislative measures and administrative practices, the respondent Government had in various respects violated Article 5 of the Convention which guaranteed to everyone the right to liberty and security of person.⁵

244. They submitted in particular that the respondent Government had, on 21st April, 1967, suspended Article 5 of the Greek Constitution of 1952 which corresponded in substance to Article 5 of the Convention.⁶ With regard to the new Constitution of 1968, they stated that its Article 10 concerning the right to liberty and security of person had not yet entered into force.⁷

245. The applicant Governments further referred to the administrative practice of the respondent Government and submitted that Article 5, *paragraph (1)*, of the Convention was violated by:

- (1) detention under administrative order;⁸
- (2) transfer and confinement to certain localities;⁹ and
- (3) house arrest.¹⁰

They also stated that the freedom of many persons was restricted by close police supervision.¹¹

246. The applicant Governments further considered that the Greek authorities violated Article 5, *paragraph (1)*, by applying unnecessarily

⁵ Hearing of June 1969, p. 28.

⁶ Applications of 20th and 27th September, 1967, part II; memorial of 25th March, 1968, pp. 15-17; hearing of September 1968, p. 62; hearing of June 1969, pp. 12-13, see also paragraphs 30-31 above.

⁷ Hearing of June 1969, page 15.

⁸ (Scandinavian) Memorial of 25th March, 1968, pp. 18-20; Netherlands memorial of 25th March, 1968, pp. 3-4; hearing of September 1968, pp. 62 *et seq.*; hearing of June 1969, pp. 14 *et seq.*

⁹ Hearing of June 1969, pp. 20-21, 29.

¹⁰ *Ibid.* pp. 21-22, 29.

¹¹ *Ibid.* pp. 22-23.

harsh methods when effecting arrests or taking other measures affecting the right to liberty and security of person¹².

247. They submitted that Article 5, *paragraph (2)*, had been violated in a considerable number of cases where persons arrested had not been informed of the reasons for their arrest nor of any charge against them¹³.

248. With regard to Article 5, *paragraph (3)*, the applicant Governments stated that this provision was violated by the Greek authorities in the case of:

- (1) persons detained under administrative order, in that such persons were never brought before a judge or judicial officer nor brought to trial¹⁴;
- (2) persons arrested on suspicion of having committed offences against national security, in that such persons were not brought before a judge in connection with their arrest¹⁵.

With regard to the latter group, the applicant Governments observed that, under the Law on the State of Siege, the length of detention pending trial was "not restricted by any law"¹⁶. This was illustrated by a document indicating the length of such detention in 144 cases¹⁷.

249. The applicant Governments further submitted, both with regard to persons arrested under the Law on the State of Siege and detained pending trial, and in respect of persons detained under administrative order, that there was a violation of Article 5, *paragraph (4)*, of the Convention, in that such persons were deprived of the right to take proceedings by which the lawfulness of their detention could be decided speedily by a court and their release ordered if their detention was not lawful¹⁸.

250. Finally, the applicant Governments referred to the right to compensation mentioned in Article 5, *paragraph 5*, of the Convention and observed that, while the corresponding provisions of the 1952 Constitution had been suspended on 21st April, 1967, the corresponding provision of the 1968 Constitution was not yet in force¹⁹.

¹² Hearing of June 1969, pp. 24–26, 29.

¹³ *Ibid.* pp. 26–27, 29–30.

¹⁴ Netherlands memorial of 25th March, 1968, p. 4; hearing of September 1968, p. 70; hearing of June 1969, p. 30.

¹⁵ Hearing of June 1969, p. 30.

¹⁶ *Ibid.* p. 13.

¹⁷ Document I submitted to the President of the Sub-Commission by the witness, Mr. Papagiannakis – hearing of March 1969, Vol. IV, pp. 1127–1133 (1131).

¹⁸ Hearing of September 1968, p. 70; hearing of June 1969, pp. 27–28, 30–31.

¹⁹ Hearing of September 1968, p. 70; hearing of June 1969, p. 31.

2. Respondent Government

251. The respondent Government denied that there had been any violation of the right to liberty and security of person laid down in Article 5 of the Convention²⁰. Alternatively, it stated that it had validly derogated from Article 5 in accordance with Article 15 of the Convention²¹.

252. It submitted that the military authorities, in the exercise of their powers under the Law on the State of Siege, had always observed the formal requirements of Article 5 of the Constitution of 1952 when arresting persons who had committed criminal offences²².

253. With regard to persons detained under administrative orders, the respondent Government stated that the system of administrative detention, which was substantially based on legislation enacted before 21st April, 1967, was designed to protect the democratic order against Communism²³. It had been found to be in conformity with the Constitution of 1952²⁴ and never been contested before the Commission.²⁵

The Government pointed out that the persons at present detained were Communists, who presented a danger to public order and security. Most of them had been convicted before 21st April, 1967, on such charges as murder or espionage and been sentenced to death or long terms of imprisonment²⁶.

II. EVIDENCE BEFORE THE COMMISSION

1. Witnesses

254. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 5 of the Convention:

²⁰ Memorial of 6th July, 1968, p. 15.

²¹ *Ibid.* p. 14.

²² *Ibid.* p. 10

²³ Memorial of 6th July, 1968, pp. 10-11; hearing of September 1968, p. 185.

²⁴ Memorial of 6th July, 1968, p. 12. hearing of September 1968, pp. 185-186.

²⁵ Memorial of 6th July, 1968, p. 13.

²⁶ *Ibid.* p. 10. According to the respondent Government's letter of 29th April, 1968 (paragraph 2 b - see Appendix IV to this Report), 697 of the 2,437 persons detained at that date had previously been sentenced for committing murder, espionage or sabotage. See also the Government's letter of 17th April, 1968.

Philippos Anghelis²⁷
 Catherine Arseni²⁸
 Nikolaos Bakopoulos²⁹
 Panayotis Kanellopoulos³⁰
 Sotirios Kouvas³¹
 André Lambert³²
 Vasilios Lambrou³³
 Andreas Lendakis³⁴
 Dionysios Livanos³⁵
 Constantinos Meletis³⁶
 Constantinos Mitsotakis³⁷
 Christos Papangiannakis³⁸
 Andreas Papandreou³⁹
 Constantinos Papaspyropoulos⁴⁰
 Georgios Rallis⁴¹
 Eleftherios Veryvakis⁴²
 Christos Yotopoulos⁴³

Some of the above witnesses had originally been called under Article 3 of the Convention and a number of further witnesses heard under Article 3 have also given evidence concerning Article 5⁴⁴.

2. Documents

255. With regard to the applicant Governments' allegations under Article 5 of the Convention, the Sub-Commission has received a number of documents which are listed at Appendix XII to this Report.⁴⁵

²⁷ Hearing of March 1969, Vol. I, p. 788.

²⁸ Hearing of November, 1968, Vol. I, pp. 137 *et seq.*

²⁹ Hearing of March 1969, Vol. II, p. 665.

³⁰ *Ibid.* Vol. I, pp. 8-11, 13-14, 55.

³¹ *Ibid.* Vol. II, pp. 528 *et seq.*

³² Hearing of November 1968, Vol. II, pp. 383-385.

³³ Hearing of March 1969, Vol. I, p. 140.

³⁴ Hearing of March 1969, Vol. I, p. 256, and Vol. IV, p. 987.

³⁵ *Ibid.* Vol. II, pp. 586, 594-595, 600-602.

³⁶ Hearing of November 1968, Vol. I, pp. 175 *et seq.*

³⁷ *Ibid.* Vol. II, p. 510, and hearing of December, 1968, Vol. I, pp. 60, 62-63.

³⁸ Hearing of March 1969, Vol. II, pp. 436-439, 444.

³⁹ Hearing of November 1968, Vol. I, pp. 9, 24, 28.

⁴⁰ Hearing of March 1969, Vol. II, pp. 626 *et seq.*, 639, 640.

⁴¹ *Ibid.* Vol. I, pp. 55, 56.

⁴² *Ibid.* Vol. II, pp. 708 *et seq.*, 722-723.

⁴³ *Ibid.* Vol. II, pp. 503-504.

⁴⁴ See Chapter IV of this Report.

⁴⁵ [Not reproduced.]

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

1. *The suspension of constitutional provisions concerning the right to liberty and security of person*(a) *Constitution of 1952*

256. *Article 5* of the Greek Constitution of 1952 provided (46):

“With the exception of persons taken in the act of committing an offence, no one shall be arrested or imprisoned without a judicial warrant stating the reasons which must be served at the moment of arrest or imprisonment pending trial. Any person taken in the act or arrested on the basis of a warrant of arrest shall without delay be brought before the competent examining magistrate within twenty-four hours of his arrest at the latest, or, if the arrest was made beyond the seat of the examining magistrate, within the time absolutely necessary for his conveyance. Within at the most three days from such appearance, the examining magistrate must either release the person arrested or deliver a warrant for his imprisonment. This time-limit shall be extended for up to five days at the request of the person arrested or in the event of force majeure, which shall be certified forthwith by a decision of the competent judicial council.

Should both these time-limits expire without such action, every jailer or other officer, civil or military, charged with the detention of the person arrested shall release him forthwith. Transgressors of the above provisions shall be punished for illegal confinement and shall be obliged to make good any loss sustained by the injured party and further to give satisfaction to said party by such sum of money as the law provides.

The maximum term of imprisonment pending trial, as well the conditions under which the State shall indemnify persons unjustly imprisoned pending trial or sentenced, shall be determined by law.”

257. The above constitutional provisions were suspended by *Royal Decree No. 280* of 21st April, 1967.⁴⁷

(b) *Constitution of 1968*

258. *Article 10* of the new Greek Constitution of 1968 provides:⁴⁸

“1. With the exception of persons caught in the act of committing an offence, no one shall be arrested or imprisoned without a judicial

⁴⁶ As reproduced in Annex A of the Netherlands application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the Report. [Not reproduced.]

⁴⁷ See paragraphs 63 and 65 above.

⁴⁸ English translation submitted by the respondent Government.

warrant stating the reasons, which must be served at the time of arrest or remand in custody pending trial.

2. The person caught in the act or held on a warrant of arrest is brought before the competent examining magistrate not later than 24 hours from the time of the arrest, and if the arrest is made beyond the seat of the examining magistrate, then within the absolutely necessary time for his conveyance before said magistrate. Within three days of the time of presentation, the examining magistrate is obliged to either release the person arrested or deliver a warrant for his imprisonment. This delay can be extended by two more days at the request of the person arrested in the event of force majeure which must be certified forthwith by a decision of the competent judicial council.

3. Should both the aforementioned delays expire without any action, every jailer or other officer, whether civil or military, in charge of the arrested person, must release him forthwith. The violator of the above provisions shall be punished for illegal confinement and shall be obliged to make good all damages sustained by the injured party and, in addition, to give satisfaction to said party by such a sum of money as the law provides.

4. The law provides that the maximum term of custody pending trial cannot exceed one year for criminal charges and six months for misdemeanour charges. In completely exceptional cases these maximum time limits can be further extended by six and three months respectively, through decision of the competent judicial council.

5. The law defines the conditions under which, through judicial decision, the State indemnifies those unjustly imprisoned or convicted.”

259. The above Article 10 of the new Constitution is not yet in force. The entry into force of the provisions of this Constitution is regulated in *Article 138* which states as follows:⁴⁹

“The present Constitution, after its approval by the Greek people through Referendum, signed by the Council of Ministers and published in the Government Gazette, comes into immediate effect, with the exception of the provisions of Articles 10, 12, 13, paragraph 1, 14, paragraphs 1–3, 18, 19, 25, paragraphs 2–3, 58, paragraphs 1–2, 60, 111, 112, 121, paragraph 2, which provisions the National Revolutionary Government is authorised to place into effect through acts published in the Government Gazette.”

The Constitution was signed by the Council of Ministers on 14th

⁴⁹ English translation submitted by the respondent Government.

September⁵⁰ and approved by Referendum on 29th September, 1968⁵¹. With the exception of Article 10 and the other provisions mentioned in Article 138, it entered into force on 15th November, 1968⁵².

260. By letter of 4th October, 1969⁵³, the respondent Government informed the Secretary General of the Council of Europe that it had taken the following measure "relating to the maintenance of internal law and order": "Liberty of the individual. Personal liberty shall be inviolable. No one shall be arrested, imprisoned or detained in any other way without a guarantee of constitutional forms and procedures. These measures shall not apply to persons charged with crimes against public order and security, who may be arrested without these formalities when the need justifies it." This information, which arrived after the adoption of the Sub-Commission's report (4th October, 1969), has not been taken into account by the Commission in its opinion set out under IV below⁵⁴.

2. Legislation concerning deprivation of liberty

(a) Law on the State of Siege

261. A state of siege was declared in Greece by Royal Decree No. 280 of 21st April⁵⁵ and maintained by Constitutional Act Beta of 5th May, 1967⁵⁶.

262. According to Article 9, paragraph (d), of the Law on the State of Siege, the military authorities may "effect arrests even without the formalities stipulated in Article 5 of the Constitution" of 1952⁵⁷.

263. An official announcement of 24th April, 1967, stated that, under the Law on the State of Siege:⁵⁸

"(1) The arrest and imprisonment of any person is allowed without the observance of normal procedure; that is to say without any

⁵⁰ See the document "Constitution of Greece - Text Submitted to the Greek People for Referendum on 29th September, 1968", p. 56 (filed by the respondent Government).

⁵¹ See the document "Constitution of Greece - Approved by Referendum on 29th September, 1968 - in effect as of 15th November, 1968" (submitted by the respondent Government).

⁵² *Ibid.*

⁵³ [The full text of this letter has been reproduced in Vol. XII at p. 52 of this Yearbook.]

⁵⁴ Cf. also paragraph 5 above.

⁵⁵ See paragraphs 63 and 65 above.

⁵⁶ Article 1 of the Act - see Appendix XVIII of this Report (Constitutional Acts submitted by the respondent Government). Constitutional Act Beta remained in force under Article 136, paragraph 2, of the 1968 Constitution.

⁵⁷ Memorial of 6th July, 1968, p. 10.

⁵⁸ English translation submitted by the applicant Governments of Denmark, Norway and Sweden - memorial of 25th March, 1968, Vol. II, p. 8.

order from a competent authority and without that person being caught in the act of carrying out a crime. Length of imprisonment before trial is not restricted by any law.

(2). Concerning political crimes, release on bail is prohibited, and imprisonment is not subject to any law.”

(b) Detention under administrative order

264. This detention is ordered by Committees of Public Safety in the case of persons considered dangerous to public order and security.⁵⁹ It is based on a Legislative Decree of 1924 and subsequent legislation, including Emergency Act No. 165 of 16th October, 1967,⁶⁰ Legislative Decree No. 11 of 28th November, 1968,⁶¹ and Legislative Decree No. 188 of 14th/15th May, 1969. The complete text of this legislation has not been submitted to the Commission but English translations have been filed of Emergency Act No. 165⁶² and of Legislative Decree No. 188.⁶³

265. From the parties' submissions⁶⁴ and the text of Emergency Act No. 165, it appears that the Committees of Public Safety are at present composed of the Prefect, the Public Prosecutor at the Court of first instance and the Commander of the Gendarmerie or Superintendent of Police. The Committees may order the detention and also decide that detention shall continue, but not for more than one year at a time.

266. Article 4 of the Emergency Act No. 165 states that the detention of persons who attempt to disturb the public order and security and the peace of the country shall be ordered jointly by the Minister of Justice and Minister of Public Order.

267. Article 3 of Emergency Act No. 165 provides that appeals may be lodged with the Minister of Public Order against decisions of the Committees of Public Safety and that the Minister's decision is "final".

268. This situation has recently been modified by Legislative Decree No. 188 of 14th/15th May, 1969, concerning the re-examination of the

⁵⁹ Memorial of 6th July, 1968, pp. 10, 12.

⁶⁰ On p. 11 of its memorial of 6th July, 1968, the respondent Government lists 15 Acts and Decrees.

⁶¹ Hearing of June 1969, p. 16.

⁶² (Scandinavian) Memorial of 25th March, 1968, Vol. II, pp. 10-11.

⁶³ Doc. D 31.218 of the Council of Europe (submitted under cover of the respondent Government's letter No. 1334 of 30th May, 1969). See also the Government's letter No. 1006 of 23rd April, 1969, to the Secretary General of the Council of Europe, paragraph B - see Appendix IV to this Report - and paragraph 242 above.

⁶⁴ Memorial of 6th July, 1968, p. 12; hearing of June 1969, p. 14. [Reproduced in this Yearbook, Vol. XII, p. 40f.]

cases of persons subjected to administrative detention since 21st April, 1967.⁶⁵ According to Article 2 of the Decree, an *ex officio* examination of these cases is to be carried out by a Committee of three judges or three Public Prosecutors appointed by the Minister of Justice. The Committee "is obliged to take into consideration every element which is useful or helpful in enlightening the individual case", in particular:

- the facts on which the detention order was based;
- the facts submitted by the "accused";
- the nature of the act for which his detention was ordered;
- "the penal situation and his conduct" in the detention place.

Before deciding whether the detention is to continue or whether it should be limited or suspended, the Committee must also evaluate:

- "the future conduct" of the detained person "when liberated", and
- "the risks incurred by the public order and security" in the case of his release.

The Committee may, "if it considers it necessary, proceed to the personal examination" of the detained person at the place of his detention. Priority is to be given to cases of women with children under age, women whose husbands are also displaced, persons suffering from severe chronic diseases, war invalides and persons over 65 years of age. Anyone who, after his release, "repeats" an act for which the law provides "the penalty" of detention is to be rearrested (Article 3 of the Decree).

3. Practice concerning deprivation of liberty

(a) Arrest

269. Evidence has been given to the Sub-Commission with regard to the manner in which arrests are ordered and effected by authorities of the respondent Government.

270. The witness Lambrou, Police Inspector in charge of the Department of Anti-Communist Activities in the Athens General Security Service,⁶⁶ has stated that "arrests are made on our own initiative. I, and those under me, do not wait for orders from anyone. If I decide to make an arrest I do not expect an order from anyone, because this is what the laws in force provide for . . . I just apply the laws which deal with public security. Any person irrespective of his political beliefs can be arrested if he breaks the law concerning national security."⁶⁷

⁶⁵ An English translation of this Decree was submitted by the respondent Government under cover of its letter No. 1334 of 30th May, 1969 - see Documents D 31.216 and D 31.218 of the Council of Europe.

⁶⁶ Hearing of March 1969, Vol. I, pp. 136, 137.

⁶⁷ *Ibid.* pp. 140, 167.

271. As regards arrests ordered by the Committees of Public Safety for purposes of administrative detention, the witness Papaspyropoulos, Director of the Athens General Security Service,⁶⁸ has stated:

“To this Committee, police authorities send their proposals as to the dangerousness of the person together with concrete evidence of his activity or the danger the State runs from his activity. And the decision is also carried out through the police authorities.”⁶⁹

272. The witness Kouvas, Police Inspector in charge of the Intelligence Service in the Piraeus Security Service,⁷⁰ stated that such arrests “did not take place following interrogation. That is, we already have all the particulars that have been collected from files compiled by persons who are not Communists but have watched these Communists and followed them etc. These files are formed without an investigation taking place, and are submitted to the Committee of Public Safety. And then the Public Prosecutor, after discussion, decides . . . We make a proposal but the Public Prosecutor does not have to accept our proposal.”⁷¹

273. The witness Papaspyropoulos admitted that, “on the first day of the Revolution, arrests were made without this formal procedure”. He added that, subsequently, commissions were sent to the detention places and each detainee “could present his case before them. Many, very many thousands . . ., if I am not mistaken, were released as a result of the revision carried out by these commissions.”⁷²

274. A number of witnesses have described to the Sub-Commission the manner in which arrests were carried out by officers of the police or armed forces of the respondent Government. Some of this evidence raises questions of ill-treatment and will be considered in connection with Article 3 of the Convention.⁷³ Apart from that it also appears from the statements made, in particular, by the witnesses MM. Bakopoulos⁷⁴, Livanos⁷⁵ and Rallis⁷⁶, that, in many cases, persons arrested and detained were not informed of the reasons for their arrest. As a general rule, “arrests are made at night because people are out during the day.”⁷⁷

⁶⁸ *Ibid.* Vol. II, p. 626.

⁶⁹ *Ibid.* p. 640.

⁷⁰ *Ibid.* p. 528.

⁷¹ *Ibid.* p. 531.

⁷² Hearing of March, 1969, Vol. II, p. 641. It also appears from evidence given before the Sub-Commission that in several cases persons were kept in detention although the period for which their detention was ordered had expired – see hearing of March 1969, Vol. I, p. 256, and Vol. IV, p. 987 (witness Lendakis).

⁷³ See Chapter IV of this Report.

⁷⁴ Hearing of March 1969, Vol. II, p. 665.

⁷⁵ *Ibid.* pp. 594–595, 601.

⁷⁶ *Ibid.* Vol. I, p. 55.

⁷⁷ Witness Lambrou, *ibid.* p. 142.

(b) Detention under administrative order

275. The witness Papaspyropoulos, Director of the Athens General Security Service, has submitted to the Sub-Commission a chart showing the number of persons detained under administrative order between 1st January, 1950, and 8th March, 1969.⁷⁸ According to this document, the number of detainees was on 1st January

in 1950	2,815
in 1951	2,727
in 1952	1,342
in 1953	1,026
in 1954	994
in 1955	833
in 1956	653
in 1957	547
in 1958	399
in 1959	319
in 1960	304
in 1961	247
in 1962	158
in 1963	0
in 1964	0
in 1965	0
in 1966 (and on 20th April, 1967)	0

276. The same indications are contained in a document submitted by the respondent Government, as regards persons detained "for reasons of national security (Communists-anarchists)".⁷⁹ This document further states that the number of persons detained "for reasons of public security" was in:⁸⁰

	(Detained under a decision of EDAN ⁸¹)	(Detained under court order)
1951	128	6
1952	63	5
1953	163	8
1954	153	18
1955	135	13
1956	75	14

⁷⁸ Hearing of March 1969, Vol. II, p. 638, and Vol. IV, p. 997.

⁷⁹ Memorial of 6th July, 1968, Annex 7 (the number given for 1961 is 304, but this appears to be a typing mistake).

⁸⁰ The figures given on p. 13 of the memorial of 6th July, 1968, comprise the two groups of detainees mentioned in paragraphs 275 and 276.

⁸¹ The meaning of this abbreviation has not been indicated by the Government.

1957	119	18
1958	133	11
1959	62	11
1960	55	19
1961	47	84
1962	113	63
1963	74	62
1964	32	28
1965	35	28
1966	30	23
1967 (21-4-67)	21	7

277. The further development as regards persons detained under administrative order has been indicated to the Commission as follows:

after 21st April, 1967	6,848 ⁸²	6,844 ⁸³	6,338 ⁸⁴
on 1st January, 1968		2,625 ⁸⁵	
on 2nd July, 1968		2,305 ⁸⁶	
on 1st January, 1969		1,889 ⁸⁷	
on 8th March, 1969		1,875 ⁸⁸	

278. A further document submitted by the witness Papaspyropoulos ⁸⁹ gives the following details with regard to the place of detention of the 1874 persons who were detained on 13th March, 1969:

1. Camp of Partheni on Leros		
a. Present in the camp	Men	379
b. In hospital etc.	„	50
		<hr/>
c. Total	Men	429

⁸² Letter of 29th April, 1968, from the respondent Government, paragraph 2(a) – see Appendix IV to this Report. [The full text of this letter has been reproduced in Vol. XI at p. 10.]

⁸³ Memorial of 6th July, 1968, Annex 5.

⁸⁴ Chart submitted by Mr. Papaspyropoulos – cf. paragraph 275 above.

⁸⁵ *Ibid.*

⁸⁶ Memorial of 6th July, 1968, Annex 6.

⁸⁷ Chart submitted by Mr. Papaspyropoulos.

⁸⁸ *Ibid.* By several communications under Article 15, paragraph (3) of the Convention, the respondent Government informed the Secretary General of the Council of Europe of the release of political prisoners – cf. Appendix IV to this Report. Three of these communications (letters of 6th October, 7th October and 3rd November, 1969, concerning respectively the release of 100 persons, 18 persons and 48 persons) arrived after the adoption of the Sub-Commission's report (4th October, 1969) and have not been taken into account by the Commission in its opinion set out under IV below (cf. also paragraph 5 above).

⁸⁹ Hearing of March 1969, Vol. I, p. 638, and Vol. IV, p. 996. For a similar chart concerning the situation on 2nd July, 1968, see memorial of 6th July, 1968, Annex 6.

2. Camp of Lakki on Leros		
a. Present in the camp	Men	1144
b. In hospital etc.	„	71
c. Total	Men	1215
3. Camp of Skala at Oropos		
a. Present in the camp	Men	89
b. In hospitals etc.	„	9
Total	Men	98
4. Camp of Halikarnassos		
a. Present in the camp	Women	128
b. In hospitals etc.	„	4
c. Total	Women	132
General Total		1874

279. Evidence has been given before the Sub-Commission as to the living conditions of detainees in the above places. This will be considered under Article 3 of the Convention⁹⁰.

(c) *Transfer and confinement to certain localities*

280. This form of deprivation of liberty, which is not connected with detention in a camp, has been described by various witnesses before the Sub-Commission, in particular MM. Bakopoulos, Livanos and A. Papan-dreou.

281. Mr. Livanos stated that he was sent to Parga, a village in Epirus, where he lived under surveillance and had to go to the police station twice a day to sign a paper that he was present. He was not permitted to speak to persons from outside the village: "When I saw a friend of mine they didn't allow me to talk to him. There were other persons . . . to whom I was not allowed to say even 'good morning' ". His wife was with him and after a while his son was brought along. "I cannot say that my exile was severe, except financially . . . I had to rent a room in a hotel and to bring my baby along with me, but apart from this there was no . . . comparison with what happened to me previously".⁹¹

⁹⁰ See Chapter IV of the Report.

⁹¹ Hearing of March 1969, Vol. II, pp. 601-602. The witness Papaspyropoulos, apparently referring not only to persons detained under administrative order but also to persons transferred and confined to certain localities, stated that "the expenses of the journey as well as the board and lodging expenses are paid by the State" - *ibid.* p. 650.

282. Evidence given by the witnesses Bakopoulos⁹² and Andreas Papandreou⁹³, as well as a document submitted by the respondent Government⁹⁴ concerns some former deputies of the Centre Union Party who were transferred to the island Hagios Efetratios. These cases also raise questions which will be considered in connection with Article 3 of the Convention⁹⁵.

(d) *House arrest*

283. House arrest has been imposed by the respondent Government on a number of former politicians and/or their families. Former Prime Minister Kanellopoulos has described to the Sub-Commission the different periods of his house arrests in 1967 and 1968⁹⁶. Evidence concerning the house arrest of former Prime Minister Georgios Papandreou has been given by his son, Andreas Papandreou⁹⁷, and former Minister Mitsotakis has spoken of his house arrest and the subsequent confinement to their house of his wife and children⁹⁸.

It appears from this evidence that there were different degrees of house arrest; that, in general, the persons under house arrest were observed by the police and that their normal means of communication were interrupted or reduced to a minimum; but that, in most cases, this form of deprivation of liberty was less severe than imprisonment, detention at a camp or transfer and confinement to other localities.

IV. OPINION OF THE COMMISSION⁹⁹

284. The Commission observes¹⁰⁰ that Article 5 of the 1952 Constitution and Article 10 of the 1968 Constitution embody in effect particular provisions of Article 5 of the Convention. It follows that the suspension of the first constitutional provision until 15th November, 1968, and the continuing non-enforcement of the second since that date, together with the application of the other emergency legislation enacted since 21st April, 1967, constitute breaches of Article 5 of the Convention. The Commission is not called upon to examine whether the legislation and practice before 21st April, 1967, were in accordance with the Convention.

285. The practice followed in the deprivation of liberty in Greece on and after 21st April, 1967, is contrary to Article 5 in the following ways:

⁹² Hearing of March 1969, Vol. II, p. 665.

⁹³ Hearing of November 1968, Vol. I, pp. 24–25.

⁹⁴ Letter No. 652 of 28th February, 1969, Annex 36.

⁹⁵ See Chapter IV of this Report (Volume II).

⁹⁶ Hearing of March 1969, Vol. I, pp. 8–9.

⁹⁷ Hearing of November 1968, Vol. I, p. 28.

⁹⁸ *Ibid.* Vol. II, p. 510, and hearing of December 1968, Vol. I, p. 62.

⁹⁹ Paragraphs 284–287 were adopted by a majority of ten members.

¹⁰⁰ Cf. paragraphs 257–260 above.

- (1) Detention under administrative order of persons considered dangerous to public order and security, in accordance with the legislation described above¹⁰¹, is contrary to Article 5 of the Convention, since it is a deprivation of liberty which does not correspond with any of the categories of deprivation of liberty permitted by paragraph (1) and, in particular, does not satisfy the requirements of sub-paragraph (c), read together with paragraph (3) of this Article.
- (2) The possibility of appeal against decisions of the Committees of Public Safety only to the Minister of Public Order does not satisfy the requirement of Article 5, paragraph (4), that the lawfulness of detention shall be determined by a court. The procedure recently made available under Decree No. 188 of 14th/15th May, 1969¹⁰², is also not consistent with the provisions of Article 5, paragraph (4), of the Convention, since the Committees to be established under the Decree are not courts and the decision to continue, limit or suspend detention is discretionary.
- (3) The use of house arrest by the respondent Government as described above, where confinement to the premises is virtually complete¹⁰³, does not correspond with any of the categories of deprivation of liberty permitted by Article 5, paragraph (1), of the Convention.

286. The Commission will consider the manner and circumstances in which arrests have been carried out, in execution of the legislation already described, under Article 3¹⁰⁴ and Article 8¹⁰⁵ of the Convention.

287. The Commission would add with respect to Article 15 of the Convention that the forms of deprivation of liberty, as already described, could not be regarded as "strictly required by the exigencies of the situation", even if it were to be said that there has been a continuing public emergency threatening the life of the Greek nation since 21st April, 1967. This is demonstrated in two ways:

- (1) While the security police continues to make arrests from time to time, over two-thirds of the persons arrested under administrative order soon after 21st April, 1967, have been released, and many persons convicted of offences have been amnestied.
- (2) Review by the Court of Appeal has been made possible of convictions by courts martial for offences not affecting national security or public order¹⁰⁶.

¹⁰¹ Paragraphs 264-267.

¹⁰² See paragraph 268 above.

¹⁰³ As in the cases of Kanellopoulos and Georgios Papandrou - cf. paragraph 283 above.

¹⁰⁴ See Chapter IV of the Report.

¹⁰⁵ See Section D below.

¹⁰⁶ See paragraph 306 below.

In these circumstances, where the security police and courts are able without difficulty or interference to perform their appointed functions, the Commission cannot find that deprivation of liberty without respect for the limiting conditions set out in Article 5 of the Convention is strictly required by the exigencies of the situation, even if it were to be said that there has been a continuing public emergency threatening the life of the Greek nation since 21st April, 1967.

V. OPINION OF MR. DELAHAYE

288. When a nation is in danger from within or abroad one of the first steps taken by the government is as a rule to arrest the suspected persons.

Such arrests are carried out administratively by various police forces.

We are here concerned with the execution of urgent measures directed not against persons known to be guilty but against suspects. Lists have often been drawn up in advance; the police forces often arrest persons known to them rightly or wrongly as suspects; often again, when a particular party is considered to be dangerous and a list of its members are found, everyone on the list is arrested.

Even in the case of persons accused of offences, the usual guarantees provided by the ordinary court are not observed. The usual procedure in such cases is to establish courts martial or to extend their jurisdiction.

This practice, which is found to almost the same extent in all countries in time of war, is in itself contrary to Article 5 of the Convention but can be justified by the exigencies of the moment under Article 15.

When, as in the present case, the courts martial are progressively abolished or their decisions submitted to one of the higher ordinary courts, many of the persons convicted have been amnestied and more than two-thirds of the suspects released and such releases are being continued, this may be interpreted as a sign that the arrests were not purely arbitrary but appeared essential at the time of the coup d'état and the period immediately following it.

C.

Article 6 of the Convention

I. SUBMISSIONS OF THE PARTIES

1. *Applicant Governments*

289. The applicant Governments submitted that the respondent Government had in various respects violated Article 6 of the Convention which provides that, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a "fair

hearing within a reasonable time by an independent and impartial tribunal established by law". In particular, the respondent Government:

- (1) had on 21st April, 1967, suspended Articles 5, 6 and 8 of the Greek Constitution of 1952 which in part corresponded to Article 6 of the Convention¹⁰⁷;
- (2) was in breach of Article 6 of the Convention by:
 - (a) establishing extraordinary courts martial¹⁰⁸, and
 - (b) interfering with the independence of the judiciary¹⁰⁹.
Reference was made in this connection to the temporary suspension of the judges' tenure of office by Constitutional Act "Kappa Delta" of 28th May, 1968, and the subsequent dismissal of thirty judicial officers by the respondent Government¹¹⁰ and, further, to the recent conflict between the Government and the Council of State which had annulled the dismissal of some of these officers¹¹¹;
- (3) was in breach of Article 6, paragraphs (1) and (3), of the Convention, in that:
 - (a) persons charged with political offences had not been given a fair hearing in accordance with paragraph (1), and
 - (b) the minimum rights set out in paragraph (3) had not been observed at their trials¹¹²;
- (4) was in breach of Article 6, paragraphs (1) and (2), in that persons complaining of torture or ill-treatment during detention pending trial were:
 - (a) treated contrary to paragraph (2) of Article 6 as being guilty of defamation of the police without the truth or falsity of their complaints being investigated;
 - (b) convicted without investigation of their complaints, so that the influence of torture or ill-treatment, if it were shown to have taken place, upon any statements or admissions they made during the trial was not taken into account, with the consequence that there was no fair hearing¹¹³.

¹⁰⁷ Memorial of 25th March, 1968, pp. 20-22; hearing of September 1968, p. 75; hearing of June 1969, p. 32.

¹⁰⁸ (Scandinavian) Memorial of 25th March, 1968, p. 21; Netherlands Memorial of 25th March, 1968, pp. 5-6.

¹⁰⁹ Hearing of June 1969, pp. 36, 39-40, 48.

¹¹⁰ *Ibid.*

¹¹¹ Letter of 1st July, 1969, from the Governments of Denmark and Norway; letter of 7th July, 1969, from the Government of Sweden.

¹¹² Hearing of June 1969, pp. 41 *et seq.*

¹¹³ *Ibid.* pp. 40-41, 44-48.

2. Respondent Government

290. The respondent Government denied that there had been any violation of Article 6 of the Convention¹¹⁴ and stated in particular:

- (1) the courts martial were established by law, their hearings were public, and accused persons before them had all the rights laid down in paragraphs (2) and (3) of Article 6¹¹⁵;
- (2) since November 1967, nearly all offences were tried by the ordinary courts and persons convicted by courts martial had been amnestied¹¹⁶;
- (3) Constitutional Act Kappa Delta of 28th May, 1968, suspended the judges' tenure of office for a period of three days. Its object was to improve justice by removing the incapable, those lacking social prestige, and judges with an anti-social activity¹¹⁷. On the basis of the above Act, a limited number of judges were dismissed who, before 21st April, 1967, had committed acts which were incompatible with the exercise of judicial functions¹¹⁸;
- (4) as regards the recent conflict between the Government and the Council of State, this was not a question of interference by the Government in the workings of justice, but of the judiciary taking political action against the Government¹¹⁹. By its decisions of June 1969 ordering the re-instatement of judicial officers dismissed under Constitutional Act "Kappa Delta", the Council had not only transgressed and grossly violated the provisions of this Act, but also disregarded its own decision of March 1969 rejecting the appeal of Mr. Floros, another judge dismissed under the same Act¹²⁰.

II. EVIDENCE BEFORE THE COMMISSION

1. Witnesses

291. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 6 of the Convention:

Philippos Anghelis¹²¹

¹¹⁴ Memorial of 6th July, 1968, p. 22.

¹¹⁵ *Ibid.* p. 21.

¹¹⁶ *Ibid.* pp. 21-22.

¹¹⁷ Letter No. 1876 of 28th August, 1969.

¹¹⁸ Hearing of May 1968, pp. 172-174; memorial of 15th November, 1968, p. 11.

¹¹⁹ Letter No. 1722 of 25th July, 1969.

¹²⁰ Letters No. 1876 of 28th August and No. 1877 of 26th August, 1969.

¹²¹ Hearing of March 1969, Vol. II, pp. 772 *et seq.* (in particular pp. 773-777, 787-788).

Evangelos Averoff¹²²
 Athanasios Georgiou¹²³
 Constantinos Georgopoulos¹²⁴
 Constantinos Kalambokias¹²⁵
 Georgios Kekkos¹²⁶
 Joannis Kritselis¹²⁷
 Antonia Marketakis¹²⁸
 Stylianos Mavromichalis¹²⁹
 Constantinos Mitsotakis¹³⁰
 Christos Papagiannakis¹³¹
 Andreas Toussis¹³²

Some of the above witnesses had originally been called under Article 3 of the Convention and a number of further witnesses heard under Article 3 have also given evidence concerning Article 6.

2. Documents

292. With regard to the applicant Governments' allegations under Article 6 of the Convention, the Sub-Commission has received a number of documents which are listed in Appendix XIII to this Report.¹³³

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

1. *The suspension of constitutional provisions concerning the right to a fair hearing within a reasonable time by an independent and impartial tribunal established by law*

(a) *Constitution of 1952*

293. The full text of *Article 5* of the Greek Constitution of 1952 is reproduced at paragraphs 65 and 256 above.

294. *Article 6* of the Constitution of 1952 provided¹³⁴:

¹²² *Ibid.* Vol. I, p. 92.

¹²³ *Ibid.* Vol. II, pp. 689-691.

¹²⁴ Hearing of December 1968, Vol. II, p. 237.

¹²⁵ Hearing of March 1969, Vol. I, pp. 223-228, 232.

¹²⁶ *Ibid.* Vol. I, pp. 340-341.

¹²⁷ *Ibid.* Vol. II, pp. 753 *et seq.*

¹²⁸ Hearing of November 1968, Vol. I, p. 274.

¹²⁹ Hearing of March 1969, Vol. II, pp. 677-678, 682.

¹³⁰ Hearing of December 1968, Vol. I, pp. 64-65.

¹³¹ Hearing of March 1969, Vol. II, pp. 472-473, and Vol. IV, Doc. No. 38 I (p. 1127).

¹³² *Ibid.* Vol. II, pp. 744 *et seq.*

¹³³ [Not reproduced.]

¹³⁴ As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present report. [Not reproduced.]

“In the case of political offences, the court of misdemeanors may always, on the request of the person detained, allow his release on bail fixed by a judicial order, which shall admit of appeal.

In the case of such offences, imprisonment pending trial shall under no circumstances be extended beyond three months.

Interpretation Clause

The introduction in the future of general or special laws abolishing or restricting the term of imprisonment pending trial or rendering release on bail mandatory for the judge is by no means precluded. It is further understood that the maximum term of three months set in the second paragraph for imprisonment pending trial shall include the duration of both the entire investigation and the procedure before the judicial councils prior to the final hearing”.

295. *Article 8* of the Constitution of 1952 provided¹³⁵:

“No person shall be withdrawn without his consent from the jurisdiction of his lawful judge. The establishment of judicial committees and extraordinary courts under any name whatsoever is prohibited.”

296. The above constitutional provisions were suspended by *Royal Decree No. 280* of 21st April, 1967¹³⁶.

(b) *Constitution of 1968*

297. The full text of *Article 10* of this Constitution is reproduced in paragraph 258 above.

298. *Article 12* of the Constitution of 1968 provides:

“No one shall be removed without his consent from the jurisdiction of the judge assigned to him by law. The establishment of judicial committees or extraordinary courts under any name is prohibited.”¹³⁷

299. The above constitutional provisions have not yet entered into force¹³⁸.

2. *Courts martial*

300. *Royal Decree No. 281* of 21st April, 1967,¹³⁹ established ten extra-

¹³⁵ *Ibid.*

¹³⁶ See paragraphs 63 and 65 above.

¹³⁷ English translation submitted by the respondent Government.

¹³⁸ See paragraph 259 above.

¹³⁹ See the English translation submitted by the first three applicant Governments, memorial of 25th March, 1968, Vol. II, pp. 12-13.

ordinary courts martial. In August 1968 their number was reduced to four¹⁴⁰.

301. The *jurisdiction* of the courts martial is defined in Article 5 of the Law on the State of Siege¹⁴¹:

“The courts martial shall have jurisdiction over all offences against the security of the State, the regime, public peace and order, regardless of the status of the offenders or their accomplices. To the courts martial are also transferred pending cases, unless it is otherwise provided in the Royal Decree declaring a state of siege, which may in general restrict the jurisdiction of the courts martial to a part only of the offences described in this Article.

These provisions shall extend to common crimes directed against persons or property whenever, in the opinion of the military judicial authorities, the security of the place which is in a state of siege is exposed to dangers because of them or when public order is disturbed there.”

302. Article 10 of the Law on the State of Siege further provides that the “disobedience to orders of military authorities, in cases referred to in the previous article, as well as any other order issued within their competence, if it is not considered to be a more serious punishable offence, shall be punished by imprisonment, inflicted by the courts martial”.

303. Finally, Article 2, paragraph 2, of Royal Decree No. 280 of 21st April, 1967,¹⁴² states that the courts martial shall exercise their jurisdiction in accordance with the Law on the State of Siege “and, in particular, in accordance with decisions of the Minister of National Defence”.

304. By an order of the Minister of National Defence of 2nd November, 1967¹⁴³, the jurisdiction of the ordinary courts was partially restored in criminal cases.

305. Article 8 of the Law on the State of Siege provides that there is no *appeal* from decisions of the courts martial¹⁴⁴.

306. According to a recent statement by the respondent Government, persons convicted by court martial after 21st April, 1967, “will be entitled

¹⁴⁰ Witness Kritselis, hearing of March 1969, Vol. II, p. 754.

¹⁴¹ Memorial of 6th July, 1968, Annex 2 (English translation by the Council of Europe).

¹⁴² See paragraph 64 above.

¹⁴³ For the full text of this order see memorial of 6th July, 1968, Annex 8.

¹⁴⁴ This was confirmed by the witness Kritselis – hearing of March 1969, Vol. II, p. 759.

to apply for a re-hearing of their case in the Court of Appeal". This, however, does not apply to persons convicted of "offences against national security and ordre public"¹⁴⁵.

307. It appears from the evidence given by the witnesses Georgiou¹⁴⁶ and Kritselis¹⁴⁷, that the courts martial are normally composed of an ordinary judge as President and four officers of the armed forces without legal training. These officers are appointed by the Public Prosecutor who is a commander of an army corps or division.

308. According to Kritselis, "there have been approximately 6,000 cases . . . before the Courts Martial" and "at least 30% of the decisions were acquittals"¹⁴⁸.

309. By letter of 4th October, 1969, the respondent Government informed the Secretary General of the Council of Europe that it had taken the following measure "relating to the maintenance of internal law and order"¹⁴⁹:

"Henceforward the courts martial will not deal with ordinary law crimes referred to them after 21st April, 1967 but will leave them to the regular criminal courts, with the exception of offences against the following Articles of the Penal Code: Articles 134-135 (high treason), 138 *et seq.* (treason against the nation), 183-185 (insurrection), 190 (disturbing the peace), 191 (publishing false news) and 192 (inciting to disaffection).

Cases pending before the courts martial will be remitted to the regular criminal courts.

The courts martial will in future deal with crimes directed at the security of the State (Article 5 of the Law on the State of Siege, 1912), against the regime as defined by the Constitution and against the public interest and peace, irrespective of the status of the guilty persons."

By a further letter of 16th October, 1969, the respondent Government informed the Secretary General that "in pursuance of the Greek Premier's decision sub No. F 7000/00/25/1334, dated 3rd instant, all extraordinary Military Courts have been abolished"¹⁵⁰.

The information contained in the above letters, which arrived after the adoption of the Sub-Commission's report (4th October, 1969), has not been taken into account by the Commission in its opinion set out under IV below.¹⁵¹

¹⁴⁵ Letter No. 1006 of 23rd April, 1969, from the respondent Government to the Secretary General of the Council of Europe. [This letter has been reproduced in Vol. XII, at p. 40f.]

¹⁴⁶ Hearing of March 1969, Vol. II, pp. 688-691.

¹⁴⁷ *Ibid.* pp. 760-761.

¹⁴⁸ *Ibid.* p. 762.

¹⁴⁹ See Appendix IV to this Report. [Reproduced in Vol. XII, p. 52.]

¹⁵⁰ See Appendix IV to this Report. [The text of this letter is set out in Vol. XII, p. 58.]

¹⁵¹ Cf. also paragraph 5 above.

3. *Action by the Government with regard to the judiciary*

(a) *Dismissal of thirty judicial officers in May 1968*

310. Article 1 of *Constitutional Act "Kappa Delta"* of 28th May, 1968, provided:¹⁵²

"1. Within three days from the publication of the present Official Gazette, the life tenure and permanency of Ordinary Justice administrators under Article 88 of the Constitution¹⁵³ is hereby suspended. They can be dismissed within this delay if:

- (a) for any reason whatsoever they do not possess the moral stature required for exercising their office;
- (b) they are not imbued with healthy social principles, or else, if their general conduct within society or the body of Law cannot be deemed as being compatible with their duties and the dignity of their office, thus resulting in a lowering of their prestige among their colleagues and the public.

2. The dismissal of judicial functionaries referred to in the preceding paragraph will be affected by decision of the Council of Ministers, following an inquiry into the elements of their case, by Royal Decree proposed by it.

3. Dismissals under the present Act are not subject to recourse or plea for annulment before the Council of State, or lawsuit for damages before Ordinary Courts."

311. Under Constitutional Act "Kappa Delta", the President of the Supreme Court, the Attorney General at the Supreme Court and twenty-eight other judicial officers were removed from office by Act No. 94 of the Council of Ministers of 28th May and a Royal Decree of 29th May, 1968¹⁵⁴.

¹⁵² English translation submitted by the respondent Government – cf. Appendix XVIII to this Report.

¹⁵³ Article 88 of the 1952 Constitution stated (English translation by the Council of Europe on the basis of the French translation in the respondent Government's memorial of 15th November, 1968):

"Judges of the Supreme Court and of appeals courts and courts of first instance shall be appointed for life, while prosecutors, assistant prosecutors, justices of the peace, magistrates, clerks and assistant clerks of courts and of offices of prosecutors, notaries, registrars of mortgages and deeds shall be permanent as long as the relevant services exist. Judges appointed for life and judicial officials who are permanent may not be dismissed except by virtue of a judicial decision either in consequence of a criminal conviction or because of disciplinary offences or illness or incompetence, duly certified in such manner as the law prescribes and in accordance with the provisions of Articles 92 and 93. Members of the Supreme Court and presidents and prosecutors of appeals courts shall retire from office on reaching the age of seventy years, and the remaining remunerated judicial functionaries on reaching the age of sixty-five years. Registrars of mortgages and notaries shall retire on reaching the age of seventy-five."

¹⁵⁴ See the respondent Government's letter No. 1983 of 14th November and its memorial of 15th November, 1968, p. 11.

312. With regard to the dismissal of the President of the Supreme Court, Mr. Mavromichalis, and the Attorney General, Mr. Toussis, in May 1968, the respondent Government has submitted two documents dated 1st November, 1968, and entitled "Personal Information Record". There is no indication that these documents were ever brought to the attention of either Mr. Mavromichalis or Mr. Toussis.

313. Mr. Mavromichalis, when heard as a witness by the Sub-Commission, maintained that the suspension of the judges' tenure of office by the respondent Government had shaken the judiciary in its foundations¹⁵⁵.

(b) The conflict between the respondent Government and the Council of State

314. Appeals were lodged with the Council of State by a number of the judicial officers dismissed under Constitutional Act "Kappa Delta". By its decision 503/1969 of 6th/8th March, 1969, the Council rejected the appeal introduced by a former judge of the Supreme Court, Mr. Floros¹⁵⁶. This appellant had, *inter alia*, complained that he had not been heard by the authorities before the decision to dismiss him had been taken. The Council rejected this complaint, stating that the requirement of a hearing "does not rank among the conditions required by the provisions of Constitutional Act 'Kappa Delta' for issuing acts of dismissal under it, which do not have the character of disciplinary sanctions but of unfavourable administrative measures". According to the respondent Government, this decision was taken unanimously¹⁵⁷.

315. By further decisions of June 1969¹⁵⁸, the Council of State accepted the similar appeals lodged by other judicial officers who had also been dismissed under Constitutional Act "Kappa Delta". Referring to a Legislative Decree¹⁵⁹ which had been promulgated on 29th May, 1969, the Council now found that this dismissal must be considered as a disciplinary measure and that, consequently, Constitutional Act "Kappa Delta" must be interpreted as requiring a hearing of the persons concerned. The Council therefore annulled Act No. 94 of the Council of Ministers of 28th May, 1968, and the Royal Decree of 29th May, 1968, insofar as they concerned the dismissal of the above officers. According

¹⁵⁵ Hearing of March 1969, Vol. II, p. 681.

¹⁵⁶ *Ibid.* Vol. IV, pp. 1191-1198.

¹⁵⁷ Letter No. 1876 of 28th August, 1969.

¹⁵⁸ One of these decisions, dated 20th/21st June, has been submitted in French, translation by the respondent Government (letter No. 1877 of 26th August, 1969).

¹⁵⁹ No. 192. The text of this Decree has not been submitted to the Sub-Commission but its origin and contents were described by the applicant Governments (hearing of June 1969, p. 133).

to the respondent Government, this decision of the Council of State was taken "by an extremely feeble majority (11 against 10)"¹⁶⁰.

316. The first three applicant Governments maintain that, following this decision, the President of the Council of State, Mr. Stassinopoulos, was "summarily dismissed" by the respondent Government and that, thereupon, eighteen members of the Council "announced their resignation"¹⁶¹. According to the respondent Government, the President of the Council of State submitted his resignation but immediately withdrew it; the Government, "taking advantage of the resignation, . . . accepted and published it"¹⁶².

4. Evidence concerning particular trials

317. Evidence has been submitted to the Sub-Commission with regard to certain trials before courts martial of persons charged with political offences¹⁶³, in particular:

- (1) the trial of 31 persons in Athens ("Patriotic Front", November 1967);
- (2) the trial of 21 persons, including Notaras, in Athens ("Democratic Defence", July 1968);
- (3) the trial of Panagoulis and 14 other persons (Athens, November 1968);
- (4) the trial of 16 persons in Athens ("Rigas Ferraios", November 1968);
- (5) the trial of 6 persons, including Nestor, in Salonica ("Democratic Defence", November 1968); and
- (6) the trial of 10 persons, including Kallerghi and Petropoulos, in Athens ("Patriotic Front", January 1969).

Certain aspects of this evidence will also be considered by the Commission under Article 3 of the Convention in Chapter IV of the present Report.

318. A general analysis of trials before courts martial, prepared by Mr. Kiritsis, a detained barrister, has also been submitted to the Sub-Commission.¹⁶⁴

¹⁶⁰ Letter No. 1876 of 28th August, 1969.

¹⁶¹ Letters of 1st and 7th July, 1969.

¹⁶² Letter No. 1722 of 25th July, 1969.

¹⁶³ Cf. Appendix XIII to the Report (list of documents). [Not reproduced.]

¹⁶⁴ Document I deposited by the witness, Mr. Papagiannakis, hearing of March 1969, Vol. IV, pp. 1127-1133.

319. As regards the position of counsel for the defence in such trials, the Sub-Commission has heard the evidence of several witnesses and received a number of documents including newspaper reports concerning a statement by the International Commission of Jurists of 17th November, 1967,¹⁶⁵ and a resolution of the Athens Bar Association, which was published on 23rd November, 1967, referring to the "Trial of the 31"¹⁶⁶.

320. The President of the Athens Bar Association, Philip Anghelis, referring to the above resolution, stated before the Sub-Commission:¹⁶⁷

"As President, I took part in the discussion held among the members of the Administrative Board . . . During that discussion, the decision in question was unanimously approved, because the Administrative Board of the Athens Bar Association was able to persuade itself completely of the truth of the matter, on the basis of information received from one of its members. That member had participated in the trial . . . he was Mr. Stylianos Triantafyllou, a lawyer specialising in criminal law, who has attended most trials before the Courts Martial in the capacity of an expert . . . during the Session we thought that, as this was a very serious matter, we should have the opinion of somebody other than a member of the Administrative Board in connection with the restriction or not of their freedom in exercising their functions before the Court Martial. We were informed that one of the 30 lawyers who had acted as Counsel for the accused during that trial was Mr. Stavros Kanellopoulos, another lawyer and a member of our Association. He was a man of socialist tendencies and if he erred on any side it would be on the side of severity, I mean, he might be tempted to exaggerate. We rang him up right away and asked him if there was indeed any truth in what had been published abroad concerning the manner in which these trials were conducted, whether any part of the allegations concerning fear and restrictions during these procedures before the Court Martial was true or not. His answer was . . . 'I am indignant at these rumours, because I participate in these trials myself and I know that I am given complete freedom, even more freedom than I would have in any ordinary criminal court'. He said that because Mr. Stavros Kanellopoulos is a specialist in criminal law."

321. One of the defendants at the above trial, Catherine Arseni, stated before the Sub-Commission that she discussed with her lawyer the ill-treatment she had suffered during her detention pending trial but that she was advised by him not to raise the matter before the court: "He tried to convince me that it was too dangerous for my family to speak

¹⁶⁵ "The Times" of 18th November, 1967 (Annex No. 116 - filed by the first three applicant Governments on 31st May, 1968).

¹⁶⁶ "Eleftheros Kosmos" of 23rd November, 1968. (Annex No. 12 to the respondent Government's memorial of 6th July, 1968.)

¹⁶⁷ Hearing of March 1969, Vol. II, pp. 775-776.

about the torture. Even at the last moment he tried to convince me not to speak about the torture.”¹⁶⁸

322. According to the evidence given before the Sub-Commission by a further witness, Anastasia Tsirka, her lawyer was interrupted and threatened by the Public Prosecutor who asked him if he wanted to be in the place of the accused. The witness also said that, this lawyer was later arrested and that he is now in prison.¹⁶⁹

323. Finally, it is stated in the report by a French lawyer submitted by the applicant Governments¹⁷⁰ and concerning the Panagoulis trial: “Several of the lawyers and in particular those of the accused Panagoulis were not appointed until the Saturday before the trial, i.e. two days before the trial opened. They were not able to interview their clients or examine any of the documents on the file. They therefore appeared before the Court knowing nothing of the case except what they had seen in the papers. For these reasons Panagoulis’ lawyer asked for an adjournment but this was refused by the Court Martial.”

324. As to the arrest and detention of barristers, the President of the Athens Bar Association was not able to give precise indications because “it is practically and virtually impossible for the Association to keep track of all its 7,000 members.”¹⁷¹

IV. OPINION OF THE COMMISSION¹⁷²

325. In its second decision on admissibility¹⁷³, the Commission, having particular regard to the dismissal of thirty judicial officers in May 1968, found that domestic remedies in Greece for complaints alleging torture or ill-treatment of political prisoners by public authorities could not be regarded as effective or sufficient. That courts and other tribunals in Greece are not seen to be independent is further shown by the consequences of the recent decisions of the Council of State, and the status of the extraordinary courts martial. Without entering into the legal basis of the recent decisions of the Council of State, the Commission observes that a dispute arose over these decisions between the Govern-

¹⁶⁸ Hearing of November 1968, Vol. I, p. 150.

¹⁶⁹ Hearing of July 1969, p. 55.

¹⁷⁰ Report by Maître Langlois submitted by the first three applicant Governments as annex to their letter of 28th January, 1969 (English translation by the Council of Europe). Cf. also the court minutes submitted by the respondent Government on 24th June, 1969, Doc. II, p. 3, from which it results that on this occasion the Public Prosecutor accused the defendant of trying to delay the trial and requested and obtained a sentence of 2 years imprisonment against him.

¹⁷¹ Witness Ph. Anghelis, hearing of March 1969, Vol. II, p. 778.

¹⁷² Paragraphs 325–328 were adopted by a majority of 11 members.

¹⁷³ Appendix II to this Report. [Not reproduced.]

ment and the Council of State and was resolved by the resignation¹⁷⁴ or dismissal¹⁷⁵ of the President of the Council of State.

326. Though reduced in number from 10 to 4 in August 1968¹⁷⁶, the extraordinary courts continue to function. The dependence of these courts upon ministerial direction is marked by the fact that their jurisdiction is to be exercised "in accordance with decisions of the Minister of National Defence"¹⁷⁷. Further, the heavy sentences of imprisonment which they have frequently imposed, including life imprisonment,¹⁷⁸ have been in many cases simply annulled by amnesties¹⁷⁹. However humane and just these acts of amnesty may be, they indicate the arbitrary basis on which political offenders are treated. The Commission also observes that the respondent Government, while conceding a right of re-hearing before the Court of Appeal to persons convicted by extraordinary courts martial, has denied it to those convicted of "offences against national security and ordre public"¹⁸⁰.

327. As regards the position of counsel for the defence in trials before courts martial, the Commission refers to paragraphs 319-324 above. It further observes that Georgios B. Mangakis, who served as defence counsel on behalf of a number of persons charged with political offences and was summoned to give evidence before the Sub-Commission, was prevented by the respondent Government from appearing before the Sub-Commission and later arrested¹⁸¹. The investigation by the Sub-Commission of the proceedings before the extraordinary courts martial and the facilities for defence has therefore been limited.

328. The Commission finally refers to its opinion concerning the alleged violation of Article 5 of the Convention¹⁸² and by similar reasoning considers that, even if it be said that there has been a continuing public emergency threatening the life of the Greek nation since 21st

¹⁷⁴ According to the respondent Government - see paragraph 316 above.

¹⁷⁵ According to the first three applicant Governments - see paragraph 316 above.

¹⁷⁶ See paragraph 300 above.

¹⁷⁷ See paragraph 303 above.

¹⁷⁸ See the case of the witness Leloudas (described in Chapter IV below). As to sentences imposed, cf. hearing of March 1969, Vol. IV, pp. 1127-1130 (Doc. I submitted by the witness Papagiannakis).

¹⁷⁹ In its letter of 29th April, 1968, paragraph 3b (reproduced in Appendix IV to this Report), the respondent Government stated: "Most of the persons sentenced by the military tribunals and subsequently imprisoned are already at liberty, persons convicted of political offences . . . having been amnestied on 23rd December, 1967." See also the case of former Minister Averoff (described in paragraph 391 below).

¹⁸⁰ See paragraph 306 above.

¹⁸¹ See Chapter IV below and cf. the Sub-Commission's request of 21st July, 1969, to be informed about the circumstances and reasons of the arrest; no reply has been received to this request.

¹⁸² Paragraph 287 above.

April, 1967, maintenance of extraordinary courts martial, and the denial of a right of re-hearing before the Court of Appeal to offenders against national security or *ordre public*¹⁸³, are not strictly required by the exigencies of the situation.

D.

Article 8 of the Convention

I. SUBMISSION OF THE PARTIES

1. *Applicant Governments*

329. The applicant Governments submitted that, by suspending on 21st April, 1967, Articles 12 and 20 of the Greek Constitution of 1952, the respondent Government had violated the corresponding provisions of Article 8 of the Convention¹⁸⁴. Further, Article 13 of the new Constitution of 1968 concerning the inviolability of the home had not yet entered into force¹⁸⁵.

330. The applicant Governments also referred to the respondent Government's administrative practice in these matters and stated that the right to respect for one's private and family life, home and correspondence had been disregarded in many cases¹⁸⁶.

2. *Respondent Government*

331. The respondent Government denied that there had been any violation of Article 8 of the Convention¹⁸⁷, and submitted in particular that correspondence was not subject to censorship and that house searches were permitted by paragraph (2) of Article 8.

II. EVIDENCE BEFORE THE COMMISSION

1. *Witnesses*

332. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 8 of the Convention:

Georgios Kekkos¹⁸⁸

¹⁸³ Cf. paragraph 306 above.

¹⁸⁴ Memorial of 25th March, 1968, pp. 24-25.

¹⁸⁵ Hearing of June 1969, p. 52.

¹⁸⁶ *Ibid.* pp. 42-54.

¹⁸⁷ Memorial of 6th July, 1968, p. 24.

¹⁸⁸ Hearing of March 1969, Vol. I, p. 342.

Constantinos Mitsotakis¹⁸⁹
 Constantinos Papaspyropoulos¹⁹⁰

A number of further witnesses heard under Article 3 of the Convention have also given evidence involving Article 8¹⁹¹.

2. Documents

333. With regard to the applicant Governments' allegations under Article 8 of the Convention, the Sub-Commission has received a number of documents which are listed at Appendix XIV to this Report¹⁹².

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

1. *The suspension of constitutional provisions concerning the rights guaranteed in Article 8 of the Convention*

(a) *Constitution of 1952*

334. The right to respect for private and family life was not expressly safeguarded by the Greek Constitution of 1952¹⁹³.

335. The right to respect for the home was protected by *Article 12* of the 1952 Constitution which read¹⁹⁴:

"Each man's house is inviolable. No house searches shall be made except when and as the law directs.

Offenders against these provisions shall be punished for abuse of authority and shall be obliged to indemnify fully the injured party and further to give satisfaction to said party by such sum of money as the law provides."

336. The right to respect for correspondence was safeguarded by *Article 20* of the 1952 Constitution which stated¹⁹⁵:

"The secrecy of letters and correspondence by any other medium whatsoever shall be completely inviolable."

337. Articles 12 and 20 of the 1952 Constitution were suspended by *Royal Decree No. 280* of 21st April, 1967¹⁹⁶, but Article 1 of Constitu-

¹⁸⁹ Hearing of December 1968, Vol. I, pp. 61-64.

¹⁹⁰ Hearing of March 1969, Vol. II, pp. 634, 647.

¹⁹¹ See Chapter IV of this Report.

¹⁹² [Not reproduced.]

¹⁹³ Memorial of 6th July, 1968, p. 23.

¹⁹⁴ As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report. [Not reproduced.]

¹⁹⁵ Cf. the above footnote.

¹⁹⁶ See paragraphs 63 and 65 above.

tional Act "Beta" of 5th May, 1967,¹⁹⁷ upheld only the suspension of Article 12 of the 1952 Constitution.

(b) *Constitution of 1968*

338. *Article 13* of the new Greek Constitution of 1968 provides¹⁹⁸:

"1. The home of each person is inviolable. No house search can take place except in a time and manner provided by law.

2. The violators of the above provision shall be punished for violation of the sanctity of the home and shall be obliged to fully indemnify the injured party and to give him further satisfaction through the payment of a monetary sum, as provided by law."

339. *Article 15* of the 1969 Constitution states¹⁹⁹:

"The privacy of letters and of all other means of correspondence is inviolable. Law designates the guarantees under which judicial authority, for reasons of national security and public order or for the ascertaining of abject crimes, is not bound by the inviolability of letters and correspondence."

340. *Article 26* of the 1968 Constitution provides²⁰⁰:

"1. Marriage and the family are under the protection of the State.

2. The parents have the right and duty to raise and educate their children. The State takes measures for the moral, intellectual and patriotic education of minors.

3. Families with many children, war invalids, as well as widows and orphans of those killed in action, shall enjoy the special care of the State."

341. Articles 15 and 26 entered into force on 15th November, 1968, while the entry into force of Article 13, paragraph (1), was delayed by Article 138 of the Constitution²⁰¹. By Constitutional Act "Beta" of 9th April, 1969,²⁰² Article 13 of the Constitution was put into force, but subsequently the respondent Government referred to the preparation of

¹⁹⁷ The Constitutional Acts submitted by the respondent Government are reproduced at Appendix XVIII to this Report.

¹⁹⁸ English translation submitted by the respondent Government.

¹⁹⁹ Translation submitted by the respondent Government.

²⁰⁰ *Ibid.*

²⁰¹ See paragraph 253 above.

²⁰² See Appendix XVIII to this Report. (Constitutional Acts.)

laws which were described as “nécessaires à l’application” of, *inter alia*, this Article²⁰³. Its present status is therefore uncertain²⁰⁴.

2. Further legislation and administrative practice

(a) Right to respect for one’s home

342. As already mentioned²⁰⁵, a state of siege was declared in Greece on 21st April, 1967, and has been maintained since that date. According to Article 9, paragraph (a), of the Law on the State of Siege, the military authorities may “search a house by day or night”²⁰⁶.

343. Entries to peoples’ homes and house searches have frequently been carried out without a warrant²⁰⁷. According to Police Inspector Lambrou, arrests are usually made “at night” because “people are out during the day”²⁰⁸.

(b) Family life

344. In a number of cases the attention of the Commission has been drawn to the effect on the spouses or children of the arrest and detention of political prisoners²⁰⁹.

IV. OPINION OF THE COMMISSION²¹⁰

345. The Commission considers that the suspension from 21st April, 1967, until 9th April, 1969,²¹¹ of the right to respect for one’s home and the consequent disregard of this right, in particular by the practice of the police authorities of carrying out arrests at night²¹², is an interference

²⁰³ Letter No. 1006 of 23rd April, 1969, paragraph E. [This letter has been reproduced in Vol. XII at p. 40.]

²⁰⁴ During the friendly settlement negotiations, the Government stated with regard to other Articles of the 1968 Constitution that, pending the promulgation of new legislation, the relevant legislation in force continued to be applied – see Volume III of this Report.

²⁰⁵ See paragraph 261 above.

²⁰⁶ Memorial of 6th July, 1968, p. 24.

²⁰⁷ Cf. the cases of the persons mentioned in Chapter IV of this Report.

²⁰⁸ Hearing of March, 1969, Vol. I, p. 142.

²⁰⁹ See, for example, the cases of Livanos (hearing of March 1969, Vol. II, pp. 586, 597), Mitsotakis (hearing of December 1968, Vol. I, pages 62–63; hearing of March 1969, Vol. II, p. 647 – witness Papaspyropoulos) and Papagiannakis (hearing of March 1969, Vol. II, p. 442; *ibid.* p. 642 – witness Papaspyropoulos). As regards the visits of children, see Papaspyropoulos *ibid.* p. 648.

²¹⁰ Paragraph 345 was adopted by a majority of eleven members. The Commission has considered under Articles 3 and 5 of the Convention the cases of the persons mentioned in paragraph 344 above.

²¹¹ See paragraphs 337 and 338 above.

²¹² See paragraphs 342 and 343 above.

with this right which, in the absence of a “public emergency threatening the life of the nation” in the sense of Article 15 of the Convention, cannot be regarded as “necessary in a democratic society” for any of the purposes set out in paragraph (2) of Article 8.

V. OPINION OF MR. DELAHAYE

346. Searches and arrests at night were authorised and carried out by virtue of the state of martial law.

In order to form an opinion whether these steps were limited to what was strictly required by the situation, it would be necessary to know whether these searches and arrests at night took place only in the first days of the coup d'état or also after that date.

It should be observed that this exceptional measure has been discontinued, since the new 1968 Constitution provides that the privacy of a person's residence shall be respected, but this new constitutional provision did not come into force until 9th April, 1969.

E.

Articles 9 and 10 in conjunction with Article 14 of the Convention

I. SUBMISSION OF THE PARTIES

1. *Applicant Governments*

347. The applicant Governments submitted that the respondent Government severely interfered with the freedom of thought and attempted to control the minds of its citizens²¹³. This was shown, in particular, by:

- (1) a number of acts and decrees restricting the freedom of expression²¹⁴;
- (2) the dismissal of civil servants on the ground that they were not loyal towards the present regime²¹⁵;
- (3) the control not only of professors and other teachers but also of students²¹⁶;

²¹³ Hearing of June 1969, pp. 55–62.

²¹⁴ Applications of 20th and 27th September, 1967, part II; (Scandinavian) memorial of 25th March, 1968, pages 27 *et seq.*; Netherlands memorial of 25th March, 1968, pages 7 *et seq.*

²¹⁵ (Scandinavian) Memorial of 25th March, 1968, pp. 27–30; Netherlands memorial of 25th March, 1968, pp. 7–9.

²¹⁶ (Scandinavian) Memorial of 25th March, 1968, pp. 27, 30; Netherlands memorial of 25th March, 1968, p. 8; hearing of June 1969, pp. 56–57.

- (4) the continued detention, under administrative order, of persons who refused to sign a "declaration of repentance"²¹⁷;
- (5) press censorship²¹⁸; and
- (6) discrimination "in nearly every regard" against political opponents²¹⁹.

The applicant Governments also maintained that the respondent Government interfered with the freedom of religion.²²⁰

2. Respondent Government

348. The respondent Government denied that there had been any violation of Articles 9, 10, or 14 of the Convention and stated in particular:

- (1) as regards civil servants, that their freedom of expression was restricted in all countries and that they were under a duty of loyalty to the regime²²¹;
- (2) as regards the Press, that a system of press control had been introduced by Ministerial Order No. 19603 "Gamma" of 27th April, 1967²²², but that the freedom of the press had been restored by Ministerial Order No. 579 of 25th January, 1968²²³.

II. EVIDENCE BEFORE THE COMMISSION

1. Witnesses

349. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 9 of the Convention:

Constantinos Kalambokias²²⁴
 Georgios Kekkos²²⁵
 Georgios Rallis²²⁶
 Nicolaos Tomadakis²²⁷

²¹⁷ Hearing of June 1969, p. 56.

²¹⁸ (Scandinavian) Memorial of 25th March, 1968, pp. 32-35; Netherlands memorial of 25th March, 1968, pp. 10-15.

²¹⁹ Hearing of June 1969, p. 96.

²²⁰ (Scandinavian) Memorial of 25th March, 1968, pp. 31-32.

²²¹ Memorial of 6th July, 1968, pp. 26, 30-36.

²²² For the text of this Order, see (Scandinavian) memorial of 25th March, 1968, Vol. II, pp. 35-36.

²²³ Memorial of 6th July, 1968, p. 35. The text of Order No. 589 has not been submitted by the respondent Government, but cf. Annex 17 to the (Scandinavian) memorial of 25th March, 1968, and paragraph 362 (footnote) below.

²²⁴ Hearing of March 1969, Vol. I, pp. 223-238.

²²⁵ *Ibid.* Vol. I, p. 330.

²²⁶ *Ibid.* Vol. I, pp. 54-55.

²²⁷ Hearing of November 1968, Vol. II, pp. 369-372.

350. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 10 of the Convention:

Evangelos Averoff²²⁸

Constantinos Georgopoulos²²⁹

Constantinos Kalambokias²³⁰

Georgios Kekkos²³¹

André Lambert²³²

Panayotis Lambrias²³³

Athanasios Paraschos²³⁴

Georgios Rallis²³⁵

Nicolaos Tomadakis²³⁶

Panayotis Troubounis²³⁷

Helen Vlachou²³⁸

351. Some of the witnesses mentioned in paragraphs 349 and 350 above had originally been called under Article 3 of the Convention and a number of further witnesses heard under Article 3 have also given evidence concerning Articles 9 and 10.

2. Documents

352. With regard to the applicant Governments' allegations under Articles 9, 10 and 14 of the Convention, the Sub-Commission has received a number of documents which are listed at Appendix XV to this Report.²³⁹

²²⁸ Hearing of March 1969, Vol. I, p. 77.

²²⁹ Hearing of December 1968, Vol. II, pp. 245, 247.

²³⁰ Hearing of March 1969, Vol. I, pp. 223-238.

²³¹ *Ibid.* Vol. I, pp. 323-351.

²³² Hearing of November 1968, Vol. II, pp. 383-385.

²³³ Hearing of December 1968, Vol. I, p. 69.

²³⁴ *Ibid.* Vol. II, p. 110.

²³⁵ Hearing of March 1969, Vol. I, pp. 54-55.

²³⁶ Hearing of November 1968, Vol. II, pp. 369-372.

²³⁷ *Ibid.* Vol. II, pp. 397-400.

²³⁸ Hearing of December 1968, Vol. I, pp.161-162.

²³⁹ [Not reproduced.]

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

*1. The suspension of constitutional provisions
protecting the freedoms of thought and expression*

(a) Constitution of 1952.

353. *Article 14* of the Greek Constitution of 1952²⁴⁰ provided:

“Any person may publish his opinion orally, in writing or in print with due adherence to the laws of the State. The press is free. Censorship and every other preventive measure is prohibited. The seizure of newspapers and other printed matter, either before or after publication, is likewise prohibited.

By exception, seizure after publication is permitted (a) because of insult to the Christian religion or indecent publications manifestly offending public decency, in the cases provided by law, (b) because of insult to the person of the King, the successor to the Throne, their wives or their offspring, (c) if the contents of the publication, according to the terms of the law, are of such a nature as to 1) disclose movements of the armed forces of military significance or fortifications of the country, 2) be manifestly rebellious or directed against the territorial integrity of the nation or constitute an instigation to commit a crime of high treason; but in these cases, the public prosecutor must, within twenty-four hours from the seizure, submit the case to the judicial council which, within a further twenty-four hours, must decide whether the seizure shall be maintained or withdrawn, otherwise an appeal shall be allowed against the order of seizure. After at least three convictions of a press offence which admits of seizure, the court shall order the permanent or temporary suspension of issue of the publication and, in grave cases, shall also prohibit the exercise of the profession of journalist by the person convicted. Such suspension or prohibition shall commence from the time that the court decision becomes final.

No person whatsoever shall be permitted to use the title of a suspended newspaper for ten years from the date of the permanent suspension thereof.

Press offences shall be deemed offences whose author is taken in the act.

Only Greek citizens who have not been deprived of their civic rights shall be allowed to publish newspapers.

The manner of rectifying through the press erroneous publications as well as the preconditions and qualifications for exercising the profession of journalist shall be determined by law.

Enforcement by law of special repressive measures directed against literature dangerous to the morals of youth shall be permitted.

²⁴⁰ As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the Report. [Not reproduced.]

The provisions on the protection of the press contained in the present article shall not be applicable to motion pictures, public shows, phonograph records, broadcasting and other similar means of conveying speech or of representation. Both the publisher of a newspaper and the author of a reprehensible publication relating to one's private life shall, in addition to being subject to the penalty imposed according to the terms of the penal law, also be civilly and jointly liable to redress fully any loss suffered by the injured party and to indemnify him by a sum of money as provided by law."

354. The above constitutional provisions were suspended by *Royal Decree No. 280* of 21st April, 1967²⁴¹

(b) *Constitution of 1968*

355. *Article 14* of the Constitution of 1968 provides:²⁴²

"1. Everyone may express orally, in writing, in print or in any other way his thoughts, with due adherence to the laws of the State.

2. The press is free and discharges a public function involving rights and duties, and responsibility for the accuracy of its content.

3. Censorship and every other preventive measure is prohibited.

4. Seizure of printed matter, either before or after publication is prohibited. By exception, seizure after circulation is permitted by order of the public prosecutor: (a) because of insult to the Christian and any other known religion; (b) because of insult to the person of the King, the Crown Prince, their wives and children; (c) because of a publication which (i) discloses information on the organisation, composition, armament and deployment of the armed forces, or on the fortifications of the country; (ii) is patently rebellious, or aims at over-throwing the regime, or the existing social system or is directed against the territorial integrity of the State or creates defeatism, or provokes or instigates the commission of a crime of high treason; (iii) intends to project or diffuse, for political exploitation, views of outlawed parties or organisations, and (d) because of indecent publications manifestly offending public decency in cases provided by law.

5. In all cases of the previous paragraph the public prosecutor must, within twenty-four hours from the seizure, submit the case to the judicial council, and the latter must, within another twenty-four hours, decide whether the seizure will be maintained or lifted, otherwise the seizure is lifted *ipso jure*. The public prosecutor and the publisher of the seized item may appeal against the decision of the council.

²⁴¹ See paragraphs 63 and 65 above.

²⁴² English translation submitted by the respondent Government.

6. Press offences are deemed offences whose author is taken in the act, and are subject to legal proceedings without preliminary examination, as provided by the law. Violation of this provision by the competent public prosecutor constitutes a serious disciplinary offence.

7. After the second conviction within five years for any press offence whatsoever as provided for by paragraphs 4 and 9 of this article, the Court shall order the permanent or temporary suspension of the publication of the printed matter involved and, in serious cases, the prohibition of the exercise of the profession of journalism by the person convicted as provided by law. Such suspension or prohibition shall commence from the time the Court order becomes final.

8. The title of a suspended publication cannot be used by anyone, so long as such suspension is still effective.

9. The publisher of the printed matter and the writer of an offending publication involving one's private or family life, aside from the penalties, provided for in criminal statutes, shall have a civil and joint liability to fully compensate any damage caused thereby, and to give monetary satisfaction to the victim as provided by law.

10. The law shall determine the manner in which inaccurate publications shall be fully rectified in print.

11. The preconditions for issuing newspapers or other political publications, the conditions and ethical rules of exercising the profession of journalism, and the rules for operation of newspaper enterprises shall be determined by law.

12. The law establishes compulsory financial control of newspaper enterprises. The outcome of such control shall be published.

13. Special repressive measures may be adopted by law to protect youth from literature dangerous to morals.

14. The provisions on the protection of the press contained in the present article shall not be applicable to motion pictures, public shows, phonograph records, radio and television broadcasts, as well as any other similar means of conveying speech or image."

356. Of the above provisions of Article 14, only paragraphs 4 to 14 have entered into force in accordance with *Article 138* of the Constitution²⁴³.

2. *Press censorship*

357. Article 14 of the Constitution of 1952, which safeguarded the freedom of the Press, was suspended on 21st April, 1967²⁴⁴ and therefore

²⁴³ See paragraph 260 above.

²⁴⁴ See paragraph 354 above.

was not applicable in the period between that date and 15th November, 1968, when the Constitution of 1968 came into force. The entry into force of Article 14, paragraphs (2) and (5), of the 1968 Constitution (freedom of the press, prohibition of censorship) was delayed by Article 138 of the Constitution²⁴⁵.

358. Article 14 of the 1968 Constitution follows closely the earlier suspended Article 14 of the 1952 Constitution²⁴⁶. There are, however, two significant differences:

- (1) an additional ground for seizure of printed matter is provided in paragraph (4), sub-paragraph (c) (ii) (publication, for political exploitation, of news of outlawed parties or organisations); and
- (2) paragraphs (11) and (12) go beyond the earlier analogous provision in adding the issue of newspapers, the operation and financial control of newspaper enterprises and ethical rules for exercising the profession of journalism, to the matters to be governed by law.

359. As already mentioned²⁴⁷, a state of siege was declared in Greece on 21st April, 1967, and has been maintained since that date. According to Article 9, paragraph (f), of the Law on the State of Siege, the military authorities may "forbid the communication or publication of information . . . by the Press" and "seize newspapers and other printed matter either before or after publication"²⁴⁸.

360. Under this provision, a system of Press control was introduced by Ministerial Order No. 19603 "Gamma" of the Minister to the Prime Minister's Office²⁴⁹, and by the general instructions on the operation of the Press Control Department, both of 27th April, 1967.²⁵⁰

361. It would be difficult either to summarise these provisions or to judge their effect without precise knowledge of how they are applied in practice²⁵¹. Ministerial Order No. 19603 "Gamma" of 27th April, 1967,

²⁴⁵ See paragraph 356 above.

²⁴⁶ See paragraphs 353 and 355 above.

²⁴⁷ See paragraph 261 above.

²⁴⁸ Memorial of 6th July, 1968, p. 35.

²⁴⁹ The text of this Order was submitted by the first three applicant Governments – memorial of 25th March, 1968, Vol. II, pp. 35–36.

²⁵⁰ *Ibid.* pp. 36–37 and Netherlands memorial of 25th March, 1968, pp. 9–13.

²⁵¹ According to the Netherlands Government, the general indications mentioned in paragraph 360 above "were followed by many others (generally conveyed to the editors by telephone) which placed the collection and selection of news, the substance and form of the articles and even the layout entirely in the hands of the Government" (memorial of 25th March, 1968, p. 14; see also the further reference to "oral instructions", *ibid.* p. 15). The texts of such instructions have not been submitted by the respondent Government.

established a Press Control Department for the "preventive censorship of all sorts of printed matter put into circulation". The broad aim is to prevent "publication of any piece of information, comment, picture or cartoon, tending to vilify the general policy of the National Government, the constitutional order, and to sabotage the internal and external security of the country". Detailed statements follow in the general instructions as to what kind of publication is prohibited. Here the notion of insult to the Government or to the armed forces or "the State machinery in general" appears; prohibited is "any publication which in the opinion of the (Press Control) Service damages the task of the Government". Prohibited also is "the insertion of notices of any left wing organisation, EDA and its affiliates included"; "the reproduction of foreign radio broadcasts of leftist nature and the more so of reports and comments by the KKE²⁵² radio station"; and publication of any text or reproduction local or foreign criticising directly or indirectly the Prime Minister or the members of his cabinet in the discharge of their duties". Publication of certain Government reports or statements and of "one comment a day, at least," on the activities of the Government are obligatory.

362. The rules which entered into force on 1st February, 1968,²⁵³ plainly relax the earlier restrictions. In particular:

- (1) "the compulsory publication of texts, except the Government announcements and news reports released by the General Department of the Press, is abolished"; and
- (2) "the publication of articles appearing in the foreign press, of foreign reports and of news reported by the foreign news agencies is permitted".

Nevertheless, the Government retains "the right to exercise control over comments and subjects concerning the country's foreign policy"; the function of criticism in newspapers and magazines must be exercised "in good faith, constructively and responsibly"; and publishers and writers are "held responsible for the sources and the facts on which they base their criticism".

363. Censorship continues to be applied in Greece. The President of the Athens Association of Newspaper Writers, Athanasios Paraschos, stated before the Sub-Commission that the main objective of censorship has been "to prevent the publication of false and unsubstantiated information. As for article writing, there is no longer any restriction

²⁵² The Greek Communist Party.

²⁵³ These were announced on 31st January, 1968, by Secretary of State Sideratos - see Netherlands memorial of 25th March, 1968, p. 15, and Scandinavian memorial of 25th March, 1968, Vol. II, p. 38. It is not clear whether these rules were contained in, or based on, Ministerial Order No. 579 of 25th January, 1968, which is quoted by the respondent Government (see paragraph 348 above).

now.”²⁵⁴ He added that, “if I were . . . the Government, I would . . . withdraw all the measures.”²⁵⁵

364. The Lambrias incident²⁵⁶ and his description of difficulties of newspaper editing show that Government pressure can be heavy and take unusual forms.

365. By letter of 4th October, 1969, the respondent Government informed the Secretary-General of the Council of Europe that it had taken the following measure “relating to the maintenance of internal law and order”:²⁵⁷

“Freedom of the Press.

Publication of information, news and criticism in the press shall, in general, be free.

Exceptionally, publication of the following information is forbidden:

- (1) When it is directed against the public interest, national security and territorial integrity;
- (2) When it is of a subversive nature;
- (3) When it is calculated to undermine public confidence in the national currency or to damage the national economy; and
- (4) When it is designed to inflame political passions by referring to the period before the revolution of 21st April, 1967.”

By letter of 16th October, 1969, the respondent Government communicated to the Secretary-General the following “further explanatory data” regarding the freedom of the Press:²⁵⁸

“On 3rd instant, the censorship established in the aftermath of the National Revolution has been abolished. Newspapers and magazines may as from the above date publish freely their opinions, by abiding by the Constitution and the Laws.

As stated emphatically in the Greek Premier’s decision pertaining to the above matter, ‘from now on the publication by the press of information, news and comments is free. Thus, it is henceforth allowed to criticise any official action, in order to keep the public aware in the public interest.’

The same decision stipulates furthermore that restrictions to the freedom of press are permitted only as regards publications directed against

²⁵⁴ Hearing of December, 1968, Vol. II, p. 110.

²⁵⁵ *Ibid.* p. 131.

²⁵⁶ *Ibid.* Vol. I, p. 69. Cf. also the Netherlands’ memorial of 25th March, 1968, pp. 15–17 (“Government action against journalists”).

²⁵⁷ See Appendix IV to this Report.

²⁵⁸ See Appendix IV to this Report. [This letter has been reproduced in Vol. XII at p. 58.]

national security, the public order and the national currency, or aiming at damaging the national economy.

The restrictions in question are more specifically referring to publications on the following topics:

- (a) Disclosure of secrets or confidential information regarding the organisation or the military equipment of the Armed Forces, including plans of mobilisation.
- (b) Incitement to high treason, offences against the ideals of the fatherland and the national symbols, as well as to acts endangering the international peace.
- (c) Slogans and proclamations by organisations or parties aiming at overthrowing by sheer force the established legal order or offending the Royal Family, the Crown Prince, or their lawful delegates.
- (d) Incitement of the members of the Army, the Security Forces or the Public Services, to violate their duties stemming from their capacity as public officials.
- (e) Incitement of the citizens to insurrection or publications urging them to public disturbances, disobedience to the Laws and Orders of the authorities, etc.
- (f) Publications stirring up political passions, emanating from the past.

It should also be noted that all above restrictions were already in force before the outbreak of the Revolution, and similar articles are contained in most, if not all, foreign legislations.

Actually, according to the Greek legislation:

1. The crimes of "lèse majesté" etc. were also included in the previous Constitution and both in the Penal Code and the Law regarding the Press.
2. The crimes of incitement to disobedience and revolt were also contained in Articles 183–185 of the Penal Code.
3. The crimes of high treason were also included in Article 134 *et seq.* of the Penal Code.
4. The crimes of disturbing the peace and spreading false information etc. were also provided by Articles 190 and 191 of the Penal Code.
5. The crime of stirring up political passions (incitement to discord) was also provided by Article 192 of the Penal Code, etc.

Lastly, the district attorneys of First Instance Courts and those of the Courts of Appeal have already been directed to prosecute the above cases, which is an additional proof that the ordinary Courts are, not only

'de jure' but 'de facto' as well, competent to deal with the crimes in question."

The information contained in the above letters, which arrived after the adoption of the Sub-Commission's report (4th October, 1969), has not been taken into account by the Commission in its opinion set out under IV below.²⁵⁹

3. *Other aspects of Articles 9 and 10*

360. Evidence has been given to the Sub-Commission of Government action against university teachers and students because of their political beliefs or affiliations.

Legislative Decree No. 93 of 22nd January, 1969,²⁶⁰ governs the rights and obligations of the students in higher educational institutes. Amending or replacing previous legislation, enacted in 1932 and 1935, it contains a number of provisions which would normally be found in university regulations.

However, among the subjects of disciplinary punishment are acts or behaviour which show that the student is:

"not inspired by the proper spirit conforming to the existing structure of the State or social regime and the national ideas" (Article 120, paragraph 7, of the Decree).

Further, Article 121, paragraph (2) provides that:

"Any conviction of a student for offences laid down in the existing legislation regarding the security of the social regime entails the penalty of permanent dismissal from the University pronounced by the Senate as soon as it is in any way informed of the conviction, independently of the length of the sentence imposed by the criminal court. Similarly, a student's deportation²⁶¹ for more than 6 months for reasons of public security in general entails a disciplinary penalty which can be, depending on the grounds for deportation, permanent dismissal pronounced in the same manner. The penalty of permanent dismissal as provided in paragraphs (1) or (2) of this Article can be transformed, through decision of the Minister of National Education and Religion, into a final exclusion from all institutions of University education in the country."

367. In a statement presented to the Sub-Commission²⁶² by students detained in Averoff Prison, it is said that:

"the condemnation of a student for any political offence implies his permanent exclusion from all University schools"

²⁵⁹ Cf. also paragraph 5 above.

²⁶⁰ Hearing of March 1969, Vol. IV, pp. 1146-1154.

²⁶¹ Detention under administrative order (cf. paragraphs 264 *et seq.* above).

²⁶² Hearing of March 1969, Vol. IV, pp. 1073-1075.

and four students are named as having been so dismissed; and further:

“more than one hundred professors, lecturers and assistant lecturers of the Universities were expelled from their positions . . .”

It is also stressed that:

“the University authorities, both academic and administrative, are burdened with the task of constant surveillance of the political and syndicalistic activities of the students . . .”

368. The Commission notes that numerous persons, who have not been convicted of any criminal offence, are detained in Greece for their political beliefs or activities.²⁶³

IV. OPINION OF THE COMMISSION²⁶⁴

1. *Press censorship*

369. The Commission considers that the rules described above²⁶⁵, if applied to their full extent, are inconsistent with Article 10 of the Convention. In particular:

- (1) the prohibition of the publication of any text, local or foreign, “criticising directly or indirectly” the Government in the discharge of its duties is a restriction of the freedom of expression which is not “necessary in a democratic society” for any of the purposes set out in paragraph (2) of Article 10;
- (2) the general prohibition of notices of “left-wing organisations”, without further specification of their purpose, involves a discrimination on grounds of “political opinion” in the sense of Article 14, read together with Articles 9 and 10 of the Convention.

2. *Other aspects of Articles 9 and 10 of the Convention*

370. The Commission finds that the provisions of Article 120, paragraph 7, of Legislative Decree No. 93 of 22nd January, 1969,²⁶⁶ are unacceptably broad in that they in effect leave the definition of the offence to the Disciplinary Council. It must, however, be possible for the individual to know beforehand whether his acts are lawful or not.

371. The Commission does not consider that the exclusion from university of students who have committed political offences, in addition to

²⁶³ Cf. Section B (Article 5) above.

²⁶⁴ Paragraphs 369–371 were adopted by a majority of 11 members.

²⁶⁵ Paragraphs 360–362.

²⁶⁶ Subjecting to disciplinary punishment any student whose acts or behaviour show that he is “not inspired by the proper spirit conforming to the existing structure of the State or social regime and the national ideas” – cf. paragraph 366 above.

any sentence imposed on them, is in itself contrary to Articles 9 or 10 of the Convention. It raises an issue under Article 2 of the First Protocol which, however, has not been invoked by the parties in the present case²⁶⁷.

V. OPINION OF MR. DELAHAYE

372. Article 14 of the 1952 Constitution was suspended on 21st April, 1967, and later superseded by Article 14 of the 1968 Constitution. However, not all the provisions of the new Article 14 have come into force.

Again the freedom of the press does not seem to have been completely restored, but censorship has nevertheless been considerably reduced.

In the present circumstances it seems difficult to separate freedom of thought and expression from freedom pure and simple, so that the provisions of Articles 9, 10 and 14 of the Convention must be treated in the same manner as those of Article 5.

F.

Article 11 of the Convention

I. SUBMISSIONS OF THE PARTIES

1. *Applicant Governments*

373. The applicant Governments submitted that the respondent Government had violated Article 11 of the Convention. In particular:

- (1) by Royal Decree No. 280 of 21st April, 1967, and by a number of proclamations, the freedoms of assembly and association had been prohibited or restricted²⁶⁸;
- (2) 279 associations and organisations had been dissolved and their property seized²⁶⁹;
- (3) the members of administrative boards of professional organisations had been replaced by persons appointed by the Government²⁷⁰; and
- (4) in spite of repeated declarations by the respondent Government that the freedoms of assembly and association had been restored, they continued to be severely restricted²⁷¹.

²⁶⁷ Cf. paragraph 48 above.

²⁶⁸ Hearing of June 1969, pp. 63-64.

²⁶⁹ *Ibid.* p. 64.

²⁷⁰ *Ibid.* p. 67.

²⁷¹ *Ibid.* pp. 65 *et seq.*

2. Respondent Government

374. The respondent Government contested that there had been any violation of Article 11. In particular:

- (1) the restrictions of the freedom of assembly and the dissolution of a number of Communist or Communist-inspired organisations were justified under paragraph (2) of that Article²⁷²; and
- (2) the suspended provisions of Articles 10 and 11 of the Constitution of 1952 "relating to the right of assembly of members of recognised professional organisations and the right of association for professional purposes" had been brought back into force by Decree No. 369 of 29th May, 1968²⁷³.

II. EVIDENCE BEFORE THE COMMISSION

1. Witnesses

375. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 11 of the Convention:

Philippos Anghelis²⁷⁴
 Evangelos Averoff²⁷⁵
 Constantinos Georgopoulos²⁷⁶
 Georgios Kekkos²⁷⁷
 Dionysos Livanos²⁷⁸
 John Vassilakopoulos²⁷⁹

2. Documents

376. With regard to the applicant Governments' allegations under Article 11 of the Convention, the Sub-Commission has received a number of documents which are listed at Appendix XVI to this Report.²⁸⁰

²⁷² Memorial of 6th July, 1968, p. 39.

²⁷³ *Ibid.*

²⁷⁴ Hearing of March, 1969, Vol. II, p. 245.

²⁷⁵ *Ibid.* Vol. I, p. 82.

²⁷⁶ Hearing of December 1968, Vol. II, p. 245.

²⁷⁷ Hearing of March 1969, Vol. I, p. 331.

²⁷⁸ *Ibid.* Vol. II, pp. 586-587.

²⁷⁹ *Ibid.* Vol. II, p. 616.

²⁸⁰ [Not reproduced.]

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

*1. The suspension of constitutional provisions protecting the freedoms of assembly and association*²⁸¹*(a) Constitution of 1952*

377. *Article 10* of the Greek Constitution of 1952 provided²⁸²:

“Greeks have the right to assemble peaceably and unarmed. The police may be present only at public gatherings. Open air assemblies may be prohibited if danger to public security is imminent therefrom.”

378. *Article 11* of the 1952 Constitution stated²⁸³:

“Greeks have the right of association, with due adherence to the laws of the State which, however, shall under no circumstances render this right subject to previous permission of the government.

An association shall not be dissolved for violation of the law except by judicial decision.

The right of association in the case of civil servants and employees of semi-governmental agencies and organisations may by law be submitted to certain restrictions.

Strikes of civil servants and employees of semi-governmental agencies and organisations are prohibited.”

379. The above constitutional provisions were suspended by *Royal Decree No. 280* of 21st April, 1967²⁸⁴

380. *Royal Decree No. 369* of 29th May, 1968, restored:

(1) the right of assembly of members of recognised professional organisations, and

(2) the right of association for professional purposes²⁸⁵.

(b) Constitution of 1968

381. *Article 18* of the Constitution of 1968 provides²⁸⁶:

“1. Greeks have the right to assemble peacefully and unarmed as provided by law.

²⁸¹ See also Section H below (Article 3 of the First Protocol).

²⁸² As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report. [Not reproduced.]

²⁸³ *Ibid.*

²⁸⁴ See paragraphs 63 and 65 above.

²⁸⁵ Cf. paragraph 374 above.

²⁸⁶ English translation submitted by the respondent Government.

2. The police may be present only at public gatherings. Public gatherings must be duly notified to the police authorities forty eight hours prior to their being held. Open air gatherings may be prohibited if they endanger public order and security.”

382. *Article 19* of the Constitution States²⁸⁷:

“1. Greeks have the right to form associations with due adherence to the laws of the State, which, however, shall under no circumstances subject this right to prior permission by the Government.

2. Every union of persons, the purpose or the activity of which are directed against the territorial integrity of the State, or the regime or the social order or the security of the State or the political or civil liberties of the citizen shall be prohibited. It is dissolved by Court decree.

3. Co-operatives are dissolved, because of violation of law or their statutes, by Court decree. By decree issued by the chief judge of the district Court the operation of a co-operative or union may be suspended temporarily, if at the same time proceedings for its permanent dissolution are initiated.

4. The right of association of civil servants may be subject to certain restrictions imposed by law. The same restrictions on the right of association may be imposed on employees of local government bodies, or other legal entities of public law, public enterprises, and public utilities.

5. Resort to strike for the purpose of achieving political or other ends unrelated to material or moral interests of the workers shall be prohibited.”

383. The above provisions are among those cited in *Article 138* of the Constitution as being dependent upon an Act of the Government to bring them into force and consequently did not enter into force on 15th November, 1968, the day of the entry into force of the new Constitution.

384. By Act “Alpha” of 16th November, 1968, the respondent Government “in accordance with its promise to recognise the right of assembly and the right of association to citizens being members of recognised professional organisations for the pursuit of their professional aims” put “into effect Articles 18 and 19 . . . concerning the right of assembly and the right of association for the members of recognised professional organisations”.²⁸⁸

²⁸⁷ Translation submitted by the respondent Government.

²⁸⁸ See Appendix XVIII to this Report (Constitutional Acts) p. 691.

385. By Constitutional Act "Beta" of 9th April, 1969,²⁸⁹ Articles 18 and 19 of the Constitution were again put into force, this time without the limitation made in Act "Alpha"²⁹⁰. However, the Government also referred to the preparation of laws which were described as "nécessaires à l'application" of, *inter alia*, these Articles²⁹¹. Their present status is therefore uncertain²⁹².

2. Further measures affecting the freedom of assembly

(a) Legislation

386. A state of siege was declared in Greece by Royal Decree No. 280 of 21st April, 1967²⁹³. According to Article 9, paragraph (e), of the *Law on the State of Siege*, the military authorities may "forbid and disperse any gathering or meeting"²⁹⁴.

387. By virtue of this provision, the Chief of the General Staff has made a number of proclamations prohibiting or restricting the freedom of assembly.

- (1) Proclamation No. 1 of 22nd April, 1967, prohibited all open air gatherings of more than five persons and all indoor gatherings apart from public entertainments²⁹⁵.
- (2) Proclamation No. 14 of 29th May, 1967,²⁹⁶ stated that indoor gatherings were allowed with the permission of the competent public authority.
- (3) Proclamation No. 26 of 1967²⁹⁷, further modified the prohibition on freedom of assembly, the following gatherings being permitted:
 - aa* indoor gatherings of persons attending a lecture with the authorisation of the competent military authority;
 - bb* open air gatherings of a social or religious nature (weddings, etc.);
 - cc* private indoor gatherings of a social nature or for amusement (receptions);

²⁸⁹ See Appendix XVIII to this Report (Constitutional Acts).

²⁹⁰ See paragraph 384 above.

²⁹¹ Letter No. 1006 of 23rd April, 1969, paragraph E – reproduced at Appendix IV to this Report. [Reproduced in this Yearbook, Vol. XII, p. 40.]

²⁹² During the friendly settlement negotiations, the Government stated that, pending the promulgation of new legislation, the relevant legislation in force continued to be applied.

²⁹³ See paragraphs 63 and 65 above.

²⁹⁴ Memorial of 6th July, 1968, p. 38.

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.* pp. 38–39.

dd meetings of the boards of directors and general meetings of juridical persons;

ee public entertainments.

388. Under Proclamation Nos. 5 and 8 of 6th May, No. 16 of 2nd June, No. 19 of 14th June, No. 22 of 15th July, No. 28 of 22nd September and No. 30 of 13th November, 1967, by the Chief of the General Staff a number of associations and organisations were dissolved – according to the respondent Government they were “Communist or Communist-inspired” and “dangerous to public order and security”²⁹⁸.

Furthermore, Proclamation No. 12 of 25th May, 1967, by the Chief of the General Staff prohibited the incorporation of any society without the permission of the military authorities²⁹⁹.

(b) Other measures

389. It is not disputed between the parties that the respondent Government ordered the dissolution of 279 associations and organisations and the seizure of their property in May 1967³⁰⁰. According to the Government, these organisations were Communist or Communist-inspired³⁰¹.

390. The Government further dismissed “the administrative boards of all organisations, with the exception of the Bar Association and the Association of Notaries”³⁰².

391. Former Foreign Minister Averoff described how he was sentenced to five years’ imprisonment for holding a non-political dinner attended by more than five persons. “It was”, he said, “to show that those who will be punished who do not obey.” The King intervened on his behalf and he was pardoned³⁰³.

IV. OPINION OF THE COMMISSION

392. *Freedom of assembly* is a major part of the political and social life of any country. It is an essential part of the activities of political parties, envisaged in Article 58 of the 1968 Constitution, and of the conduct of

²⁹⁸ *Ibid.* p. 39.

²⁹⁹ *Ibid.*

³⁰⁰ See the decision of General Anghelis quoted in the Scandinavian memorial of 25th March, 1968 (p. 37).

³⁰¹ Memorial of 6th July, 1968, p. 39.

³⁰² Witness Ph. Anghelis, hearing of March 1969, Vol. II, p. 789. See also the recent case of Mr. Makris (hearing of June 1969, p. 67).

³⁰³ Hearing of March 1969, Vol. I, p. 86.

elections under Article 3 of the First Protocol, which are to ensure the free expression of the opinion of the people.³⁰⁴

393. The present condition of the right of assembly in Greece is that:³⁰⁵

- (1) recognised professional organisations are accorded a right of assembly by Act "Alpha" of 16th November, 1968, but it is not clear whether, in the absence of implementing legislation, this Act and Act "Beta" of 9th April, 1969, are yet applicable;
- (2) meetings for political purposes are still prohibited, if they are to be held in public, and may take place in private only with the permission of the competent police authority;
- (3) indoor meetings for the purpose of attending a lecture require the authorisation of the competent military authority.

394. The Commission considers that none of these restrictions on the holding of meetings are consistent with Article 11 of the Convention. The respondent Government has not shown them to be "necessary in a democratic society" for any of the purposes set out in Article 11, paragraph (2). In particular, no evidence has been given to the Sub-Commission to show that the prohibition of public political meetings is necessary for any of these purposes. Further, to subject indoor meetings to the discretion of the police, and lectures to that of the military authorities, without any clear prescription in law as to how that discretion is to be exercised and without further control, is to create a police-state, which is the antithesis of a "democratic society"³⁰⁶.

395. As regards the freedom of association, the Commission³⁰⁷ observes that the respondent Government³⁰⁸:

- (1) ordered the dissolution of political parties and of some 270 trade unions and other organisations on the ground that they were Communist or Communist-inspired;
- (2) dismissed the administrative boards of all organisations except the Bar Association and the Association of Notaries.

396. The Commission notes that the International Labour Organisation is enquiring into the situation in Greece in the light of international labour conventions, to which Greece is a party. The commission, con-

³⁰⁴ Paragraph 392 was adopted by a majority of eleven members.

³⁰⁵ Paragraph 393 was adopted by a majority of ten members.

³⁰⁶ Paragraph 394 was adopted by a majority of eleven members.

³⁰⁷ Paragraph 395 was adopted by a majority of ten members.

³⁰⁸ See paragraphs 389 and 390 above.

fining itself to Article 11, paragraph (2), of the Convention on Human Rights, observes that it has not been shown that the above measures have been necessary under this provision as far as concerns the professional functions of trade unions, particularly where the right to hold meetings for professional purposes has been restored to recognised trade unions and professional associations since May 1968³⁰⁹.

V. OPINION OF MR. DELAHAYE

397. It seems certain that 279 associations or organisations have been dissolved but the respondent Government alleges that they were all Communist-inspired.

On the other hand, the measures restricting freedom of association have been partially cancelled, but it has not been established with certainty to what extent they have been cancelled (cf. for example, Act Alpha of 16th November, 1968, and Act Beta of 9th April, 1969).

Consequently, it seems difficult to express an opinion as to whether these dissolutions or restrictions were – or still are – strictly necessary.

G.

Article 13 of the Convention

I. SUBMISSIONS OF THE PARTIES

1. *Applicant Governments*

398. The applicant Governments submitted generally that no “effective remedy” in the sense of Article 13 of the Convention could exist in the present case where the national authorities “on a general and extensive basis violate so to speak all the rights and freedoms embodied in the Convention”³¹⁰. In particular:

- (1) the respondent Government had issued a number of Constitutional Acts which “deprive explicitly of any remedy before a national authority”³¹¹;

³⁰⁹ Paragraph 396 was adopted by a majority of eleven members.

³¹⁰ Hearing of June 1969, p. 91.

³¹¹ *Ibid.* p. 92.

- (2) the Commission itself had stated with regard to the first three applicant Governments' allegations under Article 3 of the Convention that it "does not find that, in the particular situation at present prevailing in Greece, the remedies indicated by the respondent Government can be considered as effective and sufficient"³¹²;
- (3) the recent administrative enquiries in cases of alleged ill-treatment of political prisoners had not been carried out by impartial authorities³¹³.

2. Respondent Government

399. The respondent Government denied that there had been any violation of Article 13 of the Convention and indicated a number of remedies which were available under Greek municipal law, by way of criminal, civil and administrative proceedings, to persons whose rights under the Convention had been violated³¹⁴.

II. EVIDENCE BEFORE THE COMMISSION

1. Witnesses

400. The Sub-Commission has heard the following witnesses with regard to the applicant Governments' allegations under Article 13 of the Convention:

Dionysios Livanos³¹⁵

Eleftherios Veryvakis³¹⁶

These witnesses had originally been called under Article 3 of the Convention and a number of further witnesses heard under that Article have also given evidence concerning Article 13.

2. Documents

401. With regard to the applicant Governments' allegations under Article 13 of the Convention, the Sub-Commission has received a number of documents which are listed in Appendix XIII to this Report.

³¹² *Ibid.*

³¹³ *Ibid.* p. 93.

³¹⁴ Memorial of 6th July, 1968, p. 40.

³¹⁵ Hearing of March 1969, Vol. II, p. 728.

³¹⁶ *Ibid.* Vol. II, p. 595.

III. OPINION OF THE COMMISSION³¹⁷

402. The Commission observes that the remedies called for by Article 13 have not been fully effective in Greece since 21st April, 1967. The respondent Government has said that remedies by way of criminal, civil and administrative proceedings have continued to be available³¹⁸ and have not been affected by the suspension or delayed entry into force of particular Constitutional provisions. But the Commission observes the following:

- (1) The lack of independence of the judicial tribunals since May 1968 has already been noted in the second decision of the Commission upon admissibility and further examined in connection with Article 6 above³¹⁹.
- (2) As regards, in particular, complaints of political prisoners alleging torture or ill-treatment³²⁰, the Commission observes that the administrative inquiries mentioned by the respondent Government are not ordered in all cases of such complaints and not always carried out when ordered. Further, to judge from reports of them submitted by the respondent Government, they are inadequate in their conduct for even the elucidation of facts, let alone the arrival at a proper judgment upon them. Of eight individuals, whose complaints were the subject of administrative inquiries³²¹, the results of which were communicated to the Sub-Commission, six were not interviewed or questioned at all by the officer conducting the inquiry³²², the testimony of the police officers concerned being alone heard. Further, in these six cases there is no investigation or even adequate description of the complaints actually made; and, in the case of Xintavelonis, though the officer conducting the inquiry notes that he was taken to hospital because "he fell ill", he does not pursue the matter so as to obtain the medical documents, which the Sub-Commission has examined³²³.

Since therefore the most elementary principles were disregarded in these inquiries, it is impossible to consider the existing process of administrative inquiry as an effective remedy in the sense of Article 13 of the Convention.

³¹⁷ Paragraph 402 was adopted by a majority of thirteen members.

³¹⁸ See paragraph 399 above.

³¹⁹ Paragraphs 310 *et seq.* and 326.

³²⁰ See Chapter IV of this Report.

³²¹ Photopoulos, Dragatidis, Papadatos, Xintavelonis, Polychronaki, Drossos, Anastasia Tsirka and Notaras – see hearing of March 1969, Vol. IV, pp. 1159–1167 (Notaras) and the respondent Government's memorial of 24th April, 1969.

³²² Only Notaras and Tsirka were interviewed – see the description of their cases in Chapter IV below.

³²³ *Ibid.*

H.

Article 3 of the First Protocol

I. SUBMISSION OF THE PARTIES

1. *Applicant Governments*

403. The three applicant Governments stated that, following the change of Government in Greece on 21st April, 1967, political leaders had been arrested, political parties prohibited and political organisations dissolved³²⁴; parliamentary elections scheduled for 28th May, 1967, had been cancelled³²⁵, and political activities as a whole prohibited³²⁶. In the meanwhile, no elections had been held³²⁷ and parliamentary democracy had been abolished³²⁸.

404. There was at present no legal basis in Greece for the holding of free elections through which the people could express their opinion in the choice of the legislature as provided for by Article 3 of the First Protocol to the Convention³²⁹, and there was no indication that the respondent Government contemplated such elections for the near future³³⁰. This situation, together with the present conditions regarding political activities, political parties and the communication of political ideas³³¹, excluded any genuine and equal participation of the Greek citizens in the political life of their country³³².

2. *Respondent Government*

405. The respondent Government referred to the provisions of the new Constitution which provided for parliamentary elections³³³ and stated that a committee of jurists and senior civil servants had been appointed to draft the implementing legislation, "if possible within six months"³³⁴. Greece would return to parliamentary life when "a normal state of affairs has been restored and appropriate conditions created"³³⁵.

³²⁴ Memorial of 25th March, 1968, p. 114.

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ Hearing of June 1969, pp. 75, 90.

³²⁸ Memorial of 25th March, 1968, p. 114.

³²⁹ Hearing of June 1969, pp. 76, 90.

³³⁰ *Ibid.* pp. 82, 90.

³³¹ *Ibid.* p. 90.

³³² *Ibid.*

³³³ Memorial of 19th August, 1968, pp. 45-46.

³³⁴ Letter No. 1006 of 23rd April, 1969, paragraph E - see Appendix IV to this Report. The letter refers to a statement by Prime Minister Papadopoulos of 9th April. [Reproduced in this Yearbook, Vol. XII, p 40.]

³³⁵ Memorial of 6th July, 1968, p. 76.

II. EVIDENCE BEFORE THE COMMISSIONS

1. *Witnesses*

406. The Sub-Commission has heard the following witnesses with regard to the first three applicant Governments' allegations under Article 3 of the First Protocol:

Evangelos Averoff³³⁶
 Constantinos Georgopoulos³³⁷
 Panayotis Kanellopoulos³³⁸
 Georgios Kekkos³³⁹
 Constantinos Mitsotakis³⁴⁰
 Panayotis Papaligouras³⁴¹
 Constantinos Papaspyropoulos³⁴²
 Georgios Rallis³⁴³

2. *Documents*

407. A list of the documents received by the Sub-Commission in connection with the first three applicant Governments' allegations under Article 3 of the First Protocol is set out at Appendix XVII to this Report.³⁴⁴

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

1. *Provisions of the Constitution of 1968*

408. *Section 2* of the new Greek Constitution of November 1968, deals in Chapter A (Articles 56-70) with the election and constitution of Parliament and in Chapter B (Articles 71-86) with its powers and operation.

409. *Article 56* of the Constitution provides:

"1. The Parliament is composed of Deputies, elected in accordance with the law through direct, universal and secret ballot by those citizens who have completed their twenty first year of age and have the right to vote.

2. Those irrevocably convicted of any penalty whatsoever for acts or activities directed against the existing political or social system shall be denied the right to vote.

3. The parliamentary elections shall be carried out simultaneously throughout the Country.

³³⁶ Hearing of March 1969, Vol. I, pp. 77-78, 82-84.

³³⁷ Hearing of December 1968, Vol. II, pp. 244-247.

³³⁸ Hearing of March 1969, Vol. I, p. 10.

³³⁹ *Ibid.* Vol. I, pp. 325, 332-333, 336, 339.

³⁴⁰ Hearing of November 1968, Vol. II, p. 511.

³⁴¹ Hearing of March 1969, Vol. I, p. 45.

³⁴² *Ibid.* Vol. I, p. 635.

³⁴³ *Ibid.* Vol. I, p. 56.

³⁴⁴ [Not reproduced.]

4. The exercise of the right to vote shall be obligatory.”

410. *Article 57* of the Constitution states:

“1. The number of deputies for each electoral district is designated by a Royal Decree in proportion to its legal population, as determined in the last census; however, the total number of Deputies shall never exceed one hundred and fifty.

2. The electoral system and the electoral districts shall be determined by law voted upon in a plenary session of the Parliament, and applicable, to the elections following the next pending ones.

3. The number of electoral districts may not be less than ten or more than fifteen, while the formation of each of them on the basis of legal population, must be such, so as to elect a minimum of at least five Deputies.

4. The election of a portion of Parliament, not less than one sixth and not more than one fifth of the total number of Deputies, shall be carried out uniformly throughout the Country on the basis of the electoral strength of each party. The nomination of these Deputies shall be made as specifically provided by law on the basis of a separate list of candidates from each party and in proportion to the number of preference votes which each one received. These lists shall be deposited with the Constitutional Court and published at least fifteen days before the elections. The candidates appearing on the list may not also stand as candidates in the electoral districts.

5. The number of Deputies elected in the electoral districts shall be determined by subtracting from the total number of Deputies those elected in accordance with the previous paragraph.

6. A party or coalition of parties which has not accumulated a certain percentage of the total valid ballots shall not be entitled to representation in Parliament. This percentage fixed by law can not be higher than one sixth and lower than one tenth for the parties, and not higher than one third and lower than one fourth for the coalitions of parties.”

411. *Article 58* of the Constitution provides:

“1. Greek citizens having the right to vote, may freely establish political parties and participate in them. The political parties through their activity shall express the will of the people and must contribute to the advancement of the national interest.

2. The organisation, the programme and the activity of the parties must be governed by national and democratic principles. Their leaders and governing committee must be elected by represen-

tative conventions of their members. The Charter of every party must be approved by the Constitutional Court, which checks as to the conformity of its provisions in relation to the Constitution. No party shall have the right to participate in elections if its Charter has not had the aforementioned approval.

3. The parties shall be required to maintain records of income and expenses, as well as data for checking them. In these books every type of contribution must be listed by name. During the month of February of each year the parties shall be required to publish their financial statement of the previous year.

4. The general functioning of the parties, as more specifically provided by law, shall be subject to the continuous supervision of the Constitutional Court, which shall have the right to dissolve any party whatsoever for violation of the Constitution or the laws.

5. Parties whose aims or activities are manifestly or covertly opposed to the form of government or tend to overthrow the existing social system or endanger the territorial integrity of the state or public security, shall be outlawed and dissolved by decision of the Constitutional Court, as provided by law.

6. The Deputies of the party being dissolved shall be declared deposed of their office, and the seats held by them in Parliament shall remain vacant until the termination of the parliamentary period.

7. The application of the provisions of this article are regulated by law.”

412. *Article 60* of the Constitution states:

“1. The Deputies shall be elected for five consecutive years commencing from the day of the general elections. Upon the expiration of the parliamentary period a Royal Decree countersigned by the Council of Ministers shall direct the holding of general parliamentary elections within thirty five days. The new Parliament shall convene in regular session within forty five days from the time the elections were held.

2. The parliamentary elections shall be carried out in any case by a political (not caretaker) Government.

3. A Parliamentary seat vacated during the last year of the period, shall not be filled through a supplementary election, as provided by law, when the number of the vacant seats does not surpass a fifth of the total number of Deputies.

4. In the event of war, the Parliamentary period is extended for

its entire duration. If Parliament has dissolved, the carrying out of elections is postponed until the end of the war.”

413. The entry into force of Article 58, paragraphs (1) and (2) and Article 60 was delayed by *Article 138* of the Constitution³⁴⁵.

2. *The present situation*

414. The following is not disputed between the parties:

- (1) parliamentary elections scheduled for 28th May, 1967, were cancelled by the respondent Government;
- (2) there has been no elected legislative body in Greece since April 1967;
- (3) there is at present no law or constitutional provision in force in Greece establishing the right of the Greek people to express their opinion through free elections;
- (4) no date has yet been fixed by the respondent Government for the holding of elections.

415. The Sub-Commission has heard a number of witnesses with regard to this situation³⁴⁶. The Commission notes that, according to the statement of Professor Georgopoulos³⁴⁷, constitutional provisions concerning elections have not been put into force, in the absence of implementing legislation. But it also observes that, according to the Director General of the Ministry of the Interior, the respondent Government, “as provided by the relevant article of the Constitution³⁴⁸, has the possibility of carrying out elections within a reasonable time-limit – a time-limit which cannot exceed five years – in order that in this period of time new politicians may appear on the scene and contribute to a sounder parliamentary system”³⁴⁹.

IV. OPINION OF THE COMMISSION³⁵⁰

416. The Commission considers that Article 3 of the First Protocol presupposes the existence of a representative legislature, elected at reasonable intervals, as the basis of a democratic society. The Greek Parliament, elected under the old Constitution of 1952, was dissolved on 4th April, 1967, and the elections fixed at the time of the dissolution for 28th May,

³⁴⁵ See paragraph 260 above.

³⁴⁶ Cf. paragraph 406 above.

³⁴⁷ Hearing of December 1968, Vol. II, pp. 244–247.

³⁴⁸ Cf. Article 60, quoted in paragraph 412 above.

³⁴⁹ Witness Kekkos, hearing of March 1969, Vol. I, p. 334.

³⁵⁰ Paragraphs 416–418 were adopted by a majority of twelve members.

1967, were cancelled by the respondent Government. Since that date there has been no elected legislative body in Greece. The new Constitution of 1968 provides for an elected legislature, but the entry into force of the relevant provisions has been delayed and no electoral law has yet been promulgated. The Greek people are thus prevented from expressing their political opinions by choosing a legislature in accordance with Article 3.

417. Political parties are prohibited and, in the continuing non-enforcement of Article 58, paragraphs (1) and (2) of the 1968 Constitution, and in the absence of a Constitutional Court, they cannot be re-organised and their charters formally approved. This is all in clear and persistent breach of Article 3 of the Protocol.

418. Even if it be said that there has been a continuing "public emergency threatening the life of the nation" in the sense of Article 15 of the Convention, there is no indication that the situation has been and still is such as to require the suspension of parliamentary life or that elections could not be held. The Commission observes in this connection that Parliament continued to operate in Greece during the civil war of 1946-1949.

V. OPINION OF MR. DELAHAYE

419. It is a fact that since 21st April, 1967, the legislature has ceased to exist and no elections have been held.

Although the new Constitution does provide for free elections, the provisions guaranteeing this right have not yet come into force.

The problem of free elections can scarcely be dissociated from the other problems relating to liberty, such as that of the freedom of the press.

So long as the danger, which in this case is political since it is stated to be due to the Communist party and its allies, has not been averted, a country could not hold free elections without fear of the danger reviving.

It would either have to have recourse to sham elections, such as those frequently staged by certain dictatorships, which would in no way satisfy the requirements of Article 3 of the Protocol, or organise really free elections, preceded by electoral campaigns, which are not generally characterised by their moderation, and accept all the risks involved.

However, now that two and a half years have passed since the coup d'état, the respondent Government should no longer be content with purely theoretical constitutional provisions but, assuming that there are weighty reasons preventing the holding of elections immediately, should at least establish a system enabling the requirements of Article 3 once again to be fulfilled.

CHAPTER III

ARTICLE 7 OF THE CONVENTION AND

ARTICLE 1 OF THE FIRST PROTOCOL

A.

Submissions of the parties

I. APPLICANT GOVERNMENTS

1. *As to Article 7 of the Convention*

420. The first three applicant Governments submitted that the Constitutional Act "Eta" of 11th July, 1967, violated Article 7 of the Convention¹. Article 1 of the Act stated as follows²:

"1. Greek citizens residing abroad, temporarily or permanently, or having more than one citizenship, who act or acted unpatriotically or who perform acts incompatible with the Greek citizenship, or contrary to the interests of Greece, or to serve the interests within the meaning of Articles 1 and 2 of the Emergency Act 509/1947, as this has been modified through Article 2, paragraph 1, of Decree MH/1947, of Parties or Organisations which have been or are in the process of being dissolved, can be deprived of their Greek citizenship by decision of the Minister of the Interior, against which it is not allowed to appeal or to request annulment.

2. (Definition of "unpatriotic activity").

3. The violators of the above paragraph 1 are punished by a prison penalty of at least three months and a fine of at least drs. 20,000.

In case the act was committed abroad by fellow countrymen, the persecution takes place *ex officio*, independently of the conditions of Article 6 of the Penal Code.

Modification or suspension of the penalty is not allowed, and the appeal has no suspending force."

¹ Memorial of 25th March, 1968, pp. 107-108.

² English translation by the Council of Europe on the basis of the translation submitted by the three applicant Governments. The French translation submitted by the respondent Government is reproduced at Appendix II to this Report. [Not reproduced.]

In the opinion of the three applicant Governments, the words “have acted” in paragraph 1 gave retroactive effect to the penal provision in paragraph 3. This violated Article 7 of the Convention according to which no one should be held guilty of any criminal offence on account of any act that did not constitute a criminal offence at the time when it was committed.

421. It was true that, by a subsequent Constitutional Act amending Act “Eta” – Act “Lambda” of 20th September, 1968 – any retroactive effect of the penal provision in Article 1 had been excluded. This, however, did not alter the fact that, until the promulgation of the new Act, Article 7 of the Convention had been violated through the mere existence of Act “Eta”³.

2. As to Article 1 of the First Protocol

422. The three applicant Governments submitted that the above Constitutional Act “Eta” also violated Article 1 of the First Protocol to the Convention. In this respect they referred to Article 2 of the Act which stated as follows⁴:

“1. It is possible to order the confiscation of (the whole or)⁵ a part of the immovable and movable property of any person who loses the Greek citizenship in accordance with Article 1.

2. As property which can be confiscated, is considered also the property in the name of the husband or the wife of those who are declared having lost the Greek citizenship.

In this case the confiscation cannot exceed 1/3 of the whole immovable property.

3. Transmission of elements of property, belonging to persons according to paragraphs 1 and 2, made up to two months before the issue of the decision according to the next article about confiscation is null and void.

4. The confiscation according to the previous article is imposed by decision of the Court of the first instance at the place of the last residence or stay of the person who will be deprived of his Greek

³ Hearing of June 1969, p. 51.

⁴ English translation submitted by the three applicant Governments. The French translation submitted by the respondent Government is reproduced at Appendix II to this Report. [Not reproduced.]

⁵ The words “the whole or” were deleted by Article 2 of Constitutional Act “Lambda” of 20th September, 1968 – see Appendix XVIII to this Report (p. 691).

citizenship, after proposal of the Minister of the Interior, to be transmitted to the Court through the competent Public Prosecutor.

5. No legal action is allowed against the decision of the Court of the first instance.

6. Upon issuance of the decision according to the above paragraph, the property to be confiscated is transferred to the full possession of the Greek State, and the relative decision shall be communicated by the Ministry of Finance to the competent Director of Taxation.”

The three applicant Governments considered that the above provisions for confiscation of property did not fulfil the condition of “public interest” laid down in the first paragraph of Article 1 of the First Protocol and, further, that they could not be regarded as a law which was “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” within the meaning of the second paragraph of this Article. It was irrelevant whether they had in fact been applied “as it is a violation of Article 1 of the Protocol even to have a law of that kind”⁶.

II. RESPONDENT GOVERNMENT

1. *As to Article 7 of the Convention*

423. The respondent Government contested the three applicant Governments’ allegations that Article 1 of the Constitutional Act “Eta” had retroactively created a new criminal offence. It stated that in effect the penal provision in paragraph 3 of Article 1 applied only to persons who “act”, and not to those who “have acted”, unpatriotically. Moreover, any retroactive effect of paragraph 3 was excluded by Article 7 of the Greek Constitution which was still in force. Also those acts which were punishable under Constitutional Act “Eta” constituted, even before the entry into force of that Act, criminal offences punishable by a heavier penalty than that provided for in Constitutional Act “Eta”⁷.

In this respect, reference was made to Articles 1 and 2 of Emergency

⁶ Hearing of June 1969, p. 74.

⁷ Observations of 27th May, 1968, p. 21.

Act No. 309/1947 and to Article 4 of Ordinance No. 4234/1962⁸. Constitutional Act "Lamba" of 20th September, 1968, had clarified this situation. It was also stated that Article 1, paragraph 3, of Constitutional Act "Eta" had not so far been applied.⁹

2. *As to Article 1 of the First Protocol*

424. The respondent Government maintained that the confiscation provided for in Article 2 of Constitutional Act "Eta" was justified as a penal or security measure both under Article 1 of the Protocol and, in the emergency situation prevailing in Greece, also under Article 15 of the Convention. It further stated that, so far, this provision had not been applied.¹⁰

B.

Opinion of the Commission¹¹

425. As regards the conformity of Constitutional Act "Eta" with *Article 7 of the Convention*, the Commission finds the reason of the respondent Government convincing. Article 1 of the Constitutional Act re-enacts in substance Ordinance No. 4234/1962. The extent to which the words "committing or having committed" may be read as having retroactive effect, or the penalties imposed may be greater than those in force when the offence was committed, is limited by:

⁸ *Ibid.* p. 20. Article 4 of Ordinance No. 4234/1962 provided (*ibid.* pp. 20–21): "1. Greek citizens temporarily or permanently resident abroad who engage or have engaged there in anti-national activities in order to serve the aims of the parties and organisations which have been or are dissolved in pursuance of Section 1 of Emergency Act 509 of 1947, sanctioned by Resolutions MH and XA of 1948, shall be declared to have forfeited Greek nationality under Section 20, paragraph 2, of Legislative Decree 3370 of 1955.

If such persons enter Greek territory notwithstanding the provisions of paragraph 3 of this section, they shall be required to remain at the place where they were identified until such time as the Nationality Council has expressed its opinion on a proposal to deprive them of their nationality.

In such a case, the Nationality Council shall give its opinion not later than five days from the notification of the said proposal, and the decree declaring forfeiture of nationality shall be rendered within a further period of five days.

2. Persons who have forfeited Greek nationality in pursuance of the preceding paragraph and Resolution AZ of 1947 may not return to Greece. If they are arrested in Greek territory, they shall be punishable by imprisonment for a term of at least three months; after serving their sentence, they shall be expelled as aliens. For the remainder, they shall be subject to the provisions of Act 4310 of 1929 'on the establishment and movement of aliens in Greece etc. . . .'

3. Greek nationals who have crossed the State frontiers without complying with Act 3110 of 1929 may not return to Greek territory without a passport and a consular visa, nor may their spouses or children."

⁹ Memorial of 19th August, 1968, pp. 34–37; hearing of September 1968, pp. 261–263.

¹⁰ Memorial of 19th August, 1968, p. 39.

¹¹ Paragraphs 425–428 were adopted by a majority of fourteen members.

- (1) the operation of Article 7 of the Constitution of 1952 which was not suspended up till 15th November, 1968, and of Article 11, paragraph (1), of the Constitution of 1968 since that date. Both these constitutional provisions give effect to the principles expressed in Article 7, paragraph (1), of the Convention; consequently, Article 1 of Constitutional Act "Eta" would be interpreted as having no retroactive effect.
- (2) Constitutional Act "Lamba", which interprets Article 1 of Constitutional Act "Eta" in the sense that would prevent its retroactive application.

It is not disputed that the penalties provided by Article 1, paragraphs (1) and (3), and Article 2 have not been imposed in any actual case.

426. The Commission concludes that there is no feature of this legislation which involves any inconsistency with Article 7 of the Convention.

427. The Commission does not find any inconsistency between Article 2, paragraph (1) of Constitutional Act "Eta" and *Article 1 of the First Protocol*. It observes that confiscation of *all* the property was eliminated by Article 2 of Constitutional Act "Lamba"; but that, in any case, any taking of property by law by way of penalty is a form of confiscation, and that Article 1 of the First Protocol does not prescribe any limitation, either of form or of size, upon "penalties". Laws imposing penalties, and their enforcement, are left to what each contracting State "deems necessary".

428. Article 2, paragraph (2), of Constitutional Act "Eta" provides for confiscation also of the property of the husband or wife of an offender. The application of this provision as a "penalty" in the sense of Article 1, paragraph (2), of the First Protocol would give rise to the question whether the notion of "penalty" requires the commission of an offence by the person upon whom it is imposed. However, the Commission does not find it necessary to express an opinion on this question since it is not disputed between the parties that Constitutional Act "Eta" has not been applied in any actual case.

CHAPTER IV

ARTICLE 3 OF THE CONVENTION

*Introduction***Character and scope of allegations under Article 3**

A. MEANING OF THE PROVISIONS OF ARTICLE 3

1. Article 3 of the Convention provides that:
“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.¹

2. It is plain that there may be treatment to which all these descriptions apply, for all torture must be inhuman and degrading treatment, and inhuman treatment also degrading. The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable.

The word “torture” is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience. In this Report the expression “torture or ill-treatment” will be used, for sake of brevity, to describe generally acts prohibited by Article 3.

B. ISSUES UNDER ARTICLE 3

3. By memorial dated 22nd March, 1968, the *applicant Governments*, with the exception of the Netherlands Government, extended their applications to include allegations under Article 3 of the Convention that administrative practices, now followed in Greece

“by high officials within the hierarchy of State authorities or with their permission or knowledge . . . permit or even systematically make use of torture”

on political detainees; and documents were submitted in support of these allegations.²

The three applicant Governments also drew attention to the conditions in which political prisoners were detained in Greece, in particular at the

¹ Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants.

² Scandinavian Memorial (22-3-1968) pp. 105, 106; and Annexes 25-34 contained in Vol. II of the Memorial.

Security Police (Asphalia) Headquarters of Athens and Piraeus and in the detention camps on the islands of Yaros and Leros.

4. The *respondent Government* challenged the admissibility of these new allegations in the absence of prima facie proof, and it adduced 31 reports by the International Committee of the Red Cross, on visits to various places of detention in Greece³, a further general report covering the period May 1967 to March 1968⁴ and a number of other documents annexed to its observations of 27th May, 1968⁵.

5. In declaring the allegations admissible under Article 3 of the Convention, the *Commission* held that the three applicant Governments had not at that stage offered substantial evidence of an administrative practice in Greece of torture or ill-treatment; that a question of the exhaustion of domestic remedies by the alleged victims of torture or ill-treatment might then arise; that nevertheless in the situation prevailing – the Commission noted in particular the dismissal from office of thirty judges or public prosecutors on 29th May, 1968 – in Greece⁶, the remedies indicated by the respondent Government could not be considered as sufficient or effective; and that the issue of proof of the allegations of torture or ill-treatment, brought forward in the applications, was part of the merits.

C. EVIDENCE ADDUCED BY THE PARTIES⁷

6. The three *applicant Governments* submitted on 10th September, 1968, a list of witnesses, to be heard both outside and in Greece, including the names of 53 individuals, alleged victims of torture or ill-treatment in particular while detained in the Asphalia headquarters in Athens (Bou-boulinas Street), Piraeus, Salonica and Crete⁸.

7. The documentary evidence submitted by the three applicant Governments contains descriptions of many forms of torture or ill-treatment, signed by or attributed to named alleged victims; further statements by persons whose names are withheld; a reference to an alleged regulation, secretly promulgated in the armed services, authorising the use of torture or ill-treatment; and descriptions of detention conditions of political prisoners in the Asphalia headquarters in Athens and Piraeus, and in the detention centres of Yaros and Leros.

³ Commission Document I 6493.

⁴ Rapport général sur les visites effectués par les délégués du C.I.C.R. aux détenus politiques en Grèce (mai 1967 – mars 1968).

⁵ Appendices 1–8.

⁶ Verbatim Record (May 1968), Annex III.

⁷ Complete lists of all submissions and documents received from the parties are attached as Annex I to this volume of the Report. [Not reproduced.]

⁸ Scand. Memorial 22-3-68, Vol. 1, p. 95. Throughout the Sub-Commission's investigations allegations were also made with regard to certain further localities cf. "Geographical distribution of torture" in Scand. Final Observations, 22-7-69, p. 165 *et seq.*

8. In contesting the allegations of torture or ill-treatment generally, the *respondent Government* has mainly invoked:

- (i) Greek legislative provisions, prohibiting torture and imposing sanctions, in the penal code and the new Constitution Article 11⁹, and stressed that none of these provisions have been subject to measures of derogation since 21st April, 1967;
- (ii) various exhortations of the Minister of Public Order to the police requesting courteous and humane behaviour in the exercise of their functions and announcing severe punishment for any infringement¹⁰;
a statement by the Prime Minister that those responsible for any torture that might be discovered will be executed in Constitution Square¹¹;
- (iii) lists and statistics on disciplinary proceedings against police and gendarmerie officers which ended in the dismissal of charges or punishment of certain gendarmes or corporals¹²;
- (iv) the institution of administrative enquiries into a number of cases of alleged torture or ill-treatment¹³;
- (v) certain reports of the International Committee of the Red Cross¹⁴;
- (vi) reports or statements by certain British Members of Parliament¹⁵

⁹ Cf. the texts quoted in Greek Observations, 27-5-68, pp. 3-13.

¹⁰ Cf. extracts from 6 messages from the period 10th June, 1967, to 12th April, 1968, quoted *ibid.* pp. 14-15.

¹¹ Press conference of 8th June, 1969, from the Permanent Representative of Greece.

¹² Greek Observations, 27-5-68, Appendices 1-4:

- Appendix 1: proceedings against 7 police or gendarmerie officials of the Athens area resulting in a dismissal of the charge and proceedings against 15 officers then pending, including one George Kamboglou of Agios Spyridonos, possibly one of those mentioned in connection with torture allegations; all other proceedings are not connected with the cases raised in the applications.
- Appendix 2: Disciplinary punishment of 40 gendarmes and gendarmerie corporals, all unconnected with the present allegations.
- Appendix 3: List of gendarmes disciplined: 1965: 49; 1966: 53; 1967: 45; 1968: 7.
- Appendix 4: List of policemen disciplined: 1965: 27; 1966: 32; 1967: 31; 1968: 8.

¹³ cf. Annex II to this volume of the Report. [Not reproduced.]

¹⁴ Two general reports: May 1967 - March 1968 (printed booklet) and November-December 1968 (Document I 6859); the reports for the remaining periods, in particular a report of a visit in August, 1968, have not been submitted in spite of repeated requests. The Respondent Government further submitted a series of 31 reports on the particular visits carried out between July 1967 and February 1968 (Document I 6493). The reports on the first visits to the detention camps and the covering letter of the International Committee of the Red Cross have not been submitted.

¹⁵ Texts of two press conferences by a group visiting Greece: Annexes 5 and 8 (19-8-68); statements in House of Commons by Francis Noel-Baker on 11th April, 1968: Commission Document D 24.216; and on 11th July, 1968: Annex 15 (19-8-68).

and by Mr. Siegmann, the Rapporteur of the Consultative Assembly of the Council of Europe¹⁶.

It has in general also maintained that the allegations are false propaganda put out by the Communist Party both in and outside Greece, or by other groups hostile to the respondent Government, to discredit it and the police authorities.

Sub-Commission's investigation

9. At five hearings before the Sub-Commission or its delegates –

- from 25th to 28th November, in Strasbourg¹⁷,
- from 18th to 20th December, 1968, in Strasbourg¹⁸,
- from 10th to 20th March, 1969, in Athens¹⁹,
- from 16th to 17th June, 1969, in Strasbourg²⁰,
- on 26th July, 1969, in Strasbourg²¹ –

a total of 58 witnesses gave evidence with regard to Article 3 of the Convention²².

Among these were:

- 16 alleged victims of physical ill-treatment or torture;
- 7 persons who had been detained together with those alleged victims;
- 25 police officers and other Greek officials;
- 2 political prisoners with regard to whom no torture allegations were made but who had been proposed by the respondent Government (Zervoulakos and Tambakis);
- 8 other persons who had made observations concerning the treatment of political prisoners in Greece.

The hearings in March, June and July 1969 took place in the absence of the parties but every witness was informed by the President that, though testimony was being given in the absence of the representatives of either the applicant or respondent Governments, the verbatim record of the hearing would be communicated in its entirety to all these Governments.

¹⁶ Consultative Assembly Document 2322.

¹⁷ Volume I of the Verbatim Record, Document 12.297.

¹⁸ Volume I of the Verbatim Record, Document 18.307.

¹⁹ Verbatim Record Volumes I-IV, containing also evidence concerning other articles.

²⁰ Verbatim Record, Document 14.405.

²¹ Verbatim Record (Tsirka).

²² Detailed list attached as Annex III to this volume of the Report. [Not reproduced.]

Although the respondent Government requested that the hearings in Athens in March 1969 should be conducted in the absence of the parties it protested at the similar decision by the Sub-Commission for the hearings in Strasbourg in June and July 1969.

10. 49 further witnesses whom the Sub-Commission decided to hear with regard to Article 3 were not heard for various reasons²³, among them 21 persons detained in Greece whom the respondent Government did not make available to the Sub-Commission for a hearing²⁴. One of these witnesses, Mikis Theodorakis, had not been made available to the Sub-Commission before it decided on 19th March, 1969, to terminate its investigation in Greece. However, on the following day the respondent Government offered the remaining delegated members the possibility of hearing Theodorakis as a witness. The delegated members considered that they were not at that stage in a position to accept the evidence only offered after the Sub-Commission's decision to terminate the proceedings and referred the matter to the full Sub-Commission which on 20th May, 1969, again invited the respondent Government to make arrangements for a hearing of Theodorakis and 20 other witnesses including those previously refused. The respondent Government did not reply to this request.

11. One person living in Greece who was summoned to appear in Strasbourg in June 1969, the lawyer George B. Mangakis, could not appear, due to the withdrawal of his passport²⁵. A further witness, Mrs. Tsirka, who had similarly been unable to appear at the hearing in June was subsequently heard in July after she had left Greece²⁶.

12. A number of further witnesses proposed or suggested by the parties at various stages of the investigation, i.e. –

73 witnesses detained or living in Greece and 2 witnesses living outside Greece proposed by the applicant Governments,

7 witnesses living in Greece suggested by the respondent Government –

had not yet been heard or summoned when the Sub-Commission con-

²³ Detailed list attached as Annex IV A to this volume of the report. [Not reproduced.]

²⁴ Cf. Sub-Commission's requests of 18th March and 21st May, 1969.

²⁵ Cf. Mangakis's letters of 6th and 15th and telegram of 17th June, 1969; Scandinavian letters of 17th June and 23rd July, 1969; letters of the Commission's Secretary of 4th July and 21st July, 1969, to the respondent Government; respondent Government's letter No. 1639 of 16th July, 1969.

²⁶ Cf. Appendices VII to IX to Verbatim Record (Tsirka) and Sub-Commission's letter of 24th July 1969 to respondent Government.

cluded its investigation²⁷. After having heard in November and December 1968 all witnesses proposed by the parties, the Sub-Commission then decided to give priority, during its investigation in Greece in March 1969, to evidence connected with those cases on which some substantial evidence had already been received. As a consequence of the respondent Government's refusal to make available a great number of witnesses detained in Greece and its preventing others living in Greece from travelling to Strasbourg, the Sub-Commission had to limit its subsequent hearings in June and July to witnesses available outside Greece. For these reasons the other witnesses living in Greece could not be heard.

13. The Sub-Commission also called medical experts who examined 8 alleged victims with their consent:

(a) Prof. J. Bernheim, Director of the Institute of Forensic Medicine at the University of Geneva, assisted by Dr. A. Rohner, Dr. P. Boggio and Dr. J. F. Moody, examined, and submitted opinions in the cases of the witnesses

- (i) Papagiannakis, Lendakis and Karaosman after having exchanged views in Athens with Prof. D. Ekonomos, Dr. J. Matsiotas and Dr. G. Adjutantis;
- (ii) Vardikos, Korovessis, Meletis and Vlassis

after having received the results of specialist or supplementary examinations from:

Dr. F. Borer, Geneva; Prof. Dr. M. Adloff, University of Strasbourg; Dr. R. Raber, Strasbourg; Prof. F. E. Camps, London Hospital Medical College; Prof. J. Lundevall, University of Oslo; Dr. R. Weyde, University of Oslo.

(b) Prof. J. Mehl and Prof. Dr. B. Keller of the University of Strasbourg examined the witness Mrs. Tsirka and submitted an opinion in her case.

14. During its investigation the Sub-Commission has received from the parties and from witnesses a great number of documents relating to Article 3, including statements from alleged victims of torture or ill-treatment²⁸, in particular also from witnesses whom the Sub-Commission decided to hear but who were prevented by the respondent Government from giving oral evidence.

The Sub-Commission had also requested the respondent Government to submit certain further medical records, reports of the International

²⁷ Cf. Annex IV B to this volume of the report. [Not reproduced.]

²⁸ Cf. Annex I to this volume of the report. [Not reproduced.]

Committee of the Red Cross, and information on the results of certain administrative enquiries but the respondent Government did not comply with these requests.

15. The Sub-Commission has inspected the Security Police Headquarters of Athens and Piraeus²⁹, but was refused access to Averoff prison and the detention camps on the Island of Leros. The Sub-Commission had also envisaged inspecting the Dionysos military camp but, having regard to the refusal by the respondent Government to allow the hearing of the four witnesses allegedly tortured in this camp (Panagoulis, Maria Kallerghi, Petropoulos and Kiaos), did not carry out the visit to the camp³⁰.

Similarly the Sub-Commission did not find it necessary to carry out the envisaged inspection of the Hagia Paraskevi Aliens' Interrogation Centre after having heard the evidence in the Karaosman case which was the only one connected with this centre; however, a delegated member had previously visited the centre in order to ascertain its legal status³¹.

After having refused the Sub-Commission access to the Averoff prison on 19th March, 1969, the respondent Government proposed on 20th March instead a visit to Korydallos prison, stating that this prison had never been visited by the Red Cross. The delegates referred this proposal to the full Sub-Commission which decided on 30th April, 1969, not to accept this proposal; it noted in this connection that according to the reports submitted by the respondent Government, the Red Cross had in fact carried out on 20th March, 1968, a visit to Korydallos prison but found that no person detained for political offences was then held in this prison³².

Parties' Final Submissions

16. Following the Sub-Commission's investigation the *applicant Governments* concluded that overwhelming evidence had already been produced of the fact that torture is applied to political prisoners in Greece in violation of Article 3 of the European Convention on Human Rights. They further maintained that this obvious conclusion had been strengthened and corroborated by the acts and omissions of the Greek Government in its dealing with the torture issue in the present case³³. They also urged the Sub-Commission to take into account not only the oral evidence of witnesses but also written declarations, newspaper and

²⁹ Verbatim Record (Athens) III, pp. 792-960.

³⁰ Decision of 18th March, 1969.

³¹ Verbatim Record (Athens) III, pp. 790-791.

³² General Red Cross Report, May 1967 - March 1968, p. 16. Cf. also the report on the previous visit on 26th October, 1967: Particular Red Cross Reports, p. 86.

³³ Scandinavian Final Observations dated 22nd July, 1969, p. 3.

magazine articles by reputed journalists, letters smuggled out of Greece – signed or anonymous – and similar written documents³⁴.

17. With regard to the Red Cross reports the applicant Governments submitted that the respondent Government had made a wilful selection to suit its own purposes and had failed to submit those reports which expressly dealt with torture³⁵.

18. In reply to the respondent Government's argument according to which the alleged victims of torture are "communists who told communist lies fabricated in Moscow" the applicant Governments submitted that "the respondent Government has not produced a shred of evidence with regard to these preposterous allegations" and that the witnesses heard belonged, in fact, to various political parties³⁶.

19. Finally the applicant Governments emphasised that the stand taken by the respondent Government in preventing the Sub-Commission from establishing the facts of the case must not benefit that Government and that consequently the documentary evidence emanating from persons not heard as witnesses must be taken fully into account as evidence³⁷.

20. The applicant Governments commented in detail on 40 cases – as will be set out below in the context of these cases – and gave a survey of the geographical distribution of torture based on a list of 88 names which is said to be "by no means exhaustive".

21. Commenting on the medical experts' reports in the cases of Vardikos, Korovessis, Meletis and Vlassis, the applicant Governments emphasised the inherent difficulties in establishing any discernable marks about two years after the events. In conclusion they submitted that the evidence obtained by the Sub-Commission during its hearings, investigations and through the medical examinations undertaken contain conclusive evidence that all the above-mentioned witnesses have been subjected to torture and other inhuman treatment³⁸.

22. The *respondent Government* did not make any final submissions on the evidence obtained by the Sub-Commission and the medical experts' reports³⁹. With regard to the hearings which took place in June and July, 1969, the respondent Government similarly did not propose any witnesses in connection with the cases forming the subject of those

³⁴ *Ibid.* p. 8.

³⁵ *Ibid.* p. 10.

³⁶ *Ibid.* p. 11.

³⁷ *Ibid.* p. 183.

³⁸ Scandinavian Observations dated 19th September, 1969.

³⁹ Cf. Sub-Commission's letters of 23rd June and 9th September, 1969.

hearings. It generally qualified the evidence obtained at the hearings of 16th/17th June, 1969, as "calumnious allegations"⁴⁰. It requested, however, the annulment of the last two hearings of witnesses on the ground that the Sub-Commission itself had violated Article 28, para. (a) of the Convention in conducting these hearings by delegates and in the absence of the parties⁴¹.

The *Sub-Commission* rejected this request by letter of 22nd July, 1969. Upon a further application by the respondent Government⁴² the plenary *Commission* decided on 6th October, 1969, that it was not competent to decide upon an application directed to the annulment of procedural steps of the Sub-Commission; on 9th October, 1969, the plenary Commission further decided not to obtain information either by the hearing of further witnesses or otherwise.

Preliminary issues

23. Before addressing itself to the substance of the allegations of torture or ill-treatment, the Commission finds it necessary to take a position on certain issues which must determine its examination of the evidence before it and the form of its conclusions.

These issues are: the notion of an administrative practice of torture or ill-treatment; and the standard and means of proof to be applied.

A. THE NOTION OF AN ADMINISTRATIVE PRACTICE OF TORTURE OR ILL-TREATMENT

24. The Convention does not in terms speak of administrative practices incompatible with it, but the notion is closely linked with the principle of the exhaustion of domestic remedies. The rule in Article 26 is based on the assumption, borne out by Article 13, that for a breach of a Convention provision there is a remedy available in the domestic system of law and administration, even if the provision is not directly incorporated in domestic law, and that that remedy is effective.

25. Where, however, there is a practice of non-observance of certain Convention provisions, the remedies prescribed will of necessity be side-stepped or rendered inadequate. Thus, if there was an administrative practice of torture or ill-treatment, judicial remedies prescribed would tend to be rendered ineffective by the difficulty of securing probative evidence, and administrative enquiries would either be not instituted, or, if they were, would be likely to be half-hearted and incomplete. It may be noted here that, in its decisions on the admissibility of allegations

⁴⁰ Letter No. 1489 of 19th June, 1969.

⁴¹ Letter of 24th June, 1969.

⁴² Letters of 23rd July and 25th September, 1969.

under Article 3, the Commission found that evidence of an administrative practice of torture or ill-treatment, contrary to Article 3, had not at that stage yet been produced. It therefore found that remedies were ineffective on grounds other than the existence of an administrative practice.

Certain factors of a general character must also be noticed:

26. In the first place, acts prohibited by Article 3 of the Convention will engage the responsibility of a Contracting State only if they are committed by persons exercising public authority; further, it must be presumed that they are contrary to domestic law. Breaches of Article 3 are therefore governmental acts which are essentially irregular and abnormal, and if expressly mentioned at all, they will be so only by the most secret instructions. It follows that since in the present case torture and ill-treatment is alleged to occur in places under the control of police or military authorities, evidence tending to show the truth or falsity of such allegations lies peculiarly within the knowledge or control of these authorities; and, further, that it would defeat the purpose of Article 3 to insist that an administrative practice is established only if there are standing instructions to apply torture or ill-treatment, for the proof of the existence of such instructions would be virtually impossible, given the secrecy with which they would be surrounded.

27. In the second place, it must be observed that it would obviously not be proper to describe as an administrative practice acts of torture or ill-treatment which were isolated in time and place and, after proof, duly punished. On the other hand, it would be unreasonable and again defeat the purpose of Article 3 to maintain that an administrative practice is not established unless and until every political detainee, or at least a majority, are subjected to torture or ill-treatment.

28. These various considerations lead to the conclusion that two elements are necessary to the existence of an administrative practice of torture or ill-treatment: repetition of acts, and official tolerance. By *repetition of acts* is meant a substantial number of acts of torture or ill-treatment which are the expression of a general situation. The pattern of such acts may be either, on the one hand, that they occurred in the same place, that they were attributable to the agents of the same police or military authority, or that the victims belonged to the same political category; or, on the other hand, that they occurred in several places or at the hands of distinct authorities, or were inflicted on persons of varying political affiliations.

29. By *official tolerance* is meant that, though acts of torture or ill-treatment are plainly illegal, they are tolerated in the sense that the superiors of those immediately responsible though cognisant of such acts, take no action to punish them or prevent their repetition; or that higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings, a fair hearing of such complaints is denied.

B. STANDARD AND MEANS OF PROOF

30. The task of the Commission is to determine whether Article 3 has been violated in individual cases and also whether or not there is or has been an administrative practice of torture or ill-treatment in Greece since April 1967. For these purposes, it must first examine the case of each alleged victim, as though it were dealing with individual applications. It must, therefore, maintain a certain standard of proof, which is that in each case the allegations of torture or ill-treatment, as breaches of Article 3 of the Convention, must be proved beyond reasonable doubt. A reasonable doubt means not a doubt based on a merely theoretical possibility or raised in order to avoid a disagreeable conclusion, but a doubt for which reasons can be given drawn from the facts presented.

31. There are certain inherent difficulties in the proof of allegations of torture or ill-treatment. First, a victim or a witness able to corroborate his story might hesitate to describe or reveal all that has happened to him for fear of reprisals upon himself or his family. Secondly, acts of torture or ill-treatment by agents of the police or armed services would be carried out as far as possible without witnesses and perhaps without the knowledge of higher authority. Thirdly, where allegations of torture or ill-treatment are made, the authorities, whether the police or armed services or the Ministries concerned, must inevitably feel that they have a collective reputation to defend, a feeling which would be all the stronger in those authorities that had no knowledge of the activities of the agents against whom the allegations are made. In consequence there may be reluctance of higher authority to admit, or allow inquiries to be made into, facts which might show that the allegations are true. Lastly, physical traces of torture or ill-treatment may with lapse of time become unrecognisable, even by medical experts, particularly where the form of torture itself leaves little external marks.

32. With these considerations of standards and means of proof in mind, the Sub-Commission has in the hearing of witnesses confined itself as far as possible to those whose evidence is direct in one of three possible ways: that the witness has claimed to have been himself subjected to torture or ill-treatment; that the witness has seen its actual infliction on another person; or that the witness has seen marks or traces on another

person that could be attributed to torture or ill-treatment. In other words, the Sub-Commission has thought it right to disregard a large quantity of hearsay evidence which has been brought before it in various forms. It has, however, taken into consideration evidence from persons who have heard previous accounts by the alleged victim personally and it has evaluated such evidence as an element of the credibility of the alleged victim's own statements.

33. The Sub-Commission has also received and examined many documents⁴³, including written statements by alleged victims describing torture or ill-treatment: the Sub-Commission has attributed evidentiary weight to such statements if their authenticity is established or uncontested. On the other hand, the Sub-Commission cannot accept as evidence any statements by or about unidentified persons since it has no possible means of verifying the authenticity and veracity of such documents.

34. In its evaluation of the evidence before it the Sub-Commission has also taken into account two features of the denial by the respondent Government of allegations of torture or ill-treatment: first, the respondent Government refused the Sub-Commission access to a number of individuals, whom it names and asked to see, and who might give direct evidence of torture or ill-treatment in one of the ways already described. In particular Panagoulis, Notaras, Petropoulos, Kallerghi, Tsiloglou and Kiaos might have given direct evidence concerning themselves as alleged victims. The respondent Government also refused to allow the Sub-Commission to visit the Averoff prison in Athens or the detention centres on Leros. The Sub-Commission did not consider that any of these refusals was in fact justified by the reasons invoked by the respondent Government. This will be described in detail in the Commission's report concerning the issue whether the respondent Government has complied with its obligations under Article 28, paragraph (a), of the Convention⁴⁴.

35. As to the general plea by the respondent Government that allegations of torture or ill-treatment in Greece are calculated anti-Government propaganda, inspired largely by Communists, certain facts have to be taken into account. In the first place, the political detainees have been since April 1967 in the majority of cases avowed Communists, or members of the EDA party and others collaborating with them.

36. However, opposing inferences may be drawn from this. On the one hand, allegations of torture or ill-treatment may sometimes be distorted or exaggerated or even manufactured for political purposes to

⁴³ See the complete list of all documents given in Annex I to this volume of the report and the references to these documents in the 213 cases of alleged torture or ill-treatment contained in Annex V. [Not reproduced.]

⁴⁴ See Annex VII. [Not reproduced.]

discredit the respondent Government. Certainly allegations have been repeatedly made in broadcast transmissions from Greece's northern neighbours, and have in some cases been shown to be false. On the other hand, the experience of the civil conflict of December 1944 and 1946-49 has left bitter and indelible memories in the Greek people, a fear of its repetition, and an implacable hatred between opponents and supporters of Communism. When political detainees suspected of subversive activities are in the complete power of police or military authorities, whose duty is to discover the extent of their political associations and activities and to limit them, the possibility of torture or ill-treatment may well be increased if they refuse information.

37. While then the general plan that allegations of torture or ill-treatment are simply anti-government propaganda must serve as a warning to watch for distortions, exaggerations and false repetition in them, it cannot be accepted as a basis for their simple rejection. The Sub-Commission considers that an account given first by an alleged victim to relatives or in secrecy to others, rather than to a public forum, cannot in general be suspected of being motivated by propaganda aims.

38. As to the further general plea by the respondent Government suggesting that the allegations made by prisoners are an attempt to vindicate themselves in the eyes of their co-accused and political friends in general, after having betrayed others to the police during the interrogations, the Sub-Commission kept this possibility in mind in examining the allegations of ill-treatment, but similarly finds that such pleas cannot be accepted without further substantiation as a basis for their general rejection. This possible motive can only come into consideration in cases where there is some indication that an arrested person has in fact given such information to the police and where the circumstances do allow the assumption that he might have done so without any undue pressure.

Order of presentation

39. The Commission will first set out the establishment of the facts by the Sub-Commission with regard to cases of alleged physical torture or ill-treatment. In this respect the Sub-Commission has examined all cases of alleged ill-treatment or torture in which:

- either the alleged victim was heard as a witness (Part I);
- or the alleged victim was prevented by the respondent Government from appearing as a witness, but a written statement and corroborating evidence has been received (Part II);
- or otherwise substantial evidence such as medical documents or the observations of other witnesses can confirm or disprove the allegation made by or with regard to the alleged victim (Part III).

40. All further allegations by or concerning alleged victims whose cases have not been the subject of substantial evidence and therefore not examined by the Sub-Commission will only be reported in a general manner (Part IV) but the essential details of the allegations and the references to the relevant documents are set out in Annex V to this volume of the report which covers all 213 cases of alleged torture or ill-treatment brought to the Sub-Commission's attention including those examined in the text of the report⁴⁵.

41. The cases examined by the Sub-Commission and set out in this report as well as the further allegations of ill-treatment or torture listed in the Annex will be grouped according to the police locality or other place of detention to which they relate in the following order⁴⁶:

- ATHENS AND SUBURBAN POLICE LOCALITIES
- LOCALITIES UNDER CONTROL OF MILITARY AUTHORITIES IN AND NEAR ATHENS
- PIRAEUS ASPHALIA
- SALONICA GENDARMERIE
- LOCALITIES UNDER MILITARY CONTROL IN AND NEAR SALONICA
- CRETE
- POLICE STATIONS IN OTHER PARTS OF GREECE
- ASSEMBLY PLACES FOR ARRESTED PERSONS IN APRIL 1967
- VARIOUS LOCALITIES

Within each group the cases will be set out chronologically according to the date on which the ill-treatment is alleged to have taken place.

42. Subsequently the report will deal with allegations of non-physical torture or ill-treatment of prisoners, such as severe psychological pressure or degrading treatment (Part V) and with the conditions of detention of political prisoners considered in the light of Article 3 of the Convention (Part VI). Finally, the Commission will present its opinions as to whether and to what extent, according to the facts as established by the Sub-Commission⁴⁷ Article 3 of the Convention has been violated.

⁴⁵ These cases are marked with an asterisk in Annex V to this volume of the report.

⁴⁶ Cf. also the list of geographical distribution of torture and ill-treatment given in the applicant Governments' Final Observations of 22-7-69, pp. 165-175.

⁴⁷ Cf. the analogous system adopted in the Commission's report in the Zeidler-Kornmann case, Report of 3-10-67, approved by the Committee of Ministers on 26-6-68, pp. 3, 10, 91.

Establishment of the Facts by the Sub-Commission

PART I

Cases of physical torture or ill-treatment where the alleged victims were heard by the Sub-Commission

A.

CASES RELATING TO THE ATHENS ASPHALIA

The report will now set out the findings concerning seven cases of torture or ill-treatment alleged to have taken place in the Athens Asphalia Headquarters in Bouboulinas Street.

Vardikos; Vlassis; Leloudas; Arseni; Tsirka; Lendakis; Korovessis.

In these cases the Sub-Commission has heard oral evidence from the alleged victims.

Introduction: ATHENS ASPHALIA HEADQUARTERS

1. It is necessary before the Athens group is considered to refer to certain features of the Asphalia headquarters at Bouboulinas Street.

The Sub-Commission visited the Bouboulinas Street building on 14th March, 1969, and delegated members visited it on 17th March and 20th March. In visiting the roof-terrace of the building¹ the Sub-Commission had in mind the allegations that beatings of detainees, including "falanga"² were carried out there, and in particular sought to answer three questions: was there space on the roof-terrace for such beatings to be carried out? Could cries of those being beaten be heard in rooms on the fourth floor immediately below? Could these activities be seen or heard by persons in neighbouring buildings?

2. On the roof-terrace there is a single building containing four small store-rooms, the doors of which one passes on the way from the staircase to the shower-room which is at the end and is the largest.³

The Sub-Commission considers that there would have been ample space in the shower-room for the beatings as described to have taken place. Inside there are, against the left wall, four shower cabins⁴ and one boiler suspended from the roof⁵. There is also a derelict boiler leaning against the opposite wall and a sink with a copper lid. The rear part of the room is filled with pieces of broken wood stacked against the wall

¹ Cf. Annex VI to Chapter IV of the report, p. 657 (photographs); for a full description and further photographs of the building see Verbatim Record (Athens) III, pp. 792-855.

² Beating the soles of the feet.

³ See plan in Annex VI (not reproduced) and photograph *ibid.* p. 661 (bottom).

⁴ See photograph of one cabin in Annex VI, p. 662.

⁵ See photograph in Annex VI, p. 663; the boiler is situated to the immediate right of the shower.

and a fairly large window that is blocked out with cardboard or plywood⁶. In the centre of the room a space of approximately 10 square metres remains free⁷.

3. The Sub-Commission also considers that cries or shouts could be heard from the shower-room by persons in the cells on the fourth floor; the windows of these cells look across the court-yard on to the shower-room⁸. During the Sub-Commission's inspection of the building, a member standing outside the back door of the shower-room called moderately loudly and without raising the pitch, and could be heard by another member on the fourth floor through the open windows⁹. Two other elements must be mentioned here. First, a number of references have been made by detainees on the fourth floor of the Bouboulinas Street Station of a noise variously described but often as resembling a motor-cycle engine¹⁰. It has been said that this noise was to be heard sometimes at the same time as cries coming from the shower-house, and sometimes not. The second element is that it was found that the sink with a copper lid in the shower-house makes a resonant noise if struck. References have also been made by detainees to a noise of metal being rhythmically struck accompanying cries coming from the shower-house¹¹. Allegations that those subjected to beatings in the shower-house were in some cases gagged have also been made.

4. The third question presents greater difficulties. The neighbouring buildings may be described in turn from the photographs, moving clockwise around the plan of the roof terrace¹². The terrace, like the whole building, is built in "U" form around the interior court-yard, situated north of the long side of the terrace. The eastern wing of the terrace, which is a free roof-top – but not the main part between the staircase and the shower-room – faces northward across the court-yard, the top floor of an older building¹³ and eastward, across a partition wall with wire netting, the roof-top of a – reportedly private – neighbouring building with certain rather dilapidated constructions used for keeping chickens. Southward across Tossitsa Street the whole of the terrace looks onto,

⁶ See photograph in Annex VI (not reproduced).

⁷ See Verbatim Record (Athens) III, p. 793, third paragraph.

⁸ Cf. photographs in Annex VI, p. 659, taken from one of those windows and from outside the back door of the shower-room and showing the windows at the lower margin.

⁹ Cf. Verbatim Record (Athens) III, p. 795, fifth paragraph.

¹⁰ Arseni, Verbatim Record (November 68) I, pp. 142, 143; Marketaki, *ibid.* p. 264; Lendakis, Verbatim Record (Athens) I, p. 265; Lelouda, Verbatim Record (16th/17th June, 1969) p. 115.

¹¹ Arseni and Marketaki, *ibid.*

¹² See photographs pp. 660–661 in the order presented.

¹³ See photographs, p. 660.

and is overlooked by, the top floors of three modern buildings, apparently two apartment buildings¹⁵, and one maternity home, and at some distance, the Polytechnical School. The view west onto Bouboulinas Street is obstructed by a fairly high wall; the Archeological Museum on the other side of this street is much lower than the Security Police building.

5. The possibility of cries being heard in the neighbouring buildings depends upon a number of factors. Actual distance; the fact that the beatings are alleged to have taken place generally, but not exclusively, in the night, which might render them more noticeable but which might find shutters closed¹⁹; the facts that the upper floors of the maternity clinic were unoccupied, and that from the clinic itself cries were to be heard from time to time²⁰. The last fact was relied on by the respondent Government and more particularly by certain police officers as a probable explanation of the cries said to have been heard by occupants of cells numbered 117 and 118²¹.

6. The Sub-Commission did not think that it was possible to reach any firm conclusion on the questions whether, if any cries coming from the roof-terrace had been heard in neighbouring buildings, they would have been interpreted as coming from there or from the maternity home; and whether, if interpreted as coming from the roof-terrace, they would have been necessarily reported or described to the Sub-Commission. The Sub-Commission therefore did not think it useful to question three occupants of the apartment building named by the respondent Government²².

¹⁵ See photographs pp. 660-661.

¹⁹ See Arseni, Verbatim Record (Strasbourg, November, 1968) I, p. 157.

²⁰ See testimony of Dr. Kioupis: Verbatim Record (Athens) I, pp. 218-219. It is to be observed Dr. Kioupis heard cries from the maternity home when in the street outside it, but not in his office with the windows closed. Antonia Marketaki heard babies crying, Verbatim Record (November, 1968) I, p. 270.

²¹ Questions put by Mr. Tsoukalas to witnesses Daskolopoulos, Verbatim Record (November, 1968) I, p. 215, and Marreco (December, 1968) I, p. 30; Dr. Kioupis *loc. cit.*; Babalis Verbatim Record (Athens) I, p. 192.

²² Cf. List of witnesses suggested by the parties but not called by the Sub-Commission, Annex III to this volume of the report. [Not reproduced.]