

*Report of the European Commission of Human Rights  
on the "Greek Case"*

## LIST OF PRINCIPAL DOCUMENTS

<i>Full title</i>	<i>Cited as</i>
Letter of 19th September, 1967, from the respondent Government to the Secretary General of the Council of Europe (reproduced at Appendix V to this Report).	Letter of 19th September, 1967.
Applications filed on 20th September, 1967, by the Governments of Denmark, Norway and Sweden.	Applications of 20th September, 1967.
Application filed on 27th September, 1967, by the Government of the Netherlands.	Application of 27th September, 1967.
Observations of the respondent Government of 16th December, 1967, on the admissibility of the applications – Appendix to Doc. D 22.004 (English translation by the Council of Europe)	Observations of 16th December, 1967.
Verbatim record of the hearing held before the Commission on 23rd and 24th January, 1968 – Doc. 9205	Hearing of January 1968.
Joint memorial filed by the applicant Governments of Denmark, Norway and Sweden on 25th March, 1968 (Vol. I, unless otherwise quoted).	Memorial of 25th March, 1968.
Memorial filed by the applicant Government of the Netherlands on 25th March, 1968 – Doc. D 23.643 of the Council of Europe.	Netherlands memorial of 25th March, 1968.
Observations of the respondent Government of 27th May, 1968, on the admissibility of the new allegations – Doc. 10.163 (English translation by the Council of Europe).	Observations of 27th May, 1968.
Verbatim record of the hearing held before the Commission on 28th, 29th and 31st May, 1968 – Doc. 10.486.	Hearing of May 1968.
Memorial of the respondent Government of 6th July, 1968, on the merits of the case – Doc. 10.683 (English translation by the Council of Europe).	Memorial of 6th July, 1968.

<i>Full title</i>	<i>Cited as</i>
Memorial of the respondent Government of 19th August, 1968, on the merits of the new allegations - Doc. 10.954 (English translation by the Council of Europe).	Memorial of 19th August, 1968.
Verbatim record of the hearing held before the Sub-Commission from 23rd to 27th September, 1968 - Doc. 11.419.	Hearing of September 1968.
Memorial of the respondent Government of 15th November, 1968 - Doc. D 27.974 (English translation by the Council of Europe)	Memorial of November, 1968.
Verbatim record of the hearing of witnesses before the Sub-Commission from 25th to 30th November, 1968 - Vol. I (Doc. 12.297) and Vol. II (Doc. 12.370).	Hearing of November 1968.
The Undermining of the Greek Nation by Communism (publication filed by the respondent Government on 19th December, 1968).	The Undermining of the Greek Nation.
Verbatim record and minutes of the hearing of witnesses and visits of localities in Athens (10th-20th March, 1969).	Hearing of March 1969.
The Political Situation in Greece from 1944 to the Present - the Communist Danger (reproduced at Appendix V to this Report).	The Political Situation in Greece.
Verbatim record of the hearing held before the Sub-Commission on 9th and 10th June, 1969 - Doc. D 31.344.	Hearing of June 1969.

## *Introduction*

1. The following is the outline of the present case as submitted by the parties to the European Commission of Human Rights.

2. On 3rd May, 1967, the Permanent Representative of Greece had addressed a letter to the Secretary General of the Council of Europe in which, invoking Article 15 of the Convention on Human Rights, he had stated that, by Royal Decree No. 280 of 21st April, 1967, the application of Articles 5, 6, 8, 10, 11, 12, 14, 20, 95 and 97 of the Greek Constitution had been suspended in view of internal dangers threatening public order and the security of the State. In subsequent letters of 25th May and 19th September, 1967, the Greek Government had given further information in regard to Article 15.<sup>1</sup>

3. In their identical applications of 20th September, 1967, to the Commission, the applicant Governments of Denmark, Norway and Sweden first referred to the suspension of the above provisions of the Greek Constitution. They further submitted that, by Royal Decree No. 280 and other legislative measures, and by certain administrative practices, the respondent Government had violated Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention. In relation to all these allegations, they contended that the respondent Government had failed to show that the conditions of Article 15 of the Convention for measures of derogation were satisfied.

The applicant Government of the Netherlands, in its application of 27th September, 1967, made submissions which corresponded in substance to those of the first three applicant Governments.

The four applications were joined by the Commission on 2nd October, 1967.

The respondent Government, in its written observations in reply of 16th December, 1967, submitted primarily that the Commission was not competent to examine the applications because they concerned the actions of a revolutionary Government. It also stated with regard to Article 15 of the Convention that, in accordance with the Commission's jurisprudence, a Government enjoyed a "margin of appreciation" in deciding whether there existed a public emergency threatening the life of the nation and, if so, what exceptional measures were required.

On 24th January, 1968, the Commission declared the four applications admissible. This decision is reproduced in Appendix I to the present Report.<sup>2</sup>

<sup>1</sup> See paragraphs 63-67 of this Report.

<sup>2</sup> [Not reproduced.]

4. The first three applicant Governments, in their joint memorial of 25th March, 1968, extended their original allegations to Articles 3 and 7 of the Convention and Articles 1 and 3 of the First Protocol and referred in this connection to further legislative measures and alleged administrative practices of the respondent Government. The Netherlands Government did not make any new allegations. The respondent Government submitted in reply that the new allegations of the first three applicant Governments were on various grounds inadmissible. However, on 31st May, 1968, the Commission declared these allegations admissible. This decision is reproduced in Appendix II.<sup>2</sup>

5. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and is now transmitted to the Committee of Ministers in accordance with paragraph (2) of that Article. It was adopted on 5th November, 1969, the following members of the Commission having participated in the deliberations:

MM. A. SÜSTERHENN, Acting President  
 M. SØRENSEN  
 C. TH. EUSTATHIADES  
 J. E. S. FAWCETT  
 F. ERMACORA  
 F. CASTBERG  
 G. SPERDUTI  
 M. A. TRIANTAFYLIDES  
 F. WELTER  
 T. BALTA  
 W. F. DE GAAY FORTMAN  
 P. P. O'DONOGHUE  
 P. O. DELAHAYE  
 T. B. LINDAL  
 E. BUSUTTIL

A friendly settlement of the case has not been reached and the purpose of the Commission in the present Report, as provided in paragraph (1) of Article 31, is accordingly, with regard to each point at issue:

- (1) to establish the facts, and
- (2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

The establishment of the facts is based on the submissions made by the parties to the Commission and Sub-Commission, and on evidence received up to 4th October, 1969, being the date of the adoption of the

<sup>2</sup> [Not reproduced.]

Sub-Commission's report to the Commission. Subsequent communications, made by the respondent Government under Article 15, paragraph (3), of the Convention, are mentioned in Appendix IV to this Report, but the Commission has not been able to take them into consideration in the formulation of its opinion.<sup>3</sup>

A history of the Sub-Commission's and Commission's unsuccessful attempts to reach a friendly settlement is given in Volume III of the Report. It takes into account discussions until 5th November, 1969, being the date of the adoption of the present Report.

The full text of the oral and written pleadings of the parties, together with the documents handed in as exhibits, are held in the archives of the Commission and are available if required.

<sup>3</sup> [Not reproduced.]

PART A

*History of Proceedings and Points at Issue*

## CHAPTER I

### HISTORY OF PROCEEDINGS

6. It was considered useful, in view of the complexity of the present case, to give the following brief outline of the proceedings which took place before the Commission and the Sub-Commission. A schedule containing a more detailed indication and all relevant dates of these proceedings is attached at Appendix III to this Report.<sup>1</sup>

#### 1. ADMISSIBILITY STAGE

7. The applications of the Governments of Denmark, Norway and Sweden were introduced on 20th September, 1967 and were communicated on the same day to the respondent Government for written observations on admissibility. The application of the Netherlands Government was introduced and similarly communicated on 27th September, 1967.

8. The Commission met on 2nd October, 1967, and decided:
- to give precedence to the cases in accordance with Rule 38, paragraph (1), of its Rules of Procedure;
  - to order the joinder of the cases under Rule 39;
  - to fix 15th November, 1967, as the time-limit for the submission of the respondent Government's written observations on the admissibility of the applications;
  - to invite the parties, in pursuance of Rule 46, paragraph (1) *in fine*, to appear before the Commission at a hearing beginning on 14th December, 1967, in order to make oral explanations on admissibility.

9. By letter of 18th October, the respondent Government requested that the time-limit for the submission of its written observations should be extended until 31st December, 1967, and the oral hearing correspondingly adjourned. The Commission, having obtained the applicant Governments' comments on this request, decided on 3rd November, 1967:

- to extend until 19th December, 1967, the time-limit for the submission of the respondent Government's written observations;
- to fix 23rd January, 1968, as the new date for the opening of the hearing.

<sup>1</sup> [Not reproduced.]



10. The respondent Government's observations were filed on 18th December and considered by the Commission on 20th December, 1967.

11. At the hearing before the Commission on 23rd and 24th January, 1968, the respondent Government stated that it had nothing to add to its observations already filed. The applicant Governments developed the substance of their written submissions and replied to the respondent Government's written observations. At the end of the hearing, the Commission declared the applications admissible. Steps were at once taken to set up a Sub-Commission (Article 29 of the Convention) to whom the applicant Governments should submit their memorials on the merits of the case.

12. The joint memorial of the first three applicant Governments and the memorial of the Netherlands Government were filed on 25th March, 1968. The joint memorial also contained new allegations and the Commission decided on 3rd April, 1968:

- to invite the respondent Government to submit before 13th May, 1968, its written observations on the admissibility of the new allegations (at the request of the respondent Government, this time-limit was later extended to 16th May, 1968);
- to fix 28th May, 1968 as the date for the opening of hearing of the parties on this issue, if such a hearing should be requested by the respondent Government.

13. Written observations on the admissibility of the new allegations were filed by the respondent Government on 15th and 27th May, 1968, and, at the respondent Government's request, a hearing of the parties on the admissibility of the new allegations took place before the Commission on 28th, 29th and 31st May, 1968. At the end of the hearing, the Commission declared the new allegations admissible.

## 2. PROCEEDINGS BEFORE THE SUB-COMMISSION

14. The Sub-Commission was constituted on 3rd April, 1968 and, at its first meeting on 4th April, it decided to invite the respondent Government to submit, before 4th June, 1968, its counter-memorial on the merits of the case as regards the original allegations.

15. At its next session on 29th and 31st May, 1968, the Sub-Commission:

- decided, at the respondent Government's request, to extend this time-limit until 1st July, 1968;
- noted the Commission's decision of 31st May, 1968, declaring admissible the new allegations of the first three applicant Govern-

ments and decided that the respondent Government should be invited to submit, before 15th July, 1968, its memorial on the merits of these allegations;

- fixed 23rd September, 1968, for the opening of a hearing of the parties on the merits of the whole case.

16. The respondent Government's memorial on the merits of the original allegations was filed on 6th July, 1968. At its meeting on 8th July, 1968, the Sub-Commission, at the request of the respondent Government, extended until 19th August, 1968, the time-limit for the submission of the Government's memorial on the merits of the new allegations. The memorial was filed on that date.

17. A hearing of the parties on the merits of the whole case was held before the Sub-Commission on 23rd, 24th, 25th and 27th September, 1968. At the end of the hearing, the respondent Government was given the possibility to submit before 28th October, 1968, any further observations which it wished to make in reply to the oral submissions of the applicant Governments. At the request of the respondent Government, this time-limit was later extended to 15th November, 1968, and the Government's observations were filed on that date.

18. A hearing of witnesses took place before the Sub-Commission from 25th to 30th November, 1968. The parties were present and the Sub-Commission heard ten witnesses with regard to allegations under Article 3 and eight witnesses in connection with Article 15 of the Convention.

19. At a second hearing, which was held in the presence of the parties from 18th to 20th December, 1968, the Sub-Commission heard six witnesses under Article 3 and seven under Article 15 of the Convention. During this session, the Sub-Commission also decided that the witness, Mr. Marketakis, should be recalled and heard in the absence of the parties on 20th December, 1968, but it was then informed that the witness would not appear.<sup>2</sup>

20. On 20th December, 1968, the Sub-Commission fixed 6th February, 1969, as the opening date for its investigation in Greece.

21. In a letter of 13th January, 1969 to the Sub-Commission, the respondent Government stated that the presence of the applicant Governments during the Sub-Commission's investigation in Greece was "not necessary" and "could create difficulties".

The Sub-Commission met on 14th and 15th January, 1969, in order

<sup>2</sup> Cf. Chapter IV, Part I (E) of the Report.

to consider the programme for its investigation in Greece. It decided, with regard to the question of the parties' participation, "to hear all witnesses and to visit localities in the absence of the parties' representatives and to transmit in due course the verbatim record of such hearings to the parties for the submission of their observations". At the same time, the Sub-Commission "reserved to itself in principle the right, if it finds it expedient, to invite the parties' agents to have direct contact with the Sub-Commission in Greece".

In a letter of 18th January, 1969, the first three applicant Governments observed that the presence of the parties during the Sub-Commission's investigation in Greece would have been in conformity with the previous practice in the case. By participating in this investigation, the parties' representatives would have been able to assist the Sub-Commission in its task of establishing the facts.

22. On 8th February, 1969, the respondent Government informed the Sub-Commission that, for technical reasons, it was impossible to make all necessary arrangements for the Sub-Commission's investigation in Greece by 16th February and, at the request of the Government, the investigation was adjourned until 10th March, 1969.

23. The Sub-Commission met in Athens on 9th March and began its task of obtaining further evidence on 10th March, 1969. On 19th March it decided to terminate its visit to Greece but delegated members to hear on 20th March witnesses already summoned. Between 10th and 20th March, thirty-four witnesses were heard with regard to allegations under Article 3 and twenty witnesses in connection with Article 15 of the Convention. The Sub-Commission also summoned two forensic medical experts from the University of Geneva to examine certain witnesses heard in connection with Article 3 and it further inspected the police stations of the Asphalia in Athens and Piraeus and delegated a member to visit the Hagia Paraskevi Camp. The hearing and examination of witnesses and the visits of localities took place in the absence of the parties.

During the period of its investigation in Greece, the Sub-Commission was able, with the co-operation of the respondent Government, to work continuously. However, it decided to terminate its visit to Greece on the ground that it had been prevented by the Government, for reasons which it did not consider justified, from hearing certain further witnesses in regard to Article 3 of the Convention and from inspecting the detention camps on the Island of Leros and Averoff Prison in Athens. The Sub-Commission considered that it had consequently been unable to ascertain certain further facts relevant to Article 3. It later (on 7th May, 1969) informed the Commission, in connection with Article 28, paragraph (a), of the Convention.<sup>3</sup>

<sup>3</sup> Further details are given in Volume II, Part 2, Annex VII, of the Report. [Not reproduced.]

24. Also beginning in March 1969, the Sub-Commission opened discussions with the parties in connection with its task, under Article 28, paragraph (b), of the Convention of putting itself at the disposal of the parties with a view to seeking a friendly settlement of the case.

25. At its session on 28th to 30th April, 1969, the Sub-Commission decided:

- (1) *not to summon for the time being any further witnesses in connection with Article 15;*
- (2) *to invite the parties to submit their conclusions orally on Article 15, read in conjunction with Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 3 of the First Protocol at a hearing beginning on 9th June, 1969;*
- (3) *to instruct delegated members to hear further witnesses under Article 3 of the Convention at a session opening on 16th June, 1969;*
- (4) *not to invite the parties to be present at the session under (3) but to communicate to them, as soon as possible afterwards, the complete verbatim record of the hearing of witnesses and at the same time to invite the first three applicant Governments and the respondent Government to submit written conclusions on Article 3 within a time-limit of three weeks.*

26. By letters of 14th and 17th May, 1969, the respondent Government raised various objections to these decisions of the Sub-Commission. It stated in particular:<sup>4</sup>

- that all witnesses proposed by the Government should be heard and friendly settlement discussions concluded before the parties were invited to submit their final conclusions;
- that hearings of witnesses in Strasbourg should be held in the presence of the parties;
- that conclusions on Article 3 of the Convention should be submitted at an oral hearing and not in writing; and
- that the dates and time-limits fixed by the Sub-Commission did not leave the Government sufficient time for the preparation of its case.

27. The Sub-Commission considered the above objections at its meeting on 20th May, 1969, and decided to maintain its previous decisions. This decision was communicated to the parties on the same day.

<sup>4</sup> The Government also objected to page IV of the verbatim record of the Sub-Commission's hearing in Athens (hearing of March 1969).

28. By letter of 5th June, 1969, the respondent Government, referring to an earlier communication of 3rd June, requested an adjournment of one month of the hearing of conclusions under Article 15 of the Convention which had been fixed to open on 9th June, 1969. The Sub-Commission, however, maintained this date and, at the beginning of the hearing on 9th June, the respondent Government repeated its request which was rejected by the Sub-Commission.

29. The hearing accordingly continued before the Sub-Commission on 9th and 10th June, 1969, and the applicant Governments submitted their conclusions on Articles 5, 6, 7, 8, 9, 10, 11, 13, 14 and 15 of the Convention and Articles 1 and 3 of the First Protocol. The respondent Government did not submit any conclusions at the hearing and reserved the right to submit them at a later date.

30. At the end of the hearing, the Sub-Commission gave the respondent Government the possibility to file written observations on the applicant Governments' conclusions within a time-limit of three weeks from receipt of the verbatim record of the hearing. The respondent Government did not file such observations and stated in a letter of 25th July, 1969, that it did not intend to submit conclusions until its procedural complaints had been settled.

31. At a session of delegated members of the Sub-Commission on 16th and 17th June, 1969, seven witnesses were heard in connection with Article 3 of the Convention. In accordance with the Sub-Commission's decision of 29th April, 1969, the hearing took place in the absence of the parties.

The verbatim record of the hearing was sent to the first three applicant Governments and to the respondent Government on 23rd June and these Governments were invited to submit, before 16th July, 1969, their written conclusions under Article 3 of the Convention. At the request of the first three applicant Governments, the time-limit was later extended until 23rd July.

The conclusions of the first three applicant Governments were filed on 22nd July, 1969. No conclusions were received from the respondent Government.

32. On 21st July, 1969, the Sub-Commission rejected an application of 24th June by the respondent Government requesting *inter alia* that the hearing of the parties on 9th and 10th June and the hearing of witnesses on 16th and 17th June, 1969, should be annulled.<sup>5</sup> This was in connection with the Government's objections mentioned above (paragraphs 26 and 27).

<sup>5</sup> The Government had also requested the correction of a press communiqué issued on 11th June, 1969.

33. By letter of 23rd July, 1969, the respondent Government appealed from this decision of the Sub-Commission to the plenary Commission. This appeal was further developed in the Government's letter of 25th September, 1969.

34. An additional witness under Article 3 of the Convention<sup>6</sup> was heard by delegated members of the Sub-Commission on 26th July, 1969. The verbatim record of this hearing was sent to the parties on 1st August, 1969, and the first three applicant Governments and the respondent Government were invited to submit, before 18th August, 1969, any comments which they wished to make. The observations of the first three applicant Governments were filed on 16th August, 1969. No observations were received from the respondent Government.

35. By letter of 21st August, 1969, the reports of the medical experts on the examination of witnesses heard by delegated members of the Sub-Commission on 16th and 17th June, 1969, were sent to the first three applicant Governments and the respondent Government for observations. At the request of the respondent Government the time-limit for the submission of these observations was extended from 10th to 22nd September, 1969. The observations of the first three applicant Governments were received on 19th September, 1969, while the respondent Government had stated on 2nd September that it did not wish to submit any observations.

36. On 4th October, 1969, the Sub-Commission adopted its report under Rule 63 of the Commission's Rules of Procedure which was immediately sent to the Commission.

### 3. FURTHER PROCEEDINGS BEFORE THE COMMISSION

37. On 6th October, the Commission decided that it was not competent to deal with the respondent Government's appeal of 23rd July/25th September, 1969, requesting *inter alia*<sup>7</sup> the annulment of the Sub-Commission's hearings of 9th/10th and 16th/17th June, 1969 (paragraph 33 above).

At the same session the Commission considered the Sub-Commission's report and also noted the difficulties encountered by the Sub-Commission during its investigation in Greece (paragraph 23 above). The Commission then proceeded to draw up the present Report on the basis of the evidence

<sup>6</sup> See Volume II, Part 2 (Chapter IV, Part I, A, 5) of the Report (Mrs. Tsirka). [Not reproduced.]

<sup>7</sup> The Government had also repeated its complaints concerning the verbatim record of the March hearing and the press communiqué of 11th June, 1969 - cf. paragraph 26 (footnote) and paragraph 32 (footnote) above.

and submissions before it. It decided not to call for further evidence at that stage of the proceedings and not to hold an oral hearing of the parties.

38. The Commission adopted its Report on 5th November, 1969.

#### 4. OPINION OF MR. DELAHAYE

39. Since no provision is made for an appeal to the Commission against a decision of the Sub-Commission, the application made for this purpose must be rejected.

Since it must be declared inadmissible it cannot be examined on the merits and, therefore, the Commission cannot examine the grounds on which it is based.

On these considerations and from this point of view, no reply can be made to the respondent Government's request either for an oral hearing or to hear fresh witnesses.

But from the point of view of Rule 64 of the Commission's Rules of Procedure we are faced with the question whether in fact an oral hearing or the hearing of further witnesses would be useful.

It does not seem that an oral hearing is essential. The position is not the same with regard to the hearing of fresh witnesses even though this would cause great difficulties and a further adjournment is by no means desirable and indeed there is no certainty that the respondent Government would change its attitude on the question of making it possible to hear all the witnesses whom the Commission thinks should be heard.

## CHAPTER II

### POINTS AT ISSUE

#### 1. FIRST DECISION ON ADMISSIBILITY

40. The *applicant Governments* of Denmark, Norway and Sweden, in their written applications of 20th September, 1967,<sup>1</sup> and the applicant Government of the Netherlands, in its written application of 27th September, 1967, alleged that the respondent Government had, by a number of legislative and administrative measures, violated Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention. These allegations were further developed at the oral hearing before the Commission on 23rd and 24th January, 1968. In particular, the applicant Governments stated that:

- a state of siege had been declared and Articles 5, 6, 8, 10, 11, 12, 14, 20, 95 and 97 of the Greek Constitution of 1st January, 1952, had been suspended by Royal Decree No. 280 of 21st April, 1967;<sup>2</sup>
- political parties and ordinary political activities had been prohibited and parliamentary elections scheduled for 28th May, 1967, had been cancelled;
- extraordinary courts martial had been established by Royal Decrees Nos. 280 and 281<sup>3</sup> of 21st April, 1967;
- thousands of persons had been imprisoned for a long period without being brought before a "competent legal authority";
- the right to freedom of expression had been suppressed as was illustrated by an order of the Army Chief of Staff of 14th June, 1967;<sup>4</sup>
- censorship had been applied to the press and private communications;

<sup>1</sup> In these applications, reference was also made to Resolution 346 (1967) of 32nd June, 1967, in which the Consultative Assembly of the Council of Europe expressed "its grave concern at the present situation in Greece and at the many serious reported violations of human rights and fundamental freedoms" and also expressed the wish that the Governments of the Contracting Parties to the Convention on Human Rights "refer the Greek Case either jointly or separately to the European Commission of Human Rights in accordance with Article 24 of the Convention".

<sup>2</sup> The text of the Decree and of the suspended Articles of the Constitution is reproduced in paragraphs 65-66 below.

<sup>3</sup> See Part B, Chapter II (C) of this Report.

<sup>4</sup> See Part B, Chapter II (E) of this Report.



- many persons had been sentenced by extraordinary courts martial for their political opinions;
- the right to assemble freely or to associate freely with others had been abolished as was demonstrated by criminal charges and resultant harsh sentences in certain cases.

With regard to the notice of derogation given by the respondent Government under Article 15 of the Convention, the applicant Governments submitted that:

- the respondent Government had failed to show that the measures concerned were taken in a "public emergency threatening the life of the nation" and were "strictly required by the exigencies of the situation" in the sense of paragraph (1) of this Article;
- the respondent Government had not fulfilled its obligation under paragraph (3) to keep the Secretary General of the Council of Europe "fully informed of the measures it has taken and the reasons therefor".

41. The *respondent Government*, in its observations of 16th December, 1967, denied the competence of the Commission to examine the applications. The new Greek Government was the product of a revolution and, although a revolutionary Government was bound by the international obligations assumed by its predecessors, the actions by which this revolutionary Government maintained itself in power and indeed the original objects of the revolution could not logically be subject to the control of the Commission. The Turkish revolution of 1960 was invoked and the contrast between the attitudes adopted by the applicant Governments in that and in the present case.

The respondent Government further pointed out that, both in the First Cyprus Case and in the case of *Lawless v. Ireland* (Applications Nos. 176/56 and 332/57), the Commission, when applying Article 15 of the Convention, had recognised the right of the Governments concerned to enjoy a "margin of appreciation" in deciding whether there existed a public emergency threatening the life of the nation and, if so, what exceptional measures were required. This consideration should apply *a fortiori* to a Government which had come to power through a revolution.

Finally, the respondent Government quoted Resolution 351 (1967) of the Consultative Assembly of the Council of Europe, according to which the Assembly held itself ready "to make a declaration at the appropriate time on the possibility of the suspension of Greece from, or her right to remain a Member of, the Council of Europe".<sup>5</sup> The Government sub-

<sup>5</sup> This Resolution had been adopted on 26th September, 1967.

mitted that this Resolution constituted an anticipated condemnation of Greece by the Assembly and considered that this was bound to influence the Commission unfavourably and compromise its independence in the examination of the present case.

42. By its decision of 24th January, 1968,<sup>6</sup> *the Commission* declared the applications admissible.

In particular, it held that it was competent to examine the acts of governments even in political situations of an extraordinary character, such as after a revolution. As regards the proceedings in the Consultative Assembly, the Commission observed that, in the exercise of its functions under Article 19 of the Convention, it was limited to a consideration of the facts of the application before it and so acted in complete independence from any other body.

The Commission also held that the provision of Article 26 of the Convention concerning the exhaustion of domestic remedies did not apply to the present applications, the object of which was to determine the compatibility with the Convention of legislative measures and administrative practices.

The Commission further stated that the provisions of Article 27, paragraph (2), of the Convention did not apply to applications lodged by Governments, so that the question whether or not the applications were ill-founded was part of the merits of the case. The Commission was bound therefore to reserve for its examination of the merits the question whether the measures and practices complained of were or were not justified under Article 15.

## 2. SECOND DECISION ON ADMISSIBILITY

43. By their joint memorial of 25th March, 1968, the *first three applicant Governments*, referring to a reservation made in their applications of 20th September, 1967, extended their original allegations to Articles 3 and 7 of the Convention and Articles 1 and 3 of the First Protocol. In the memorial and at the hearing before the Commission on 28th, 29th and 31st May, 1968, they stated in particular that:

- as regards Article 3 of the Convention, political prisoners had in a number of cases been tortured or subjected to inhuman or degrading treatment by police officers acting under the authority of the respondent Government;
- as regards Article 7 of the Convention, Article 1 of Constitutional Act Éta<sup>7</sup> of 11th July, 1967, provided penalties for acts which did not constitute criminal offences at the time when they were committed;

<sup>6</sup> See Appendix I to this Report. [Not reproduced.]

- as regards Article 1 of the First Protocol, there was a violation resulting from the provisions for confiscation of property in Article 2 of Constitutional Act Eta<sup>7</sup>;
- as regards Article 3 of the Protocol, there was a violation resulting from the respondent Government's failure to hold free elections.

The above applicant Governments further submitted that their allegations under Article 3 of the Convention related to an administrative practice of the respondent Government and that, consequently, the rule concerning the exhaustion of domestic remedies did not apply. Alternatively, they stated that, if the Commission should hold that this rule was applicable, any domestic remedies, which might be shown by the respondent Government to be available to political prisoners in cases of torture or ill-treatment, were in fact inadequate and ineffective.

44. In its written observations of 15th and 27th May, 1968, and at the subsequent hearing before the Commission, the *respondent Government* submitted that the above new allegations were as a whole inadmissible on the following grounds:

- that they constituted an abuse of the procedure provided for by the Convention in that they pursued political ends;
- that the issues before the Commission were at the same time under discussion in the Consultative Assembly of the Council of Europe<sup>8</sup> and this prevented the Commission from considering the case in the proper atmosphere;
- that the new allegations should have been submitted as new applications; that they should have been addressed to the Secretary General of the Council of Europe and not to the Commission's Secretary;
- that, in accordance with Article 15, the respondent Government had validly derogated from certain of its obligations under the Convention.

As regards the particular Articles invoked by the first three applicant Governments, the respondent Government submitted:

- that the new allegations under Article 3 of the Convention were manifestly ill-founded. They should also be rejected on the ground of non-exhaustion of domestic remedies; no "administrative practice" of torture or ill-treatment of prisoners existed in Greece and the effective remedies available under Greek law had not been exhausted;

<sup>7</sup> See Appendix XVIII to this Report (Constitutional Acts submitted by the respondent Government). The Act was then cited by the applicant Governments as Act "G".

<sup>8</sup> Cf. paragraphs 40 and 41 above.

- as regards the new allegations under Article 7 of the Convention, that the penal provision in Article 1 of Constitutional Act Eta had no retroactive effect and, further, that it had not so far been applied;
- as to the allegation under Article 1 of the First Protocol, that the confiscation provided for in Article 2 of the 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; and that, so far, Article 2 of Constitutional Act Eta had not been applied;
- with regard to the allegation under Article 3 of the Protocol, that the obligation to hold elections “at reasonable intervals” had not been violated. Articles 53 and 57 of the draft Constitution provided for parliamentary elections. In any case, the Government’s position was justified under Article 15 of the Convention.

45. By its decision of 31st May, 1968,<sup>9</sup> *the Commission* declared the new allegations admissible.

It stated with regard to these allegations as a whole that they had properly been introduced by way of an extension of the original allegations of the first three applicant Governments and that they could not be rejected as “abusive”. In connection with the proceedings in the Consultative Assembly the Commission referred to its statement in its decision of 24th January, 1968, that, in the exercise of its functions under Article 19 of the Convention, it acted in complete independence from any outside body.

With respect to the allegations under Article 3 of the Convention, the Commission found that the three applicant Governments had not, at that stage of the proceedings, offered substantial evidence to show the existence of an “administrative practice” and that, consequently, the application of the domestic remedies rule could not be excluded on that ground.

On the other hand, the Commission, having regard to the measures taken by the respondent Government with respect to the status and functioning of courts of law, did not find that, in the particular situation prevailing in Greece, the domestic remedies indicated by the respondent Government could be considered as effective and sufficient.

The Commission concluded that the allegations under Article 3 of the Convention could not be rejected for non-exhaustion of domestic remedies and it also stated that they could not be dismissed for non-observance of the six months’ rule laid down in Article 26 of the Convention.

With regard to the same allegations, the Commission further referred to its decision of 24th January, 1968, that a petition under Article 24

<sup>9</sup> Appendix II to this Report. [Not reproduced.]

could not be rejected under Article 27, paragraph (2), as being manifestly ill-founded. The Commission added that neither could the present allegations be rejected on the ground that no *prima facie* proof had been produced.

With regard to the allegations under Article 7 of the Convention and Article 1 of the First Protocol relating to Constitutional Act Eta, the Commission observed that the condition of a "victim" was not mentioned in Article 24 of the Convention, as in Article 25, and that it was therefore not necessary for the three applicant Governments to establish, at the stage of admissibility, that the relevant provisions of this Act had in fact been applied. It also found that the provisions of Article 26 of the Convention did not apply to these allegations which concerned continuing legislative measures and it reserved for an examination of the merits of the case the question whether the allegations were well-founded or not.

With regard to the allegation under Article 3 of the First Protocol, the Commission again stated that the provisions of Article 26 did not apply and that the question whether the allegation was well-founded could not be considered at the stage of admissibility.

Finally, the Commission also reserved for an examination of the merits of the case the question whether the measures of the respondent Government which formed the subject of the new allegations were justified under Article 15 of the Convention.

### 3. POINTS AT ISSUE UNDER THE TWO DECISIONS ON ADMISSIBILITY

46. Consequently, under its decisions of 24th January, 1968, on the admissibility of the original applications (set out under 1. above) and of 31st May, 1968, on the admissibility of the new allegations (set out under 2. above), the Commission was called upon to establish the facts and to state its opinion, in accordance with Article 31, paragraph (1), of the Convention, with regard to the following issues:

- (1) whether or not the respondent Government had violated Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Article 3 of the First Protocol by Royal Decree No. 280, other legislative measures and certain administrative practices;
- (2) whether or not Constitutional Act Eta of 11th July, 1967, violated Article 7 of the Convention and Article 1 of the First Protocol;
- (3) whether or not political prisoners had been tortured or subjected to inhuman or degrading treatment by police officers of the respondent Government and, if so, whether this amounted to an "administrative practice" (violation of Article 3 of the Convention); and
- (4) whether or not the measures of derogation taken by the respondent Government were justified under Article 15 of the Convention.

## 4. SUBMISSIONS BEFORE THE SUB-COMMISSION

47. In the proceedings before the Sub-Commission, the parties have further developed the substance of the submissions made by them before the Commission and, in this connection, they have also referred to certain events which were alleged to have taken place in Greece subsequent to the Commission's above decisions on admissibility. In particular:

- (1) the parties have stated that further Constitutional Acts and other legislation affecting human rights and fundamental freedoms have been enacted;
- (2) the respondent Government has informed the Sub-Commission that a new Constitution has been adopted by a referendum on 29th September and promulgated on 15th November, 1968;
- (3) the four applicant Governments have maintained that, by its legislative measures and administrative practices, the respondent Government has continued to violate Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention;
- (4) the first three applicant Governments have submitted that the respondent Government has continued to violate Article 7 of the Convention and Articles 1 and 3 of the First Protocol and that there has been a continued practice of torture or ill-treatment of political prisoners by officers of the police or armed forces (violation of Article 3 of the Convention);
- (5) the respondent Government has denied that there has been a violation of any of the Articles invoked by the applicant Governments and has referred to the clauses in some of these Articles which authorise restrictions of the rights guaranteed;
- (6) in relation to Article 15, the respondent Government has further contended that, in any event, there has continued to exist in Greece a public emergency threatening the life of the nation and that the measures of derogation taken by the Government continued to be justified under this Article.

These submissions, which were made to the Sub-Commission in connection with the original points at issue mentioned under 3. above, have also been considered by the Commission with regard to the subsequent development and the current situation in Greece.

48. During the course of the proceedings before the Commission and Sub-Commission, evidence has also been given which appears to be relevant under Article 2 of the Convention (right to life)<sup>10</sup>, and under Article 2 of the First Protocol (right to education)<sup>11</sup>. However, no allega-

<sup>10</sup> Concerning the alleged shooting of political prisoners.

<sup>11</sup> Regarding the alleged exclusion of political opponents of the respondent Government from academic education by Legislative Decree No. 93 of 16th January, 1969.

tions were made expressly under either of these Articles by the applicant Governments and no specific reference was made to them in the Commission's two decisions on admissibility. Consequently, the above evidence has been dealt with in this Report only under other relevant provisions, namely Article 3 of the Convention (evidence concerning the cases of MM. Bekrodimitris, Chalkidis, Ellis, Mandilaras, Paleologos and Tsarouchas) and Article 10 of the Convention (Legislative Decree No. 93).

#### 5. ORDER OF PRESENTATION

49. It should first be noted that the four applicant Governments allege violations by the respondent Government of Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and that, in reply, the respondent Government contests these allegations invoking in particular the clauses in some of the above Articles which authorise restrictions of the rights guaranteed; alternatively the respondent Government claims to have validly derogated from its obligations under these Articles in accordance with paragraph (1) of Article 15. Secondly, in reply to the first three applicant Governments' allegations under Articles 1 and 3 of the First Protocol, the respondent Government again contends that, in the emergency situation prevailing in Greece, its position was, and is, justified under Article 15, paragraph (1), of the Convention.

The first three applicant Governments also allege violations of Articles 3 and 7 of the Convention. A derogation from these provisions is excluded by paragraph (2) of Article 15 and, consequently, these allegations cannot be considered in connection with Article 15.

The Commission has found it convenient to follow in its present Report the procedure adopted in the First Cyprus Case<sup>12</sup> and to deal first with the issues arising under Article 15 of the Convention. The reason for this is that the invocation of Article 15 by the respondent Government has the character of a general defence under the Convention of acts done and measures adopted on and after 21st April, 1967, and may therefore properly be given priority.

The issues arising under Articles 3, 5, 6, 7, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 3 of the First Protocol will be examined in subsequent chapters.

<sup>12</sup> See, in particular, the Commission's Report on Application No. 176/56 (Greece v. United Kingdom), Vol. I, p. 103.

PART B

*Establishment of the Facts and Opinion of the Commission*





CHAPTER I

ARTICLE 15 OF THE CONVENTION

A.

**Issues arising under Article 15**

50. Article 15 of the Convention provides:

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

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

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

51. It follows from paragraph (1) of Article 15 that measures derogating from the Convention may be taken:

- in time of war or other public emergency threatening the life of the nation;
- to the extent strictly required by the exigencies of the situation; and
- provided that such measures are not inconsistent with other obligations under international law.

It further follows from paragraph (3) of Article 15 that any High Contracting Party availing itself of its right of derogation under this Article “shall keep the Secretary General of the Council of Europe fully informed of the measures it has taken and the reasons therefor”.

52. The following questions were raised in the present case:

- (a) whether the right of derogation can be exercised only by constitutional, or also by revolutionary, governments;

- (b) whether there was, on 21st April, 1967, and is still, a public emergency in Greece threatening the life of the nation;
- (c) whether the measures of derogation taken by the respondent Government were, and are, strictly required by the exigencies of the situation;
- (d) whether Articles 17 and 18, read together with Article 15 and the Preamble, exclude the present derogations on the ground that they are:
  - aimed at the destruction of rights and freedoms set forth in the Convention or at their limitation to a greater extent than is provided for in the Convention (Article 17); or
  - applied for purposes other than those for which the restrictions permitted under Article 15 have been prescribed (Article 18);
- (e) whether the measures of derogation taken by the respondent Government are consistent with its other obligations under international law;
- (f) whether the respondent Government has kept the Secretary General of the Council of Europe fully informed of its measures of derogation and of the reasons therefor.

53. Of the above issues, those mentioned under (a) and (f) will be considered first<sup>1</sup>, followed by issues (b), (c), (d) and (e).

54. As regards issue (c), it will be seen below<sup>2</sup> that the Commission did not feel called upon to express a view on this question under Article 15 of the Convention. However, an account of the measures taken by the respondent Government in derogation from its obligations under the Convention, and of the relevant submissions of the parties, will be given under particular Articles of the Convention in subsequent Chapters.<sup>3</sup> In that connection, the Commission will also consider whether or not these measures could be regarded as “strictly required by the exigencies of the situation”.

55. In view of the fact that Article 15 has been invoked by the respondent Government, it has been found convenient in the present Chapter, as regards the parties’ submissions, first to set out the respondent Government’s submissions on the issue concerned and then to reproduce the submissions made in reply by the applicant Governments.

<sup>1</sup> See B and C below.

<sup>2</sup> Under F.

<sup>3</sup> Chapters II and III.

**B.****Whether a revolutionary government can derogate from provisions of the Convention under Article 15**

## I. SUBMISSIONS OF THE PARTIES

1. *Respondent Government*

56. The respondent Government, in its original submissions on the admissibility of the applications<sup>4</sup>, had contested the competence of the Commission on the ground that it could not control the actions by which a revolutionary government maintained itself in power. A revolution created such a disturbance in the life of a state that it seemed meaningless to try to assess the actions of the revolutionary government by the criteria which applied in the case of a simple "public emergency threatening the life of the nation" within the meaning of Article 15. At the same time, the respondent Government had also submitted that certain considerations under Article 15, in particular concerning the government's "margin of appreciation", applied *a fortiori* to a revolutionary government.

57. In the subsequent proceedings before the Commission<sup>5</sup> and Sub-Commission<sup>6</sup>, the respondent Government generally invoked Article 15 as a justification of the measures it had taken. It maintained that the form of the government concerned, in particular whether or not it was democratic, was a domestic question and irrelevant under Article 15.<sup>7</sup>

With regard to its status, both under International and national law, the respondent Government further pointed out that it had been diplomatically recognised by the applicant Governments<sup>8</sup> and that a new Greek Constitution proposed by the revolutionary Government had been adopted by the people at a referendum on 29th September, 1968.<sup>9</sup>

2. *Applicant Governments*

58. The applicant Governments first referred to the statement made by the respondent Government at the admissibility stage that it was not a constitutional but a revolutionary Government. They observed in reply that the Convention did not distinguish between legal and illegal governments and that the Commission was not called upon "to state an opinion

<sup>4</sup> Observations of 16th December, 1967.

<sup>5</sup> Preliminary observations of 15th May, 1968 – Doc. D 10.017 (English translation by the Council of Europe) – p. 17 (No. 5).

<sup>6</sup> Memorial of 6th July, 1968.

<sup>7</sup> Hearing of September 1968, pp. 270 and 279.

<sup>8</sup> *Ibid.* p. 270.

<sup>9</sup> The Political Situation in Greece, p. 20 (cf. Appendix IV to this Report).

on the revolution”<sup>10</sup>. However, with regard to Article 15, a revolutionary government could not invoke an “emergency situation, which they themselves created, as a justification for derogating from the Articles of the Convention in order to remain in power”.<sup>11</sup>

59. Following the Commission’s decision by which the applications were declared admissible, the applicant Governments also submitted that Article 15 was designed to protect a “democratically organised state with a constitutional government” and that it was consequently relevant under this Article “whether the measures of derogation have been taken by the legally established authorities in order to protect the democratic institutions”.<sup>12</sup>

They further referred to the respondent Government’s<sup>13</sup> statement that, following the judgment of the European Court of Human Rights in the *Lawless Case*, it was now accepted, as regards the definition of “public emergency threatening the life of the nation” within the meaning of Article 15 of the Convention, that the threat must derive from revolution or subversive action against the existing order, or from collective acts of violence. In the opinion of the applicant Governments, it resulted from this statement that the respondent Government, being a revolutionary Government, fell itself under the category “revolution or subversive action” against which the constitutional Greek Government had the right to protect itself under Article 15.<sup>14</sup> It also followed from the respondent Government’s own submissions at the admissibility stage that its acts of revolution were by their very nature alien to the scope and principles laid down in Article 15.<sup>15</sup>

## II. OPINION OF THE COMMISSION<sup>16</sup>

60. As stated in its decision of 24th January, 1968, on the admissibility of the present applications, the Commission is competent to examine the acts of Governments also in political situations of an extraordinary character, such as after a revolution. At the same time, the revolution itself did not deprive Greece of its rights, or absolve it from its obligations, under the Convention; thus, the respondent Government had the right to take measures of derogation under Article 15, where the conditions laid down in that Article were fulfilled.

<sup>10</sup> Hearing of January, 1968, pp. 6 and 7.

<sup>11</sup> Hearing of September, 1968, p. 155; hearing of June, 1969, p. 114.

<sup>12</sup> Memorial of 25th March, 1968, pp. 77–79; hearing of September, 1968, pp. 153 and 266.

<sup>13</sup> Memorial of 6th July, 1968, p. 48.

<sup>14</sup> Hearing of September 1968, p. 151.

<sup>15</sup> Memorial of 25th March, 1968, p. 44; hearing of September 1968, pp. 141–143; hearing of June 1969, pp. 101–105, 108.

<sup>16</sup> Paragraphs 60 and 61 were adopted by a majority of ten members.

61. It remains to be considered whether the respondent Government's measures of derogation are excluded on the ground that they are:

- aimed at the destruction of rights and freedoms set forth in the Convention or at their limitation to a greater extent than is provided for in the Convention; or
- applied for purposes other than those for which the restrictions permitted under Article 15 have been prescribed.<sup>17</sup>

This question will be examined under G below.

### C.

## Whether the requirements of Article 15, paragraph (3), have been fully met by the respondent Government

### I. REQUIREMENTS OF ARTICLE 15, PARAGRAPH (3)

62. Paragraph (3) of Article 15 provides that any High Contracting Party availing itself of its right of derogation under this Article "shall keep the Secretary General of the Council of Europe fully informed of the measures it has taken and the reasons therefor". Similarly, such Party shall inform the Secretary General "when such measures have ceased to operate and the provisions of the Convention are again being fully executed".

### II. COMMUNICATIONS MADE BY THE GOVERNMENT OF GREECE TO THE SECRETARY GENERAL UNDER ARTICLE 15

#### 1. *Period from 21st April to 19th September, 1967*

63. By *letter of 3rd May, 1967*<sup>18</sup>, the respondent Government referring to Article 15, paragraph (3), of the Convention, informed the Secretary General of the Council of Europe "that, by Royal Decree No. 280 of 21st April last, the application of Articles 5, 6, 8, 10, 11, 12, 14, 20, 95 and 97 of the Greek Constitution has been suspended in view of internal dangers which threaten public order and the security of the State".

The Government pointed out "that the suspension of the application of the aforementioned Articles of the Greek Constitution does not prejudice paragraph (2) of Article 15" and further stated that "Greece will revert to normal political and parliamentary life as soon as circumstances will allow". The Secretary General would be informed, in accordance

<sup>17</sup> Cf. paragraphs 52(d) above.

<sup>18</sup> Doc. 18.312 (English translation by the Council of Europe). [The full text of this letter has been reproduced in Vol. X, p. 26 of this Yearbook.]

with paragraph (3) of Article 15, “of the date when these exceptional measures cease to operate and the provisions of the European Convention on Human Rights are again fully executed”.

64. By *letter of 25th May, 1967*, the respondent Government transmitted to the Secretary General the texts of Royal Decree No. 280 of 21st April, 1967, and also of the Articles of the Greek Constitution which had been suspended.

65. The text of *Royal Decree No. 280*<sup>19</sup> was as follows:

#### “Article 1

On the proposal of the Council of Ministers, we hereby bring into effect throughout the territory the Martial Law Act ΔΞΘ of 8th October, 1912, as amended by Section 8 of Legislative Decree 4234/1962, by Act 2839/1941 and by the Legislative Decree of 9th–11th November, 1922.

#### Article 2

1. From the date of publication of this Decree we suspend throughout the territory the application of Articles 5, 6, 8, 10, 11, 12, 14, 20, 95 and 97 of the Constitution.

2. Military tribunals which are already in existence, military tribunals as may be set up as an extraordinary measure, and the competent military authorities shall exercise the jurisdiction, provided for by Act ΔΞΘ as amended, and, in particular, in accordance with the decisions of the Minister of National Defence.

#### Article 3

Cases pending before the Criminal Courts shall not be transmitted to the Military Tribunals, unless the Military Judicial Authority sees fit to request transmission thereof.

#### Article 4

This Decree shall enter into force as from the date of its publication in the Official Gazette.”

66. The provisions of the *Constitution of Greece*<sup>20</sup> which were suspended by Article 2, paragraph 1, of the above Decree, stated as follows:

<sup>19</sup> Doc. 18.804 (English translation by the Council of Europe). [This Decree has been reproduced in Vol. X, pp. 28–36.]

<sup>20</sup> As reproduced in Annex A of the Netherlands’ application of 27th September 1967. The French text received from the Greek Permanent Representative is reproduced at Appendix I to the present Report. [Not reproduced.]

## Article 5

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 as the conditions under which the State shall indemnify persons unjustly imprisoned pending trial or sentenced, shall be determined by law.

## Article 6

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.

## Article 8

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.



## Article 10

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.

## Article 11

Greeks have the right to 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.

## Article 12

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.

## Article 14

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 the seizure shall be *ipso jure* lifted. Only the

publisher of the item seized shall be allowed to appeal against the judicial order. 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.

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.

#### Article 20

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

#### Article 95

Trial by jury shall be given to criminal and political offences as well as offences of the press, whenever such offences do not concern one's private life, and to any other offences which may by law be made liable to trial by jury. For the trial of the said offences of the press, mixed courts may be established by law composed of regular judges and jurors, the latter constituting the majority.

Criminal offences which have thus far been brought within the jurisdiction of the Courts of Appeal by special laws and resolutions shall continue to be tried by such courts provided they are not by law made liable to trial by jury.

## Article 97

The details regarding courts martial of the army, navy and air force, piracy, barratry and prize courts shall be regulated by special laws.

Civilians may not be brought under the jurisdiction of courts martial of the army, navy or air force except for punishable acts affecting the security of the armed forces.”

67. *By letter of 19th September, 1967*<sup>21</sup>, the Greek Permanent Representative, referring to his letter of 3rd May,<sup>22</sup> provided the Secretary General, “in so far as considerations of State security permit at this stage, and in the spirit of Article 15 of the Convention, with certain details regarding the public emergency which threatened the life of the nation”. In this connection, the letter reviewed the political and social situation in Greece between July 1965 and April 1967.<sup>23</sup>

At the same time, the Permanent Representative stated that the measures taken by his Government were “strictly limited to what was made absolutely necessary by the situation which prevailed in Greece prior to 21st April, 1967” and that, in the meanwhile, “three-quarters of those originally arrested were set free as soon as they had given an undertaking not to engage in activities against the lawful authorities of the country.”

*2. Period from 20th September, 1967, to 24th January, 1968*

68. The present applications were introduced on 20th and 27th September, 1967, respectively and declared admissible by the Commission on 24th January, 1968. During this period, the respondent Government did not address any communication to the Secretary General of the Council of Europe in which reference was made to Article 15 of the Convention.

69. It should be noted, however, that, by letter No. 1974 of 20th October, 1967, the respondent Government informed the Secretary General of a time-table for preparing and bringing into force the new Constitution and, on 24th October, it requested that this information be communicated to the Governments of the member States and to the President of the Consultative Assembly of the Council of Europe.<sup>24</sup> By a further letter of 10th November, 1967, the respondent Government asked the Secretary General to inform the President of the Commission that the jurisdiction of the ordinary courts had been partially restored in criminal cases.<sup>25</sup>

<sup>21</sup> Doc. D 20.330 (English translation by the Council of Europe). [The full text of this letter has been reproduced in Vol. X, p. 38 of this Yearbook.]

<sup>22</sup> See paragraph 63 above.

<sup>23</sup> This will be considered under D below.

<sup>24</sup> See the Secretary General's memorandum of 26th October, 1967 – Doc. CM (67) 168.

<sup>25</sup> Doc. D 21.586.

### 3. *Period from 25th January, 1968, to date*

70. In this period the respondent Government has made over twenty communications to the Secretary General with regard to measures of derogation taken under Article 15.<sup>26</sup>

These communications to a great extent describe legislative and administrative acts which repeal or ameliorate earlier measures of derogation. They are not accompanied by legislative texts, but in some cases they quote Government statements.

The full text of these communications is reproduced at Appendix IV to the present Report and their contents will be further examined under different headings in paragraphs below.<sup>27</sup>

## III. SUBMISSIONS OF THE PARTIES

### 1. *Respondent Government*

71. The respondent Government referred to Article 15, paragraph (3), of the Convention and submitted that, by its above communications and by further information given orally or by depositing documents<sup>28</sup>, it had kept the Secretary General of the Council of Europe fully informed of the measures taken in derogation from the Convention, of those being taken in order to restore normal political and parliamentary conditions and of the reasons for all such measures<sup>29</sup>.

72. In this connection, the Government referred to the practice of other High Contracting Parties, which had previously derogated from the Convention, and to the jurisprudence of the Commission and of the European Court of Human Rights in the Lawless Case. In the Government's opinion, a comparison with this practice and jurisprudence showed that the information given in the present case satisfied the conditions of Article 15, paragraph (3). In particular, no special form was prescribed for notices of derogation, nor could a relative lack of clarity in such communications raise any doubts as to whether the right of derogation had been validly exercised.

73. Moreover the provision of Article 15, paragraph (3) was a *lex imperfecta*<sup>30</sup>.

<sup>26</sup> A further letter from the respondent Government (No. 1230 of 12th July, 1968) was not considered by the Secretary General to constitute in substance a communication under this Article.

<sup>27</sup> [Not reproduced.]

<sup>28</sup> It is not clear whether this statement in the Government's observations of 15th May, 1968, is meant to refer to certain documents deposited during the period from 20th September, 1967 to 24th January, 1968 - cf. above, paragraph 69.

<sup>29</sup> Preliminary observations of 15th May, 1969, on the admissibility of the new allegations, p. 16; memorial of 6th July, 1968, pp. 89-90; hearing of September 1968, pp. 250-251.

<sup>30</sup> Memorial of 6th July, 1968, pp. 90-91; hearing of September 1968, pp. 251-252.

## 2. *Applicant Governments*

74. The applicant Governments, however, maintained that the respondent Government had violated Article 15, paragraph (3).<sup>31</sup> In particular, it had failed:

- to indicate the Articles of the Convention from which it had derogated;<sup>32</sup>
- to furnish the complete texts of its emergency legislation;<sup>33</sup>  
and
- to provide full information with regard to the administrative measures taken.<sup>34</sup>

75. As stated by the Commission's Principal Delegate before the Court in the Lawless Case, Article 15, paragraph (3), was a vital link in the system of collective guarantee which was the primary aim of the Convention. The Committee of Ministers, by its Resolution (56) 16, had accordingly instructed the Secretary General of the Council of Europe to communicate to the other Parties and to the Commission any information received from a High Contracting Party under Article 15.<sup>35</sup>

76. The applicant Governments also quoted the Commission's opinions in the First Cyprus Case and the Lawless Case and the judgment of the European Court in the Lawless Case. As stated by the Commission in that case a government derogating under Article 15 was obliged to "notify the Secretary General of the measures in question without any avoidable delay" and to "furnish sufficient information concerning them to enable the other High Contracting Parties and the European Commission to appreciate the nature and extent of the derogation from the provisions of the Convention which these measures involve". The Commission was competent to "examine the conformity of a notice of derogation with the requirements set out in paragraph (3) of Article 15."<sup>36</sup>

77. Finally, the applicant Governments raised the question whether

<sup>31</sup> Applications of 20th September, 1967, part IV; application of 27th September 1967, part III; memorial of 25th March, 1968, pp. 10-11 and 70-71; hearing of May, 1968, pp. 98-99; hearing of September, 1968, pp. 139-141; hearing of June, 1969, pp. 97-100.

<sup>32</sup> Memorial of 25th March, 1968, pp. 11, 70; hearing of May, 1968, p. 99; hearing of September, 1968, p. 139.

<sup>33</sup> Applications of 20th September, 1967, part IV; memorial of 25th March, 1968, p. 70; hearing of May, 1968, pp. 98-99; hearing of September, 1968, pp. 139-140; hearing of June, 1969, pp. 98-99.

<sup>34</sup> Hearing of May, 1968, pp. 98-99; hearing of June, 1969, p. 97.

<sup>35</sup> Applications of 20th September, 1967, part IV; hearing of January, 1968, p. 37; memorial of 25th March, 1968, pp. 67-68; hearing of September, 1968, pp. 133-134.

<sup>36</sup> Applications of 20th September, 1967, part IV; hearing of January, 1968, p. 37; memorial of 25th March, 1968, pp. 68-70; hearing of September, 1968, pp. 134-140.

the alleged non-observance by the respondent Government of its obligations under paragraph (3) of Article 15 should not "strike with nullity the derogations made" under paragraph (1).<sup>37</sup>

#### IV. OPINION OF THE COMMISSION

78. The European Court of Human Rights has in the *Lawless Case* confirmed the competence of the Commission to examine the conformity with Article 15, paragraph (3), of a notice of derogation, and supporting information, communicated to the Secretary General by a Contracting State.<sup>38</sup> It has further found that the communication of legislative texts, with an explanation of their purpose, within twelve days of their introduction, gave the Secretary General "sufficient information of the measures taken and the reasons therefor".<sup>39</sup> The Court also held that communication without delay is an element in the sufficiency of information<sup>40</sup>, though this is not expressly stated in Article 15, paragraph (3).

79. The Commission, having regard to the communications made to the Secretary General under Article 15, paragraph (3), and set out under II, above, observes in the present case:

- (1) that the notice of derogation was communicated by the respondent Government on 3rd May, 1967, that is to say, twelve days after its assumption of power and the proclamation of the state of siege;
- (2) that the texts of Royal Decree No. 280 and of the suspended Articles of the Constitution of 1952 were transmitted on 25th May, 1967;
- (3) that the respondent Government did not communicate the texts of its further legislative measures affecting the Articles of the Convention from which it had derogated;<sup>41</sup>
- (4) that, in particular, the text of the new Constitution of 1968 was not notified;
- (5) that the respondent Government did not provide full information with regard to the administrative measures taken (e.g. detention of persons without court order);
- (6) that, however, it notified the Secretary General of various legislative and administrative actions, repealing or ameliorating earlier measures of derogation;<sup>42</sup>

<sup>37</sup> Hearing of January 1968, p. 37; hearing of September 1968, pp. 133-140.

<sup>38</sup> "Lawless" Case (Merits), Judgment of 1st July, 1961, *The Law*, paragraph 45 (p. 61).

<sup>39</sup> *Ibid.*, paragraph 47 (p. 62). In the (authentic) French text: "avait suffisamment informé le Secrétaire Général des mesures prises et des motifs qui les ont inspirées".

<sup>40</sup> *Ibid.*

<sup>41</sup> These will be discussed in Chapters II and III below.

<sup>42</sup> Cf. paragraph 70 above.

- (7) that the respondent Government did not indicate expressly the Articles of the Convention from which it derogated;
- (8) that reasons for derogation were not communicated until 19th September, 1967, that is to say, more than four months after the notice of derogation of 3rd May, 1967.

80. The Commission considers:

- (1) that the notification on 3rd May, together with the further communication of 25th May, 1967, provided some, though not complete information of the measures of derogation taken by the respondent Government;
- (2) that this notice was given within a reasonable time;
- (3) that Article 15, paragraph (3), does not oblige the Government concerned to indicate expressly the Articles of the Convention from which it is derogating and that, in the present case, the Articles of the Convention affected by the derogation were indirectly indicated by the respondent Government when it communicated the full text of the suspended Articles of the Constitution of 1952;
- (4) that there was undue delay in communicating, on 19th September, 1967, the reasons for the derogation of 3rd May, 1967;
- (5) that, while the respondent Government has in the present proceedings provided the Commission and Sub-Commission with information, including texts of legislation and the new Constitution, concerning measures of derogation and their partial relaxation, this information is not complete;<sup>43</sup>
- (6) that, in any event, information given to the Commission or a Sub-Commission in proceedings under Article 24 or 25 cannot rank as, or replace, information required under Article 15, paragraph (3), since information communicated under this provision is to be brought to the knowledge of all High Contracting Parties and of the Convention organs while that given to the Commission or Sub-Commission is limited to that organ and the parties before it.

81. The Commission *concludes*<sup>44</sup> that the respondent Government has not fully met the requirements of Article 15, paragraph (3), of the Convention, in that:

- (1) it did not communicate to the Secretary General of the Council of

<sup>43</sup> By letter of 12th March, 1969, the respondent Government was invited "to submit as soon as possible the complete text of the emergency legislation at present in force in Greece, insofar as it affects the rights guaranteed by Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 3 of the Protocol". By letter of 1st May the Government was informed that the Sub-Commission had fixed 17th May, 1969, as time-limit for the submission of these documents. This time-limit was later extended to 31st May, 1969 (letter of 21st May).

<sup>44</sup> Paragraph 81 was adopted by a majority of ten members.

Europe the texts of a number of legislative measures and in particular that of the new Constitution of 1968;

- (2) it did not provide the Secretary General with full information of the administrative measures, in particular as regards the detention of persons without court order;
- (3) it did not communicate to the Secretary General the reasons for the measures of derogation until 19th September, 1967, that is to say more than four months after they were first taken.

#### V. DISSENTING OPINION OF MR. DELAHAYE

82. If the text of Article 15, paragraph (3), is applied to the letter, the respondent Government cannot be considered to have satisfied this stipulation of the Convention: some information is lacking, some is incomplete, some has been given only after a certain delay.

A strict interpretation in the above sense would make any government which found itself, as a result of difficulties which it had to face, in the situation provided for under Article 15, paragraph (1), liable to infringe paragraph (3) almost systematically. Such an infringement would not only possibly but even probably result, because of the circumstances, from mere oversight.

83. It is possible to envisage a liberal interpretation of paragraph (3).

A Government which either omitted to provide the information required under this paragraph, or deliberately or unduly delayed the transmission of it, would unquestionably be violating the Convention.

On the other hand, it is quite understandable that at a time when it has to face an internal or external danger, a Government's first concern is not to meet the formal obligations imposed upon it by national law or by a Convention.

Could it do so without delay?

When a nation is in danger the first step the Government usually takes is to arrest suspects. According to the circumstances, such arrests may be made on a large scale, in all parts of the country, by various authorities.

The reasons for these arrests, while their purpose is the same, may be very varied. Often they may be founded only on suspicion, for example when the police gains possession of a list of the members of a party considered to be dangerous.

The detainees may be transported to prisons in remote parts of the country.

The Government may be cut off from part of the country.

84. It must not be overlooked that Article 15, paragraph (3), does not stipulate a time-limit within which the information must be sent to the Secretary General. Is this not deliberate?

This being so, it does not seem to be at variance with the letter or the



spirit of Article 15 to consider that the time-limit, within which such communications must be made, must be reasonable – which will depend on the difficulties met with by the Government concerned in fulfilling its obligations.

85. Should not the requirements of paragraph (3) be interpreted liberally when a case is brought before the European Commission of Human Rights and when, as in this case, the Government concerned has sent to the Commission a number of documents?

In doing so without informing the Secretary General it has no doubt violated the Convention, but more in the letter than in the spirit.

#### VI. DISSENTING OPINION OF MR. FAWCETT

86. In my opinion, the conclusion that the respondent Government has been in breach of Article 15, paragraph (3), is not justified. That provision must, in order to be effective, of necessity impose obligations on the Secretary General as well as on the High Contracting Party. If the notification by the respondent Government dated 3rd May, 1967, or any later communication by it to the Secretary General under Article 15, did not meet the requirements of full information under Article 15, paragraph (3), then it was the duty of the Secretary General, particularly under Committee of Ministers Resolution (56) 16, to request fuller information from the respondent Government. In the absence of any such request, the respondent Government was entitled to assume that it had complied with Article 15, paragraph (3), and that it was not necessary to send further information.

#### VII. DISSENTING OPINION OF MR. EUSTATHIADES

87. I agree with the conclusions of MM. Delahaye and Fawcett, considering that the respondent Government has substantially met the requirements of Article 15, paragraph (3), of the Convention.

#### D.

### Whether there was, on 21st April, 1967 a public emergency in Greece threatening the life of the nation

#### I. INTRODUCTION

88. The Commission proposes to answer the question whether there was on 21st April, 1967, a public emergency in Greece threatening the life of the nation by examining the elements indicated by the respondent Government as constituting in its view such an emergency. In this con-

nection, the Commission considers that the present Government of Greece was also entitled to take into account, as an element for appreciating the situation on and after 21st April, 1967, the situation which existed before that date. In its examination, the Commission will also discuss the meaning of the term in Article 15, paragraph (1) "public emergency threatening the life of the nation" and the criteria governing the control of a declaration of public emergency.

89. In its communications made under Article 15, paragraph (3), of the Convention to the Secretary General of the Council of Europe<sup>45</sup>, and in its submissions in the proceedings before the Commission and Sub-Commission, the respondent Government has indicated a number of elements which, in its view, constituted in Greece, when it assumed power on 21st April, 1967, a public emergency threatening the life of the nation, and which may be grouped under the following headings:

- (1) Communist danger,
- (2) crisis of constitutional government, and
- (3) crisis of public order.

The Commission proposes first to set out the submissions of the parties and to examine the evidence obtained under each of the above headings and then to present a final conclusion.

## II. THE COMMUNIST DANGER

### 1. *General statements of the parties*

#### (a) *Respondent Government*

90. The main element indicated by the respondent Government as constituting a public emergency threatening the life of the nation when the Government assumed power on 21st April, 1967, were Communist activities in Greece and neighbouring States. The Government has referred to facts which occurred before 21st April, 1967, but which, in its opinion, were relevant to an appreciation of the situation existing on and after that date.

91. The respondent Government has drawn the following picture:

- (1) On three occasions between 1943 and 1950 the Greek Communists attempted to seize power by force. Two Communist uprisings in 1943 and 1944 were followed by the Communist rebellion of 1946 which led to the four-year guerilla war.<sup>46</sup>

The danger of Communism was increased by the part played by the Greek Communist Party (KKE) in the plans of neighbouring

<sup>45</sup> See paragraphs 63-70 above and Appendix IV to this Report.

<sup>46</sup> Memorial of 6th July, 1968, pp. 49-52 and Annex 27; hearing of September 1968, pp. 185, 216; The Undermining of the Greek Nation, pp. 9-11; The Political Situation in Greece, pp. 4-9.

States against the territorial integrity of Greece. Already at the 6th Communist Balkan Conference of 1924, the Party had accepted the decision to found "a united and autonomous Macedonia", that is to say, to detach part of Greek territory and unite it with an independent Macedonian State.<sup>47</sup>

In its Resolution 193 (III) of 27th November, 1948, the General Assembly of the United Nations had approved the conclusions of its Special Committee on the Balkans, which had found that the Communist rebellion in Greece and its support from abroad constituted "a threat to the political independence and territorial integrity of Greece".<sup>48</sup>

- (2) After the defeat of the second Communist rebellion, the Communists had continued their subversive activities in Greece.

The "Union of the Democratic Left" (EDA), a political party represented in Parliament, was the cover organisation of the outlawed KKE.<sup>49</sup> Between November 1963 and February 1967, EDA's "organised membership" increased from 23,000 to 123,329.<sup>50</sup>

EDA collaborated with democratic parties, in particular the Centre Union, with the object of setting up a "Popular Front" and of seizing power.<sup>51</sup> In the elections of 1963 and 1964, it helped the Centre Union to power.<sup>52</sup> Later it co-operated closely with the left wing of the Centre Union under Andreas Papandreou.<sup>53</sup>

With the help of EDA and other Communist-inspired organisations, the Greek Communists infiltrated the State apparatus, including the Army and security forces<sup>54</sup>, and penetrated all sectors of public life.<sup>55</sup> The Communist-inspired organisations increased from 3 in 1958 to 29 in 1966.<sup>56</sup> The principal one, "Lambraki Democratic Youth",<sup>57</sup> was the militant avantgarde of Communism in demonstrations<sup>58</sup> and terrorised the country-side.<sup>59</sup>

<sup>47</sup> Memorial of 6th July, 1968, pp. 49-52; hearing of September 1968, pp. 185 and 217.

<sup>48</sup> Memorial of 6th July, pp. 49, 51-52, and Annexes 19 and 22 to this memorial; hearing of September 1968, p. 217.

<sup>49</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, pp. 53-54, 66; hearing of September 1968, p. 217; *The Undermining of the Greek Nation*, pp. 14 *et seq.* *The Political Situation in Greece*, p. 10.

<sup>50</sup> Memorial of 6th July, 1968, p. 53.

<sup>51</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, pp. 49, 53, 57, 67; hearing of September 1968, p. 228.

<sup>52</sup> Memorial of 6th July, 1968, p. 53; hearing of September 1968, p. 218; *The Political Situation in Greece*, p. 12.

<sup>53</sup> Memorial of 6th July, 1968, p. 67; hearing of September 1968, p. 228.

<sup>54</sup> Memorial of 6th July, 1968, pp. 54, 64.

<sup>55</sup> Hearing of September 1968, p. 217.

<sup>56</sup> Memorial of 6th July, 1968, p. 53.

<sup>57</sup> *The Undermining of the Greek Nation*, pp. 30-33.

<sup>58</sup> Memorial of 6th July, 1968, p. 53.

<sup>59</sup> *Ibid.* pp. 56, 61; *The Political Situation in Greece*, p. 5.

At EDA's request, the governments in power between 1951 and 1967, in particular the Centre Union Government of Mr. Georgios Papandreou, gradually released most of the Communists detained in Greece following conviction for criminal offences or under administrative order<sup>60</sup> and also repatriated Communist rebels who were in Iron Curtain countries receiving special training for subversive activities.<sup>61</sup> In particular, the number of persons detained under administrative order fell from 2,815 in 1950 to 28 on 21st April, 1967.<sup>62</sup>

- (3) Following the political crisis in Greece in the summer of 1965<sup>63</sup> the Communists began in 1966 to prepare for armed insurrection.<sup>64</sup> Their "clandestine apparatus" included shock brigades and groups which observed officers of the Army and security forces.<sup>65</sup> The Communists were assembling weapons and disposed of hiding places and depots for equipment.<sup>66</sup> A paramilitary organisation had been secretly set up.<sup>67</sup>

A plan for the seizure of power by force was also drawn up for the Popular Front, on 15th April, 1967, by a retired General, Archimedes Argyropoulos, together with Professor Phedon Vegleris.<sup>68</sup>

The plan of the Communists and their allies to overthrow the established Government began to be implemented in 1967 by various acts of violence.<sup>69</sup> In particular, during the first half of April 1967, attempts were made to occupy the University of Salonica and the centre of Athens.<sup>70</sup> Despite a Government order prohibiting the "Marathon Peace March", the Communist newspaper "Avghi" called on its leaders to take part in this March.<sup>71</sup> Shock brigades intended to overthrow the Provincial Government of Northern Greece on the occasion of a visit of Mr. G. Papandreou to Salonica which was scheduled to take place on 23rd April, 1967.<sup>72</sup>

<sup>60</sup> Hearing of September 1968, pp. 227, 287.

<sup>61</sup> Memorial of 6th July, 1968, p. 53; hearing of September 1968, p. 287.

<sup>62</sup> Memorial of 6th July, 1968, pp. 12-13. See also Chapter II(B) below.

<sup>63</sup> *Ibid.* pp. 61-63.

<sup>64</sup> *Ibid.* p. 66; hearing of September 1968, p. 227.

<sup>65</sup> Memorial of 6th July, 1968, pp. 57-58, 68, 70.

<sup>66</sup> *Ibid.* pp. 56, 68.

<sup>67</sup> *Ibid.* p. 54.

<sup>68</sup> *Loc. cit.* pp. 70-71 and Annexes 117, 118; hearing of September 1968, pp. 232-233.

<sup>69</sup> Hearing of September, 1968, p. 231.

<sup>70</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 69; hearing of September 1968, pp. 231-232.

<sup>71</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 68; hearing of September 1968, p. 229.

<sup>72</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 70; hearing of September 1968, p. 232.

*(b) Applicant Governments*

92. The respondent Government's claim that Communist activities in Greece constituted a public emergency threatening the life of the nation in April 1967 has been contested by the applicant Governments<sup>73</sup> for the following reasons:

- (1) The existence of such a danger had not been mentioned by the respondent Government in its initial statements to the Greek people and to the Council of Europe<sup>74</sup> and the evidence submitted did not show that such a danger was imminent in 1967.<sup>75</sup>
- (2) While it was not to be denied that Greece suffered heavily during the years 1944–1949<sup>76</sup>, the situation twenty years later was entirely different.<sup>77</sup> As in other democratic States, Communist organisations might have carried out subversive activities in Greece prior to 21st April, 1967,<sup>78</sup> but any danger which such activities presented could be met by ordinary constitutional means.<sup>79</sup> The Government in power before 21st April, 1967, did not find it necessary to make use of its extraordinary powers under the Constitution.<sup>80</sup> It also had at its disposal a strong and modern army, which was anti-Communist in spirit and was in control of the situation.<sup>81</sup>

In this connection, the applicant Governments observed that the "Marathon March", which had been scheduled to take place on 16th April, 1967, and was mentioned by the respondent Government as a threat to public order, had in fact been cancelled following a prohibition issued by the Minister of Public Order.<sup>82</sup>

- (3) With regard to the respondent Government's allegations concerning the activities of EDA and the existence of a collaboration between EDA and the Centre Union Party, the applicant Governments further submitted that EDA was not a purely Communist party but that it consisted of Communists and other left-wingers;<sup>83</sup> that its electoral strength in votes obtained and deputies elected had declined since 1958;<sup>84</sup> and that the Centre Union Party had not collaborated with EDA, in particular, that there had been no electoral alliance between the two parties in the campaign of 1967.<sup>85</sup>

<sup>73</sup> Hearing of September 1968, pp. 155–156; hearing of June 1969, pp. 109 *et seq.*

<sup>74</sup> Hearing of June 1969, pp. 109–111.

<sup>75</sup> *Ibid.* pp. 109 *et seq.*

<sup>76</sup> Hearing of September 1968, p. 156.

<sup>77</sup> *Ibid.* and hearing of June 1969, p. 115.

<sup>78</sup> Hearing of September 1969, p. 156.

<sup>79</sup> *Ibid.* and hearing of June 1969, pp. 114, 119.

<sup>80</sup> Hearing of September 1968, p. 154; hearing of June 1969, p. 114.

<sup>81</sup> Hearing of June, 1969, p. 114.

<sup>82</sup> *Loc. cit.* p. 119.

<sup>83</sup> Hearing of June 1969, p. 123.

<sup>84</sup> *Loc. cit.* pp. 123–124. The applicant Governments quoted the statement of a witness that the percentage of votes cast for EDA fell from 24.4% in 1958 to 11.8% in 1964.

<sup>85</sup> *Loc. cit.* pp. 123 *et seq.*

## 2. Evidence before the Commission

### (a) Witnesses

93. All witnesses heard by the Sub-Commission in the present case have been summoned *ex officio*. However, when deciding to call these witnesses, the Sub-Commission has taken into account the proposals made by the parties.

94. Certain further witnesses who had been summoned to testify on questions of fact arising under Article 15 of the Convention did not, for various reasons, appear. They are listed and the reasons given in Appendix V to this Report.<sup>86</sup>

95. Of the numerous witnesses proposed by the applicant and respondent Governments to give evidence on these questions the Sub-Commission selected those who could speak with authority as to the facts of the situation on 21st April, 1967, and who together represented several different sectors of Greek public life. It did not call the others either because they did not appear to meet the first condition and, in spite of repeated requests of the Sub-Commission,<sup>87</sup> no indication was given to it on what particular facts they could usefully testify, or because, at a later stage of the proceedings, it considered that no substantial addition to its evidence could be made by further hearings. A list of witnesses proposed but not called is in Appendix VI.<sup>88</sup>

96. The Sub-Commission has heard the following thirty witnesses with regard to the respondent Government's assertions about Communist activities on and before 21st April, 1967:

*Members of Governments in office between  
17th September, 1965, and 21st April, 1967*

*Kanellopoulos Government* (3rd April – 21st April, 1967)

Panayotis Kanellopoulos (Prime Minister)<sup>89</sup>

Georgios Rallis (Minister of Public Order)<sup>89</sup>

Panayotis Papaligouras (Minister of Defence)<sup>90</sup>

Evangelos Averoff (Minister of Agriculture, former Minister of Foreign Affairs)<sup>91</sup>

<sup>86</sup> [Not reproduced.]

<sup>87</sup> See the Secretary's letters of 30th September and 8th November, 1968, to the Agent of the respondent Government; cf. also hearing of November 1968, p. 544.

<sup>88</sup> Hearing of March 1969, Vol. I, pp. 15–17, 19, 23–24, 26.

<sup>89</sup> *Loc. cit.* pp. 50 *et seq.*

<sup>90</sup> *Loc. cit.* pp. 37, 39, 41–42.

<sup>91</sup> *Loc. cit.* pp. 73–75, 89–92.

*Paraskevopoulos Government* (21st December, 1966 – 3rd April 1967)Sophokles Tzanotis (Minister of Public Order)<sup>92</sup>Panayotis Christou (Minister of Northern Greece)<sup>93</sup>*Stephanopoulos Government* (17th September, 1965 – 21st December 1966)Stephanos Stephanopoulos (Prime Minister)<sup>94</sup>Constantinos Mitsotakis (Minister of Coordination)<sup>95</sup>*Other personalities holding government posts before 21st April, 1967*Constantinos Georgakopoulos (Prime Minister of care-taker Government in 1958)<sup>96</sup>Nicolaos Bakopoulos (Minister of Justice 1964–1965)<sup>97</sup>Andreas Papandreou (Minister of Coordination 1964–1965)<sup>98</sup>*Officers of the respondent Government*Georgios Kekkos, Director General of the Ministry of the Interior<sup>99</sup>Constantinos Paspapropoulos, Director, General Security Service, Athens<sup>100</sup>*Officers (former and present) of the Armed Forces*Odysseus Anghelis, General, Chief of the Armed Forces<sup>101</sup>Georgios Engolfopoulos, Rear Admiral, former Chief of Naval Staff<sup>102</sup>Alexandros Natsinas, Lieutenant General, former Chief of Central Intelligence Service (K.Y.P.)<sup>103</sup>Kyriakos Papageorgopoulos, General, former Chief of K.Y.P.<sup>104</sup>Constantinos Tsolakas, General, former Chief of General Staff<sup>105</sup><sup>92</sup> *Loc. cit.* pp. 62–65, 68–70.<sup>93</sup> Hearing of November, 1968, Vol. II, pp. 308–309, 313, 315–319, 322–324, 330–340.<sup>94</sup> Hearing of March, 1969, Vol. II, p. 701.<sup>95</sup> Hearing of November, 1968, Vol. II, pp. 482–486, 490, 492, 494–497, 499–503, 509.<sup>96</sup> Hearing of March, 1969, Vol. I, pp. 117–119.<sup>97</sup> *Loc. cit.*, Vol. II, pp. 656–657, 663–664.<sup>98</sup> Hearing of November, 1968, Vol. II, pp. 431–434, 437–439, 445–446, 459–462, 467–472.<sup>99</sup> Hearing of March, 1969, Vol. I, pp. 326–327.<sup>100</sup> Hearing of March, 1969, Vol. II, pp. 628 *et seq.*<sup>101</sup> *Loc. cit.* Vol. I, pp. 314–320.<sup>102</sup> *Loc. cit.* pp. 95–99.<sup>103</sup> Hearing of December, 1968, Vol. II, pp. 179, 182–185, 187–189, 191–193, 195–196, 200–201, 206–209.<sup>104</sup> Hearing of March, 1969, Vol. I, pp. 124–126, 130.<sup>105</sup> *Loc. cit.* pp. 109–113, 115–116.

*Economic life*

Georgios Anastassopoulos, President, Coordinating Council of Greek Chambers of Commerce<sup>106</sup>

Constantinos Hadjitheodorou, Secretary General, Panhellenic Sailors' Confederation<sup>107</sup>

Fotios Makris, Secretary General, General Confederation of Greek Labour<sup>108</sup>

*Legal profession*

Philippos Anghelis, President, Athens Bar Association<sup>109</sup>

Constantinos Georgopoulos, Professor of Constitutional Law, Athens University<sup>110</sup>

Phedon Vegleris, former Professor of Administrative Law, Athens University (now Strasbourg University)<sup>111</sup>

*Press*

Athanasios Paraschos, publisher and journalist<sup>112</sup>

Alexander Sedgwick, retired American journalist resident in Greece<sup>113</sup>

Panayotis Troubounis, Vice-President, Union of Athens Newspaper Writers<sup>114</sup>

Helen Vlachou, Publisher<sup>115</sup>

*Others*

André Lambert, former delegate of the International Committee of the Red Cross (Swiss citizen resident in Greece)<sup>116</sup>

Nicolaos Tomadakis, Professor of Byzantine Literature, Athens University<sup>117</sup>

*(b) Documents*

97. The documents considered by the Commission in connection with the respondent Government's assertions about Communist activities on and before 21st April, 1967, are listed at Appendix VII to the present Report.<sup>118</sup>

<sup>106</sup> Hearing of December, 1968, Vol. II, pp. 139-140, 145.

<sup>107</sup> *Loc. cit.* pp. 226-230.

<sup>108</sup> Hearing of November, 1968, Vol. II, pp. 519, 521, 523-534.

<sup>109</sup> Hearing of March, 1969, Vol. II, p. 781.

<sup>110</sup> Hearing of December, 1968, Vol. II, p. 243.

<sup>111</sup> *Loc. cit.* pp. 265, 268-270.

<sup>112</sup> *Loc. cit.* pp. 100, 104, 108, 113, 115-116.

<sup>113</sup> Hearing of November, 1968, Vol. II, pp. 346-347, 351, 358.

<sup>114</sup> *Loc. cit.* pp. 396-397, 400-401, 419-423.

<sup>115</sup> Hearing of December 1968, Vol. II, pp. 154, 158, 160.

<sup>116</sup> Hearing of November 1968, Vol. II, pp. 376, 384.

<sup>117</sup> *Loc. cit.* pp. 361, 363-364, 396-397, 400-401, 419-423.

<sup>118</sup> [Not reproduced.]



### 3. *Examination of the evidence by the Commission*

98. Certain elements of the Communist danger will have to be considered in the sections "Crisis of constitutional government"<sup>119</sup> and "Crisis of public order"<sup>120</sup>. In the present section the Commission will examine the evidence for the assertion that there was on 21st April, 1967, a public emergency threatening the life of the Greek nation in the form of an imminent threat of a Communist displacement of the lawful Government by force of arms.

99. In considering this question a distinction ought to be made between the known plans of the Communists and their allies on the one hand and the evidence produced to the Sub-Commission of their ability to execute those plans on the other hand.

100. The respondent Government has presented to the Sub-Commission evidence both of the general policy of the Communists and their allies and of the particular methods which they recommended for the attainment of their political objectives.

101. On the general policy, six documents have been given to the Sub-Commission:

- (1) a document described as "Outline for the analysis of the 10th Meeting of the Administrative Council of EDA".<sup>121</sup> The source or use of this document is not indicated but, according to the respondent Government, it concerns an EDA meeting held on 10th and 11th September, 1965;<sup>122</sup>
- (2) a typescript extract from a speech by Manolis Glezos at the tenth session of the Executive Committee<sup>123</sup> of EDA in May 1966;<sup>124</sup>
- (3) a newspaper article by Costas Filinis published in July 1966, of which only certain passages have been submitted in translation;<sup>125</sup>
- (4) a secret dispatch to certain commands from the General Staff of the Army dated 23rd July, 1966;<sup>126</sup>
- (5) an unsigned document, headed "Conclusions" and addressed to the King.<sup>127</sup> According to the respondent Government, this document is taken from the quarterly report of the Chief of General

<sup>119</sup> See III below.

<sup>120</sup> See IV below.

<sup>121</sup> Memorial of 6th July, 1968, Annex 54.

<sup>122</sup> Memorial of 6th July, 1968, p. 58.

<sup>123</sup> It is not clear whether this body is the same as that referred to under point (1) above.

<sup>124</sup> Memorial of 6th July, 1968, Annex 59.

<sup>125</sup> *Ibid.* Annex 103.

<sup>126</sup> Memorial of 6th July, 1968, Annex 56.

<sup>127</sup> *Ibid.* Annex 100.

Staff for the period October-December, 1966.<sup>128</sup> Its author has not been identified;

- (6) a document entitled "General Plan of Action" and dated 15th April, 1967,<sup>129</sup> which is reproduced in translation at Appendix VIII to this Report.

102. The "General Plan of Action" has been identified by the respondent Government as prepared by Archimedes Argyropoulos, a retired General, and Professor Phedon Vegleris. Copies are said to have been found in the offices of EDA and of Andreas Papandreou.<sup>130</sup> General Argyropoulos was later convicted and the "General Plan of Action" is said to show the contribution by the Centre Union Party to the attempted seizure of power by the Greek Communists.<sup>131</sup>

103. When giving evidence before the Sub-Commission, the witness, Professor Vegleris, stated with regard to this document: "This is the first time I have seen it. I have seen extracts in the newspaper which was sent to me from Athens, the newspaper which contained my own text, but this is the first time I have seen this text in its entirety."<sup>132</sup>

104. The witness, Professor Andreas Papandreou, when shown the "General Plan of Action" and asked whether he knew it, replied: "No, Sir, . . . My offices . . . were closed within 10 days after the coup and everything removed from them. Andreas Papandreou had no offices. So it was with great surprise that I discovered that I was in Sweden<sup>133</sup> when I read first that a document was found in my offices but my office had been cleaned out, taken care of in 10 days of the coup in the knowledge of the army . . . I would say that by 5th May, 1967, there existed no office of Andreas Papandreou. I do not know when they claim they found it."<sup>134</sup>

<sup>128</sup> See the Government's list of the Annexes submitted with its Memorial of 6th July, 1968.

<sup>129</sup> Memorial of 6th July, 1968, Annex 118.

<sup>130</sup> Hearing of September 1968, p. 232.

<sup>131</sup> Witness Kekkos, hearing of March 1969, Vol. I, p. 323.

<sup>132</sup> Hearing of December 1968, Vol. II, p. 263 (English translation by the Council of Europe). The other text referred to by the witness as "my own text" is apparently the document entitled "Text of Professor Phedon Vegleris" (memorial of 18th August, 1968, Annex 10), cf. his further statement: "I know that last June a text appeared in the Athens newspapers which was attributed to me and which I read in the columns of the Greek newspaper sent to me from Athens. This text is known to me. It was, in fact, with a few minor alterations which make the text a little difficult to read from time to time, a text which is entirely my own. It was a text in which I had set down my thoughts and which I delivered to General Argyropoulos . . . and which contained my thoughts on what must be done, on how to defend the Republic and Democracy, which were in danger in March." (Hearing of December 1968, Vol. II, pp. 258-259; English translation by the Council of Europe.)

<sup>133</sup> The witness states that he left Greece on 16th January, 1968 - see hearing of November 1968, Vol. I, p. 8.

<sup>134</sup> *Ibid.* Vol. II, p. 445.

105. In only two of the documents mentioned in paragraph 101 above is there a reference to arms, namely:

- (1) the collection of small automatic arms and revolvers said to have been recommended by the Greek Communist Party (KKE) after January 1965;<sup>135</sup> and
- (2) the statement in the "General plan of Action" that "the organisation of special shock groups must be provided for from now. They must be equipped with proper means and armaments through which the neutralisation or destruction of the mechanical armoured machines, as well as the chemical means, of the opponent shall be possible." According to its text, the "General Plan" was drafted "to face every type of violence and fraud or even camouflaged or undisguised dictatorship" and the above statement was made with regard to "Case C: Completion of the elections with unfavourable results for the Right – not turning over the authority to the majority party under various excuses (i.e. vague danger for the maintenance of internal order and security, by the staged provocation of serious incidents and disturbances)".

106. As regards an anticipated attempt to take over the Government by force of arms, it is to be noted with respect to the documents mentioned in paragraph 101 above that:

- (1) the communication to the King ("Conclusions") expressly says of "the Communism" that it has for the time abandoned any attempt to impose itself by force;
- (2) force of arms is contemplated in the "General Plan of Action" as a counter-measure ("struggle of legality") against the abolition by the Right of "legal democratic government and the freedoms of the people". However, the formulation of this document is not necessarily conclusive as to the actual intentions of its authors;
- (3) also Filinis, though advocating the creation of a balance of force as would deter any group from attempting to start a civil war, maintains the possibility of a "peaceful way" in his newspaper article of July 1966.

107. Three particular methods of executing the general plan of the Communists and their allies are mentioned in the documents submitted by the respondent Government:

- (1) infiltration of the armed forces;
- (2) "neutralisation" of the armed forces, and particularly their officers; and
- (3) assemblage of arms and munitions.

<sup>135</sup> Dispatch from the General Staff of the Army of 23rd July, 1966, paragraph 5(c).

108. As to the first, estimates given in the documents submitted and by witnesses of the number of supporters of the Communists and their allies in the army vary from 15% to 20%.<sup>136</sup> However, it was denied by Rear Admiral Engolfopoulos that there was any infiltration in the navy<sup>137</sup> and General Tsanetis, Minister of Public Order between December 1966 and April 1967, maintained that all officers of the armed forces were anti-Communist.<sup>138</sup> Further, there is a notable decline after 1960 in the number of prosecutions for Communist or subversive activities in the armed forces.<sup>139</sup>

109. Plans are described for “neutralisation” of the armed forces by observing their movements and then creating road blocks and other obstacles, and by marking the doors of the houses of officers and then, upon orders in certain circumstances, “neutralising” them.<sup>140</sup>

General Papageorgopoulos “repeatedly confirmed the watch which they kept on me and the notes which they had about me. I even knew people who had my address, wrote down my movements, at what time I left my house and went to Headquarters, and what time I returned, and what time-table governed my movements.”<sup>141</sup>

With regard to the marking of doors, General Anghelis expressed doubts as to whether the marks observed were those of the Communists and their allies or of a commercial company selling detergents. He stated, however, that plans to murder officers were known.<sup>142</sup>

General Tsolakas said: “We had information that the Communists marked the houses of the officers and that, at a given moment, they were going to put them out of action. We had this information. We did not attach any particular importance to this, because the idea that Communists could neutralise officers was a joke. The defence plans provide all the necessary measures. Plans exist because the Communists were planning to neutralise the officers. But do not forget that we also, as guardians of the national security, have studied them and we know how to deal with them and how to react against this activity of the Communists. And I say, with complete certainty, that our plans were such that we could neutralise them in a few hours. The fact that even the present Revolution-

<sup>136</sup> General Anghelis stated that it was 16% in 1966 – hearing of March 1969 Vol. I, p. 316.

<sup>137</sup> *Ibid.* pp. 98–99.

<sup>138</sup> *Ibid.* p. 63. Former Minister Christou considered that “more than 20% of the soldiers . . . not the officers . . . were influenced by Communism” – hearing of November 1968, Vol. II, p. 325.

<sup>139</sup> Memorial of 6th July, 1968, Annexes 42–47. Brigadier General Kritselis, Chief of the Judicial Services of the Army, speaking of the crisis of public order said nothing to contradict this impression – hearing of March 1969, Vol. II, pp. 751 *et seq.*

<sup>140</sup> *Ibid.* Annexes 39, 40, 55, 109.

<sup>141</sup> Hearing of March 1969, Vol. I, p. 135.

<sup>142</sup> Memorial of 6th July, 1968, Annex 37; hearing of March 1969, Vol. I, p. 314.

ary Government used the same plan and arrested in one night all the Communists who were considered as dangerous, is a proof of this.”<sup>143</sup>

110. The evidence adduced by the respondent Government of the actual assemblage of arms and munitions is slight.

General Anghelis referred to the importation from abroad of hunting guns, to arms caches being found, and to thefts of small arms from the services in 1965 and 1966, but stated that it was not possible to know in what quantities arms were being secreted by the Communists and their allies.<sup>144</sup>

111. Four documents have been produced to the Sub-Commission by the respondent Government, which are reports of the following findings of arms caches:<sup>145</sup>

- (1) on 7th October, 1966,<sup>146</sup> in the region of Ormas – Aradaia – Edessa. The find reported was 128 rifles, 271 bayonets, 4 Bren gun barrels, 196 hand grenades probably of Bulgarian manufacture, 25,000 cartridges, a number of bazooka and mortar grenades and detonators, and various explosives;
- (2) on 29th December, 1966, at a place defined solely by a numerical map reference. The document records the finding of 6 rifles, 1 Bren gun, 2 sub-machine-guns, 1 firing adjustment mechanism for a mortar of 81 mm diameter, 11 anti-tank grenades, 30 hand grenades, 2 anti-tank mines and 10 bottles of inflammable fluid;
- (3) on 2nd November, 1967, near the village Trivounon (1238 bullets and 14 hand grenades); and
- (4) on 6th November, 1967, in the region of Florina (1 sub-machine-gun, 1 rifle, 729 cartridges, 5 sticks of dynamite and 2 detonators).

112. The above documents were produced to the Sub-Commission in Greek, in the form of photocopies, together with an explanatory note by the Ministry of Foreign Affairs<sup>147</sup>. This note, which appears to be a summary of the documents submitted, is in fact incomplete. For it does not mention:

- (1) that, according to the original text of the report of 7th October, 1966, the 126 rifles found were “in a state of semi-destruction”;
- (2) that at any rate the arms found on 29th December, 1966, were “in a state of destruction” (so the original text of the second report);

<sup>143</sup> Hearing of March 1969, Vol. I, p. 115.

<sup>144</sup> *Ibid.* p. 315. See also Memorial of 6th July, 1968, Annex 56, paragraph 5 (c).

<sup>145</sup> Memorial of 6th July, 1968, Annex 57. It will be noted that the arms caches mentioned under (3) and (4) were found after 21st April, 1967.

<sup>146</sup> This date had been inserted on the photocopy submitted by the respondent Government.

<sup>147</sup> Memorial of 6th July, Annex 57.

- (3) that the two persons arrested after the find of 2nd November, 1967, were described in the third report as "nationalists" and the son of one of them as group leader of TEA<sup>148</sup>; and
- (4) that this find was connected with that mentioned in the fourth report.<sup>149</sup>

113. Speaking of these documents and of a newspaper report of the discovery of an arms cache on 31st March, 1967, former Prime Minister Kanellopoulos told the Sub-Commission that the newspaper report was false<sup>150</sup>, that no substantial arms deposits had been found or reported to his Government<sup>151</sup>, and that in any case "it is impossible to organise an armed revolt with 100, 200 or even 2000 arms."<sup>152</sup>

114. General Papageorgopoulos, former Chief of the Central Intelligence Service (K.Y.P.), spoke in similar terms of the known importation of hunting guns, that it was "not in quantities which would have given scope to an uprising of great force"<sup>153</sup>. Later he added: "These numbers which were given to me at that time give me the impression that they would not have permitted a popular insurrection to confront an Army formation, under one pre-supposition, namely that the Army would not have been called out to confront a large uprising in Athens, I mean of the order of 100,000 men, even unarmed, or with five hundred weapons. Because the Greek Army is not a professional Army, the soldiers are conscripts and it is doubtful whether they would have obeyed orders to fire on the crowd to kill large numbers of people."<sup>154</sup>

115. With regard to the rally planned in Salonica for Georgios Papandreou on 23rd April, 1967, Andreas Papandreou denied before the Sub-Commission that any conflict with the authorities was envisaged.<sup>155</sup>

Former Minister Rallis said his Government was informed "that the EDA party, which was a front for the Communist Party, intended to take advantage of this meeting of the Centre Party to provoke disturbances in Salonica, but such disturbances were quite normal in Greece, if I may say so . . . As we had information that officers might be insulted in Salonica and that there might be demonstrations against the

<sup>148</sup> It appears from the memorial of 19th August, 1968, (Annex 9) that TEA was an anti-Communist organisation.

<sup>149</sup> The original text of the fourth report refers to the third report and states that the material mentioned was found on the basis of indications made by one of the two arrested persons.

<sup>150</sup> Hearing of March 1969, Vol. I, p. 19. The newspaper report was in "Kathimerini" of 1st April, 1967.

<sup>151</sup> *Loc. cit.* p. 24.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Loc. cit.* p. 124.

<sup>154</sup> *Loc. cit.* p. 130. For the same opinion see General Anghelis, who also stated that "the Communist soldiers had instructions, at a moment of crisis, when the Army was ordered to intervene, to spread a spirit of defeatism, and say 'What are we heading for? Are we going to kill our brothers?'" (*ibid.* p. 320).

<sup>155</sup> Hearing of November 1968, Vol. II, p. 457.

Third Army Corps, I telephoned my colleague, the Minister of Defence, Mr. Papaligouras . . . I passed on this information to him and told him that the police had been given orders to be on the alert on that day and on the Saturday before the meeting and that he must alert the army. He did so and we were sure that if there were any disturbances we could deal with them in the same way as we had dealt with the disturbances among students and workers."<sup>156</sup>

Former Minister Papaligouras, expressing himself in similar terms, rejected categorically the suggestion that the above rally would have led to even a local seizure of power.<sup>157</sup>

### III. THE CRISIS OF CONSTITUTIONAL GOVERNMENT

#### 1. *General statements of the parties*

##### (a) *Respondent Government*

116. The respondent Government maintained that the political life of the country had been in decline since 1944. Between 24th May, 1944 and 21st April, 1967, there had been forty-one successive governments.<sup>158</sup> From July 1965 a situation had been brought about, in part by the Communist factor,<sup>159</sup> in which the existence of established political institutions was plainly threatened.<sup>160</sup> The Parliamentary system had virtually broken down,<sup>161</sup> with party corruption<sup>162</sup> and violent incidents in the Chamber.<sup>163</sup> The machinery of State was paralysed.<sup>164</sup> There were daily strikes<sup>165</sup> and warnings that the economy was on the verge of bankruptcy.<sup>166</sup>

117. Andreas Papandreou had in the "Aspida" conspiracy collaborated with a group of officers to depose the King and to replace the constitutional monarchy by a dictatorship with socialist tendencies.<sup>167</sup> His father, Prime Minister Georgios Papandreou, intervened in 1965 to influence the investigation and, for this purpose, insisted on taking over the Ministry of Defence.<sup>168</sup>

<sup>156</sup> Hearing of March 1969, Vol. I, p. 53 (English translation by the Council of Europe).

<sup>157</sup> *Ibid.* pp. 41-42.

<sup>158</sup> The Political Situation in Greece, pp. 17-19 (the Governments which held office during that period are listed on pp. 18-19).

<sup>159</sup> Memorial of 6th July, 1968, p. 65.

<sup>160</sup> Letter of 19th September, 1967.

<sup>161</sup> The Political Situation in Greece, p. 15.

<sup>162</sup> Memorial of 6th July, 1968, p. 65.

<sup>163</sup> The Political Situation in Greece, p. 15.

<sup>164</sup> Memorial of 6th July, 1968, p. 65.

<sup>165</sup> Letter of 19th September, 1967.

<sup>166</sup> The Political Situation in Greece, p. 13.

<sup>167</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, pp. 58-60 and Annex 60; hearing of September 1968, pp. 221-222; The Political Situation in Greece, p. 13.

<sup>168</sup> Memorial of 6th July, 1968, p. 59; The Political Situation in Greece, p. 14.

118. On 22nd February, 1967, Andreas Papandreou had declared in a speech that the constitutional form of taking the oath would be ignored by the new Government after the May elections, and the Centre Left majority would assume power without presentation of the new Government to the King.<sup>169</sup> He is quoted as saying:

“After the next elections, the Centre Union will have sufficient power. But a political party may cease to dispose of independent power. It will then form a Government, which will present itself to Parliament and ask approval of a minimum programme. If Parliament gives a vote of confidence, the Government will remain in office; if not it will proceed to a dissolution of Parliament and call new elections.”<sup>170</sup>

A different version of this quoted statement has also been given to the Sub-Commission, in which “EDA” is substituted for “Centre Union”.<sup>171</sup> The respondent Government argues that this statement implies an intention “to abolish the Constitution and the King” since the dissolution of Parliament and calling of elections are functions only of the King.<sup>172</sup>

119. It also claimed that Georgios Papandreou, leader of the Centre Union and former Prime Minister, planned a visit to Salonika on 23rd April, 1967, to foment disorder and bloodshed with the help of his EDA supporters, in order to bring down the lawful Government.<sup>173</sup>

(b) *Applicant Governments*

120. The applicant Governments observed that the respondent Government had relied in part on facts which were alleged to have occurred in 1965, and that such facts could not justify the respondent Government’s derogation from the Convention in 1967.<sup>174</sup>

121. With regard to the “Aspida” conspiracy, they pointed out that the officers concerned had been convicted before 21st April, 1967,<sup>175</sup> and that Andreas Papandreou had been released from prison by the respondent Government because the charges against him could not be maintained.<sup>176</sup> In fact, one<sup>177</sup> of the documents submitted by the respondent

<sup>169</sup> Memorial of 6th July, 1968, p. 67; hearing of September 1968, p. 228. See also letter of 19th September, 1967, and *The Political Situation in Greece*, p. 16 (alleged intention to swear in a Government “in Constitution Square”).

<sup>170</sup> Memorial of 6th July, 1968, p. 67 (revised translation); hearing of September 1968, p. 228. The source of this quotation is not indicated.

<sup>171</sup> *The Undermining of the Greek Nation*, p. 75.

<sup>172</sup> Memorial of 6th July, 1968, p. 67; hearing of September 1968, p. 228.

<sup>173</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 70; hearing of September 1968, p. 232.

<sup>174</sup> Memorial of 25th March, 1968, p. 85.

<sup>175</sup> Memorial of 25th March, 1968, p. 87.

<sup>176</sup> *Loc. cit.* p. 88.

<sup>177</sup> Memorial of 6th July, 1968, Annex 66.



Government to the Sub-Commission with regard to the alleged participation of Georgios and Andreas Papandreou in the "Aspida" conspiracy was forged.<sup>178</sup>

122. The applicant Governments further contested the allegation that the leader of the Centre Union Party, Georgios Papandreou, intended during his visit to Salonica in April 1967 to foment disorder and bloodshed in order to overthrow the authority of the State.<sup>179</sup>

123. In general, the applicant Governments maintained that its disapproval of the programme of certain political parties, namely the Centre Union and EDA, did not of itself entitle the respondent Government to derogate from the Convention under Article 15.<sup>180</sup>

## 2. Evidence before the Commission

### (a) Witnesses

124. Of the witnesses mentioned in paragraph 96 above, the following have also given evidence with regard to the respondent Government's assertions about a crisis of constitutional government on and before 21st April, 1967:

Panayotis Kanellopoulos<sup>181</sup>  
 Panayotis Papaligouras<sup>182</sup>  
 Evangelos Averoff<sup>183</sup>  
 Sophokles Tsanetis<sup>184</sup>  
 Panayotis Christou<sup>185</sup>  
 Stephanos Stephanopoulos<sup>186</sup>  
 Constantinos Mitsotakis<sup>187</sup>  
 Constantinos Georgakopoulos<sup>188</sup>  
 Nicolaos Bakopoulos<sup>189</sup>  
 Andreas Papandreou<sup>190</sup>

<sup>178</sup> Hearing of June 1969, p. 112.

<sup>179</sup> Memorial of 25th March, 1968, p. 88.

<sup>180</sup> *Loc. cit.* p. 86.

<sup>181</sup> Hearing of March 1969, Vol. I, pp. 17, 31, 34; Vol. IV, Doc. No. 1 (pp. 961 *et seq.* - letter from the witness to Mr. Karamanlis).

<sup>182</sup> *Ibid.* Vol. I, pp. 39, 41.

<sup>183</sup> *Ibid.* pp. 74-75, 80-81.

<sup>184</sup> *Ibid.* p. 63.

<sup>185</sup> Hearing of November 1968, Vol. II, pp. 331-332.

<sup>186</sup> Hearing of March 1969, Vol. II, pp. 697, 705-706.

<sup>187</sup> Hearing of November 1968, Vol. II, pp. 482, 487-488, 494-495, 508-509.

<sup>188</sup> Hearing of March 1969, Vol. I, pp. 117-120.

<sup>189</sup> *Ibid.* Vol. II, pp. 662-663.

<sup>190</sup> Hearing of November 1968, Vol. II, pp. 430, 439-440, 442-444, 446-447, 450-453, 464-465, 475.

Alexandros Natsinas<sup>191</sup>  
 Kyriakos Papageorgopoulos<sup>192</sup>  
 Georgios Anastassopoulos<sup>193</sup>  
 Constantinos Hadjitheodorou<sup>194</sup>  
 Constantinos Georgopoulos<sup>195</sup>  
 Phedon Vegleris<sup>196</sup>  
 Athanasios Paraschos<sup>197</sup>  
 Alexander Sedgwick<sup>198</sup>  
 Panayotis Troubounis<sup>199</sup>  
 Helen Vlachou<sup>200</sup>

The Sub-Commission also heard the evidence of Mr. Demetrios Galanis, Governor of the Bank of Greece,<sup>201</sup> and Dr. Demetrios Kapsaskis, Director of the Athens Forensic Medicine Service.<sup>202</sup>

(b) *Documents*

125. The documents considered by the Commission in connection with the respondent Government's assertions about a crisis of constitutional government on and before 21st April, 1967, are listed at Appendix IX to the present Report.<sup>203</sup>

3. *Examination of the evidence by the Commission*

126. There is general agreement to be found in the evidence presented to the Sub-Commission that there was in April 1967 widespread anxiety about the future of political institutions in Greece and the ability of governments to maintain public order and social progress.<sup>204</sup> Nevertheless, as regards the factors indicated by the respondent Government – a decline in the standing and influence of Parliament, an increase in numbers and organisation of the Communists and their allies, and a possibility of the creation of a “Popular Front” after the May elections –, the Commission would observe the following:

- (1) the preparation for the May elections was going forward on the basis, clearly accepted by all parties, that a new Parliament was to

<sup>191</sup> Hearing of December 1968, Vol. II, pp. 203, 206–207.

<sup>192</sup> Hearing of March 1969, Vol. I, pp. 126–127, 130–131.

<sup>193</sup> Hearing of December 1968, Vol. II, pp. 139–143.

<sup>194</sup> *Ibid.* pp. 226–230.

<sup>195</sup> *Ibid.* pp. 239.

<sup>196</sup> *Ibid.* pp. 258–264.

<sup>197</sup> *Ibid.* pp. 104, 116–118, 124.

<sup>198</sup> Hearing of November 1968, Vol. II, pp. 349–350.

<sup>199</sup> *Ibid.* pp. 402–403, 406–408.

<sup>200</sup> Hearing of December 1968, Vol. II, pp. 163, 173.

<sup>201</sup> Hearing of March 1969, Vol. I, pp. 352–359.

<sup>202</sup> Hearing of November 1968, Vol. I, pp. 251–252, 255.

<sup>203</sup> [Not reproduced.]

<sup>204</sup> See, for example, the witnesses Averoff (hearing of March 1969, Vol. I, pp. 74–75, and Vol. IV, p. 1181); Papageorgopoulos (*ibid.* pp. 126–127); Andreas Papan-dreou (hearing of November 1968, Vol. II, pp. 442–447).

be elected by the normal constitutional process. There is no conclusive evidence that any party or group in the electoral campaign proposed the abolition of Parliament or substantial limitation of its powers. Further, the trial of the officers charged in the "Aspida" affair had been completed in March 1967 with a number of convictions;<sup>205</sup>

- (2) as regards the Communists and their allies, Prime Minister Papadopoulos insisted in March 1969 that the number of Communists in Greece had always been small.<sup>206</sup> Further, there was before 21st April, 1967, a steady decline in successive elections both of electoral votes for EDA and in the number of its deputies in Parliament. According to General Tsanetis, the percentage of votes cast for EDA was 24.4 in 1958, 14.6 in 1961, 14.3 in 1963 and 11.8 in 1964;<sup>207</sup>
- (3) as regards the activities of Georgios and Andreas Papandreou, some of the evidence relates to the earlier period of 1964-1965 and has little bearing on the question whether there was a public emergency, actual or imminent, on 21st April, 1967. Among this evidence, the Commission notes that a letter, produced by the respondent Government to the Sub-Commission in the "Aspida" conspiracy,<sup>208</sup> is a forgery<sup>209</sup> and had been so found by an Athens tribunal before it was produced.<sup>210</sup>

127. As to the statements attributed to Andreas Papandreou in February 1967,<sup>211</sup> the Sub-Commission has heard a number of witnesses. Andreas Papandreou when giving evidence before the Sub-Commission, described his speech as follows: "I was speaking about procedures in Western European countries, . . . especially . . . Denmark. I had just received a letter from a deputy . . . from Denmark in which he described what happened at the last elections in Denmark. He stated (that) his

<sup>205</sup> See the respondent Government's letter of 19th September, 1967, to the Secretary General of the Council of Europe, paragraph I(e) (see Appendix IV to this Report). [Not reproduced.]

<sup>206</sup> "We had but a few Communists in our country" - see hearing of March 1969, Vol. IV, p. 1184.

<sup>207</sup> Hearing of March 1969, Vol. I, p. 63. See also Vol. II, p. 659 (witness Bakopoulos). EDA's electoral strength in 1958 and its decline thereafter was explained by the facts that, in 1958, there was "no well-organised socialist party in Greece" while in 1961 "the Centre Union Party had become organised, and had concentrated in its ranks all the elements that belonged neither to the extreme right nor to the extreme left" - *ibid.* pp. 64-65.

<sup>208</sup> Memorial of 6th July, 1968, Annexes 65 (Greek original) and 66 (French translation).

<sup>209</sup> The document was identified as a forgery by the witness, Dr. Kapsaskis, Director of the Athens Forensic Medicine Service and expert in graphology (hearing of November 1968, Vol. I, pp. 251-252, 255).

<sup>210</sup> *Ibid.* p. 252 (witness Kapsaskis) and Vol. II, pp. 441-442 (witness Andreas Papandreou).

<sup>211</sup> See paragraph 118 above.

party, when it won the election, not for the first but for the second or third time . . . , according to Danish tradition merely informed the King that it had won the elections and stayed on to do its business. I brought this out as a contrast with what happens in Greece. I was speaking about a contrast . . . how their Constitution<sup>212</sup> was put into practice, applied, because actually the Danish Constitution and the Greek Constitution are very close in wording but not in application. What I pointed out is that: "Look at the contrast", I said, "there you see, when the Prime Minister wins an election, he informs the King of the fact, as actually Mr. Krag did, while in Greece, we have to ask the question even if one has the majority of Parliament, whether he will rule or not." This is a question I put and this is the contrast that I made. But it would be the farthest thing from my thoughts . . . to raise a question about the Greek Constitution. We were truly religious about that in our party and I myself too."<sup>213</sup>

The witness further stated: "A question had been put to me of principle from the audience at that time as to whether, if this party of ours were not to have an absolute win in the elections, it would accept a collaboration with some party in Parliament. I stated that the question did not really exist politically because we would win the elections absolutely, but I added that the legitimate procedure in general, the framework within which a party operates in a parliamentary democracy, is the following. You have your minimum programme – which you present, if you have no absolute majority, in Parliament. If that programme is adopted by Parliament, you may stay on, if not, you recommend to the King that the Parliament be dissolved and elections be held. I think this is absolutely proper constitutional procedure, and I was in a way giving a lesson on constitutional procedure at that time . . .".<sup>214</sup>

When asked whether he requested a rectification of the newspaper reports concerning his speech, the witness replied: "Were I to answer all the mud that has been thrown at me over a year and a half through preparations of this quality, I would have no time to do anything else. This is not the only item, in fact it was not the most serious item. I have been charged with everything you can think of, and my answer is specifically: no, I have not been answering any of the charges made in the Yellow Press of Greece, I have not answered any of them."<sup>215</sup>

128. According to the witness Bakopoulos, a former Minister and leader of the Centre Union Party, "Andreas Papandreou did not say . . . that he would form a government in Constitution Square. The news-

<sup>212</sup> According to the respondent Government, Andreas Papandreou relied on "a non-existent article of the Danish Constitution" – *The Undermining of the Greek Nation*, p. 75.

<sup>213</sup> Hearing of November 1968, Vol. II, pp. 439–440; 447.

<sup>214</sup> *Ibid.*, p. 440.

<sup>215</sup> *Ibid.*, p. 472.

papers wrote at that time that he had said it. But Andreas Papandreou immediately denied this and wrote two articles in the Athens newspaper 'Ethnos' . . ." <sup>216</sup>.

129. According to former Minister Averoff, Andreas Papandreou did in fact make the declaration that he would form a Government in Constitution Square "and that was published in all the newspapers. Afterwards, there was such a snowball effect that everybody was talking about it as being very important and fundamental; it was so much commented on and so much on everybody's lips that several of us even discussed what we should do if Andreas Papandreou acted in that way . . ." <sup>217</sup>.

Similarly, the witnesses, MM. Anastassopoulos <sup>218</sup> and Parachos <sup>219</sup>, had "no doubt" that the above-quoted statement had been made by Andreas Papandreou. According to Anastassopoulos, Andreas Papandreou had "stressed that – on the example of some other country – his Government would take oath by itself on Constitution Square, and he would in this manner abolish the Constitution and our Constitutional Sovereign. He added that he would do so even if his Party did not obtain an absolute majority, maintaining that if he obtained a relative majority of the votes he would still form a Government and appear before the Parliament with a minimum programme. And if Parliament did not vote in favour of that programme, he would then proclaim new elections, ignoring the Constitutional Sovereign and Constitutional order." <sup>220</sup>

130. None of the witnesses mentioned in paragraphs 128 and 129 said that he was himself present when Andreas Papandreou allegedly made the above statements.

131. The Commission observes with regard to the evidence set out in paragraphs 127 to 129 above that it is disputed and confused both as to what Andreas Papandreou actually said on 22nd February, 1967, and as to how it is to be interpreted. Against the affirmations of three witnesses (Anastassopoulos, Averoff and Parachos) as to what he said, there are the denials of Bakopoulos and of Papandreou himself. Further, the submissions made by the respondent Government before the Sub-Commission differ from each other in one important respect, in that one makes his quoted statement refer to the Centre Union, the other to EDA <sup>221</sup>. Nevertheless, it is plain that the newspaper reports, whether true or false, had a marked effect, particularly on the issue of the taking of the

<sup>216</sup> Hearing of March 1969, Vol. II, pp. 662–663.

<sup>217</sup> *Ibid.* Vol. I, p. 81 (English translation of the Council of Europe).

<sup>218</sup> Hearing of December 1968, Vol. II, pp. 144–145.

<sup>219</sup> *Ibid.* p. 124.

<sup>220</sup> *Ibid.* p. 144.

<sup>221</sup> See paragraph 118 above.

governmental oath, in creating public anxiety about the political intentions of the Centre Union party.

132. With regard to the rally planned in Salonica for Georgios Papan-dreou on 23rd April, 1967, the Commission refers to its analysis of the evidence in paragraph 115 above.

#### IV. CRISIS OF PUBLIC ORDER

##### 1. *General statements of the parties*

###### (a) *Respondent Government*

133. The respondent Government submitted that, beginning in 1965, a situation had been created in Greece which was bringing the country to the brink of anarchy.<sup>222</sup>

134. Violent demonstrations began in July 1965, when vehicles and houses under construction were set on fire and barricades were erected in the centre of Athens,<sup>223</sup> and the demonstrations continued until 21st April, 1967.<sup>224</sup> Hundreds of policemen and civilians were killed or injured.<sup>225</sup>

In July 1965, 299 civilians and 250 policemen were injured.<sup>226</sup> In July 1966, during a violent clash between farmers and the police at Salonica, 90 policemen and 67 civilians were injured.<sup>227</sup>

On 6th and 11th April, 1967, students and building workers attacked the University of Salonica. They seized the Rector, threatened his life and subjected professors to brutality.<sup>228</sup>

On 12th April, 1967, nearly 3000 building workers tried to occupy the centre of Athens, causing injury to 85 persons, including 51 members of the security forces.<sup>229</sup>

135. In 1964 and 1965, during the Government of Georgios Papan-dreou, the Centre Union Party carried out an unprecedented attack on the security forces. At the instigation in many cases of EDA, 5,731 members of these forces were "transferred" for party reasons, ostensibly as part of a campaign against a "police State". The result was the *de facto*

<sup>222</sup> Letter of 19th September, 1967.

<sup>223</sup> *Ibid.*; memorial of 6th July, 1968, p. 61.

<sup>224</sup> Memorial of 6th July, 1968, p. 61.

<sup>225</sup> *Ibid.*; hearing of September 1968, p. 224. The number of persons killed has not been indicated by the respondent Government.

<sup>226</sup> Memorial of 6th July, 1968, p. 62.

<sup>227</sup> *Ibid.* p. 63.

<sup>228</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 69; hearing of September 1968, p. 231.

<sup>229</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 69; hearing of September 1968, p. 232.

dissolution of the security forces and their inability to cope with anarchic demonstrations at a time when disturbances of public order were assuming frightening dimensions.<sup>230</sup>

136. Political strikes formed the majority of the almost daily strikes in the first quarter of 1967; they increased disturbingly in the days immediately preceding 21st April.<sup>231</sup>

(b) *Applicant Governments*

137. The applicant Governments denied that the demonstrations mentioned by the respondent Government constituted, on 21st April, 1967, a public emergency in Greece threatening the life of the nation.<sup>232</sup> They submitted that public order had been sufficiently maintained by constitutional means and, as regards the incidents of 6th, 11th and 12th April, 1967, invoked the evidence given before the Sub-Commission by Mr. Rallis, who had been Minister of Public Order at that time.<sup>233</sup>

138. The applicant Governments also contested that the strikes mentioned by the respondent Government had threatened the life of the nation.<sup>234</sup> They observed that, in democratic states, strikes were normal occurrences.<sup>235</sup>

## 2. *Evidence before the Commission*

(a) *Witnesses*

139. Of the witnesses mentioned in paragraph 96 above, the following have also given evidence with regard to the respondent Government's assertions about a crisis of public order on and before 21st April, 1967:

- Panayotis Kanellopoulos<sup>236</sup>
- Georgios Rallis<sup>237</sup>
- Panayotis Papaligouras<sup>238</sup>
- Evangelos Averoff<sup>239</sup>
- Panayotis Christou<sup>240</sup>
- Constantinos Mitsotakis<sup>241</sup>

<sup>230</sup> Memorial of 6th July, 1968, p. 62.

<sup>231</sup> Letter of 19th September, 1967; memorial of 6th July, 1968, p. 69; hearing of September 1968, p. 232.

<sup>232</sup> Hearing of June 1969, p. 127.

<sup>233</sup> *Ibid.* p. 119; hearing of March 1969, Vol. I, p. 52.

<sup>234</sup> Hearing of June 1969, p. 127.

<sup>235</sup> Memorial of 25th March, 1968, p. 86.

<sup>236</sup> Hearing of March 1969, Vol. I, pp. 20, 25-26.

<sup>237</sup> *Ibid.* pp. 51-53.

<sup>238</sup> *Ibid.* pp. 36-37, 41.

<sup>239</sup> *Ibid.* p. 74.

<sup>240</sup> Hearing of November 1968, Vol. II, pp. 299-307, 319, 322.

<sup>241</sup> *Ibid.* pp. 495-496, 498.

Andreas Papandreou<sup>242</sup>  
 Alexandros Natsinas<sup>243</sup>  
 Georgios Anastassopoulos<sup>244</sup>  
 Constantinos Hadjitheodorou<sup>245</sup>  
 Fotios Makris<sup>246</sup>  
 Constantinos Georgopoulos<sup>247</sup>  
 Phedon Vegleris<sup>248</sup>  
 Athanassios Paraschos<sup>249</sup>  
 Alexander Sedgwick<sup>250</sup>  
 Panayotis Troubounis<sup>251</sup>  
 Helen Vlachou<sup>252</sup>  
 André Lambert<sup>253</sup>  
 Nicolaos Tomadakis<sup>254</sup>

(b) *Documents*

140. The documents considered by the Commission in connection with the respondent Government's assertions about a crisis of public order on and before 21st April, 1967, are listed at Appendix X to the present Report.<sup>255</sup> They also include reports and photographs of street demonstrations in August 1965 and July 1966 submitted by the Government.

3. *Examination of the evidence by the Commission*

(a) *Public demonstrations*

141. The respondent Government has provided the Sub-Commission with the following documents concerning public demonstrations in April 1967:

- (1) official reports of street demonstrations in Athens on 4th, 7th, 10th, 12th and 14th April, 1967;<sup>256</sup>
- (2) newspaper reports and photographs of public demonstrations in Salonica on 6th and 11th April, 1967.<sup>257</sup>

<sup>242</sup> *Ibid.* pp. 434-436, 453-457.

<sup>243</sup> Hearing of December 1968, Vol. II, p. 187.

<sup>244</sup> *Ibid.* pp. 142-143, 145.

<sup>245</sup> *Ibid.* pp. 218-221.

<sup>246</sup> Hearing of November 1968, Vol. II, pp. 535-538.

<sup>247</sup> Hearing of December 1968, Vol. II, pp. 239, 242.

<sup>248</sup> *Ibid.* pp. 257-258, 266-267.

<sup>249</sup> *Ibid.* pp. 100-102, 104, 108, 129.

<sup>250</sup> Hearing of November 1968, Vol. II, p. 346.

<sup>251</sup> *Ibid.* pp. 395-396, 406-408, 411-415, 420-421.

<sup>252</sup> Hearing of December 1968, Vol. II, pp. 154-155, 161, 167, 174-175.

<sup>253</sup> Hearing of November 1968, Vol. II, pp. 379-383.

<sup>254</sup> *Ibid.* pp. 361-363.

<sup>255</sup> [Not reproduced.]

<sup>256</sup> Memorial of 6th July, 1968, Annex 113.

<sup>257</sup> *Ibid.* Annexes 111 and 112.



142. The Sub-Commission has also heard several witnesses on these demonstrations, in particular, Mr. Rallis,<sup>258</sup> who was then Minister of Public Order, and Professor Christou, who was then Rector of Salonica University and previously Minister of Northern Greece.<sup>259</sup>

143. The official reports on the Athens demonstrations in April 1967<sup>260</sup> bring out the following points:

- (1) Two of the five demonstrations mentioned led to violence:<sup>261</sup>
  - on 4th April, 1967, 15 participants and 9 policemen were injured;
  - on 12th April, 1967, during a protest march by building workers, 17 participants and 51 policemen were injured, 25 policemen being hospitalised.
- (2) While the principal organisers were EDA and the “Lambraki Democratic Youth”, about 300 counter-demonstrators, shouting for example, “EDA to Bulgaria”, “long live ERE”<sup>262</sup>, appeared on 4th April, when there was violence, and on 7th April.
- (3) All demonstrations were effectively dispersed by the police, a number of arrests being made.

144. Former Minister Rallis gave the following description of the demonstration of building workers in Athens on 12th April, 1967: “The building workers were holding a meeting in the morning in a central theatre in Athens. I had informed them through the Athens Chief of Police that they were free to take part in that meeting, but that, according to the law, as soon as the meeting was over they must leave quietly and return home without demonstrating in the streets. As soon as the meeting was over, about mid-day, about a hundred of these workers went out into the streets of Athens. They attacked the police. They threw stones. They broke . . . shop-windows. They injured fifty policemen and the police were obliged to counter-attack and there were, among the demonstrators and other Communists who had come to their help, 130 or 135 injured. There were 50 injured among the police. The fighting lasted until 3 or 4 o’clock in the afternoon when order was restored.”<sup>263</sup>

<sup>258</sup> Hearing of March 1969, Vol. I, pp. 52–54.

<sup>259</sup> Hearing of November 1968, Vol. II, pp. 299–307, and witnesses’ notes deposited at that hearing, document No. 5 (photos of demonstrations).

<sup>260</sup> Memorial of 6th July, 1968, Annex 113.

<sup>261</sup> A press report quoted by the respondent Government mentions a student demonstration in Athens on 8th April, 1967, in which 18 students and 1 policeman were hurt – memorial of 6th July, 1968, Annex 114, p. 561.

<sup>262</sup> The (conservative) National Radical Union.

<sup>263</sup> Hearing of March 1969, Vol. I, p. 52 (English translation by the Council of Europe). According to the witness Anastassopoulos, there were “from seventy to eighty policemen wounded and from seventy to eighty building workers” – hearing of December 1968, Vol. II, p. 145.

145. The newspaper reports submitted by the respondent Government with regard to the demonstrations in the University of Salonica<sup>264</sup> state that:

- on 6th April, 1967, 2000 demonstrators were in conflict, 22 injured and 3 hospitalised;
- on 11th April, 1967, the police evacuated the demonstrators "in a few minutes", after a number of scuffles.

146. Professor Christou, apparently referring to the clashes between left-wing and right-wing demonstrators in the University on 6th April, 1967, said that, "for a period of three hours . . . a real battle was joined by these two groups of students, forty of them were wounded . . . I observed the action of the battle from the highest building of the University. Later, when I was informed that the injured had reached a total of forty, I called the police and asked them to intervene to disperse these groups. The police came and intervened in the beginning with fire extinguishers using water, with fire hoses. As these brought forth no results, smoke-producing bombs were used."<sup>265</sup>

147. Former Minister Rallis, apparently referring to the demonstrations in Salonica University on 11th April, 1967, stated: "A number of student Communist sympathisers entered the university. They remained there the whole of one day and one night. They refused to leave. The police were sent for. Two or three blows were struck; there were no injured, or perhaps one or two. And the students returned home. Order was restored"<sup>266</sup>

148. The "Marathon March", planned for 16th April, 1967, was cancelled following an order prohibiting it by the Minister of Public Order. According to former Minister Rallis, "the party of the extreme left"<sup>267</sup> . . . had announced that the Marathon Peace March would be held on 16th April.

Invitations had been sent to Communists all over Europe and even to some in South America. The Government of Mr. Paraskevopoulos . . . had taken no steps to ban this Communist march. I was sworn in on 3rd April. On 5th April, in agreement with the Prime Minister, Mr. Kanellopoulos, and on the following day, I made a declaration banning the Marathon march of 16th April, adding that anyone taking part in the march would be arrested by the police, whether they were Greeks or foreigners who had come specially for the occasion. The extreme left

<sup>264</sup> Memorial of July, 1968, Annexes 111 and 112.

<sup>265</sup> Hearing of November 1968, Vol. II, p. 300.

<sup>266</sup> Hearing of March 1969, Vol. I, p. 52 (English translation by the Council of Europe).

<sup>267</sup> EDA.

newspaper<sup>268</sup> and the Communist sympathisers among the members of Parliament made a lot of fuss and called me a fascist, said that I wouldn't allow this completely pacifist march and threatened to take part in this demonstration despite the Government ban. On 15th April, I was telephoned by the Chairman of the Marathon March Committee, a Mr. Pyromaglou, who was not a member of the Communist Party, but who collaborated with the Communists, asking me to make a statement requesting the March Committee to postpone the march until after the elections, because in a pre-electoral period there should be no demonstrations. I told him that I refused absolutely, that I asked no favours from the Communist Party or the March Committee. The march had been banned and anyone taking part in it would be arrested and brought to trial. He told me that by my intransigence I was endangering the situation in Greece, and that blood would flow. I told him that was not my concern, but that my job was to maintain order and that I did not intend to parley with Communist sympathisers and leftist extremists. Then he said: "Then we will hold the march". I said: "Just as you like. You will be arrested." He telephoned straight away to the Prime Minister, where he received the same reply. That happened on the morning of Thursday, 12th April. In the evening the March Committee issued a statement to the effect that the march was indefinitely postponed."<sup>269</sup>

149. The record clearly shows a state of tension<sup>270</sup> in Athens and Salonica, particularly among the students and building workers, and at least one demonstration led to serious violence. Nevertheless, there is no evidence that the police were not in both cities fully able to cope with the situation; there is no indication that firearms were used or their use planned and still less was there any suggestion that the army should be called in to assist the police.<sup>271</sup> In fact, General Anghelis, when asked by the Sub-Commission's delegates whether, in the spring of 1967, "there were ever situations where the armed forces had to give help to the civil power", stated that the armed forces were always "ready to give (such help) but the need did not arise".<sup>272</sup>

(b) *Strikes*

150. The respondent Government has given the Sub-Commission a list, extracted from newspaper reports, of strikes and work-stoppages in

<sup>268</sup> "Avghi" - cf. paragraph 91, No. 3 above.

<sup>269</sup> Hearing of March 1969, Vol. I, p. 51 (English translation by the Council of Europe).

<sup>270</sup> See also the evidence given before the Sub-Commission by MM. Lambert (hearing of November 1968, Vol. II, pp. 380-383) and Sedgwick (*ibid.* pp. 345-346).

<sup>271</sup> It may be observed that this is not suggested, even contingently, in the report of the Lieutenant-General Panayotakopoulos, Chief of the Gendarmerie, on the Salonica disturbance of 10th July, 1966 - see Memorial of 6th July, 1968, Annex 88.

<sup>272</sup> Hearing of March 1969, Vol. I, pp. 318-319.

Greece from the beginning of 1967 up to mid-April.<sup>273</sup> Scrutiny of this list reveals that:

- (1) out of 23 strikes, 8 were stoppages for 4 hours or less and only 2 exceeded 2 days; these were a strike of employees of the hospital "Asklipios" at Voula (5 days from 6th February) and a strike of an otherwise unidentified furniture firm "Sirigos" (3 days from 13th February);
- (2) the 7 strikes described as general included 1 of public transport for 24 hours on 19th January, 2 of state servants for 24 hours on 26th January and 4th February and 1 of postal services, doctors and transport from 25th to 27th March, 1967;
- (3) the number of stoppages steadily declined during the period in question.

151. It was stressed before the Sub-Commission that these strikes were politically motivated and were in great part unofficial,<sup>274</sup> but that, at least in the case of school teachers and civil servants, strike conditions were from a trade union point of view present.<sup>275</sup>

V. OPINION OF THE COMMISSION ON THE QUESTION WHETHER THERE WAS ON 21ST APRIL, 1967, A PUBLIC EMERGENCY IN GREECE THREATENING THE LIFE OF THE NATION

1. *As to the meaning of the term "public emergency threatening the life of the nation" in Article 15, paragraph (1), of the Convention*<sup>276</sup>

152. A "public emergency threatening the life of the nation"<sup>277</sup> has been described by the European Court of Human Rights in the Lawless Case as:

"une situation de crise ou de danger exceptionnel et imminent qui affecte l'ensemble de la population et constitue une menace pour la vie organisée de la communauté composant l'Etat" (in the English text: "an exceptional situation of crisis or emergency which affects

<sup>273</sup> Memorial of 6th July, 1968, Annex 114.

<sup>274</sup> Witness Makris, hearing of November 1968, Vol. II, pp. 535 *et seq.*

<sup>275</sup> *Ibid.* p. 537.

<sup>276</sup> This question has been discussed by the parties before the Sub-Commission. See memorial of 6th July, 1968, pp. 47-48, and hearing of September 1968, pp. 212, 236-237 (respondent Government); memorial of 25th March, 1968, pp. 49-60; hearing of September 1968, pp. 145-148 (applicant Governments).

<sup>277</sup> In the French text of Article 15: "danger public menaçant la vie de la nation". The English and French texts of the Convention are, as stated in its final clause, equally authentic.

the whole population and constitutes a threat to the organised life of the community of which the State is composed".<sup>278</sup>

It will be noticed that the notion of "imminent" danger, which is represented in the French but not directly in the English text of the judgment, must be given weight because it is the French text which is authentic.

153. Such a public emergency may then be seen to have, in particular, the following characteristics:

- (1) It must be actual or imminent.
- (2) Its effects must involve the whole nation.
- (3) The continuance of the organised life of the community must be threatened.
- (4) The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate.

*2. As to the criteria governing the control of a declaration of public emergency*<sup>279</sup>

154. The Commission considers that in the present case the burden lies upon the respondent Government to show that the conditions justifying measures of derogation under Article 15 have been and continue to be met, due regard being had to the "margin of appreciation" which, according to the constant jurisprudence of the Commission,<sup>280</sup> the Government has in judging the situation in Greece as from the moment it assumed power on 21st April, 1967.

<sup>278</sup> Lawless Case (Merits), Judgment of 1st July, 1961, The Law, paragraph 28 (p. 56). As stated by the Court, the French text of the judgment is authentic - cf. Rule 50, paragraph (1) (m), of the Rules of Court.

<sup>279</sup> This question has been discussed by the parties before the Commission and the Sub-Commission. See, for the respondent Government: observations of 16th December, 1967, p. 5; observations of 15th May, 1968, p. 16; hearing of September 1968, pp. 213-214, 238; for the applicant Governments: applications of 20th September, 1967, part III; memorial of 25th March, 1968, pp. 54, 75-76, 82; hearing of September 1968, pp. 145, 149-150, 286; hearing of June 1969, p. 102.

<sup>280</sup> See its reports in the First Cyprus Case (para. 136: "discretion in appreciating the threat to the life of the nation") and in the Lawless Case (para. 90: "a certain discretion - a certain margin of appreciation - must be left to the Government in determining whether there exists a public emergency which threatens the life of the nation", see also para. 91). The Court, in its judgment in the Lawless Case, did not use the term "margin of appreciation", but with regard to the question of the existence of a public emergency the Court stated *inter alia* that such emergency "was reasonably deduced by the Irish Government from a combination of several factors" ("a pu être raisonnablement déduite") - The Law, para. 28 (p. 56).

3. *As to the situation on 21st April, 1967*

155. In its notice of derogation of 3rd May, 1967, the respondent Government referred to "internal dangers which threaten public order and the security of the State".<sup>281</sup> According to the Government, there was on 21st April, 1967, "no question of an external danger, that is of war".<sup>282</sup>

156. As regards the internal situation, the Commission finds it established beyond dispute that, following the political crisis of July 1965, there has been a period in Greece of political instability and tension, of an expansion of the activities of the Communists and their allies, and of some public disorder. It is also plain that these three factors, which have been already reviewed, were always linked and interacting.

157. The task of the Commission is to examine whether, on the evidence before it, the three factors described were together of such scope and intensity as to create a public emergency threatening the life of the Greek nation. This examination is itself limited by the criteria of what constitutes a public emergency for the purpose of Article 15, set out in paragraph 153 above. In particular, the criterion of actuality or imminence imposes a limitation in time. Thus the justification under Article 15 of the measures of derogation adopted by the respondent Government on 21st April, 1967, depends upon there being a public emergency, actual or imminent, at that date.

158. In reaching its conclusions, the Commission will evaluate the evidence before it under the three heads of the threat of a Communist take-over of government by force, the state of public order and the constitutional crisis, these being the three factors indicated by the respondent Government as creating a public emergency threatening the life of the Greek nation on 21st April, 1967.

159. The Commission has not found that the evidence adduced by the respondent Government shows that a displacement of the lawful Government by force of arms by the Communists and their allies was imminent on 21st April, 1967; indeed, there is evidence indicating that it was neither planned at that time, nor seriously anticipated by either the military or police authorities. In particular:

- (1) the arms caches found and described to the Sub-Commission<sup>283</sup> were negligible in size and quality; former Prime Minister Kannelopoulos stated that no substantial arms deposits had been found or reported to his Government; General Papageorgopoulos did

<sup>281</sup> See paragraph 63 above.

<sup>282</sup> Hearing of September 1968, p. 212.

<sup>283</sup> Paragraphs 110-114 above.

not consider the importation of hunting guns to have been sufficient for an "uprising of great force"; and no evidence was produced of the use or attempted use of fire arms or explosives either in street demonstrations or elsewhere;

- (2) the authors of the "General Plan of Action" attributed to General Argyropoulos<sup>284</sup>, state in it that they envisage force in three possible situations only:
- carrying out of the May elections with use of force or fraud by the conservative ERE Party of Prime Minister Kanellopoulos:
  - the indefinite postponement of elections by this Party, based on a "camouflaged Royal dictatorship"; and
  - unfavourable election results for the Right and the refusal to surrender authority to the majority party.

It is thus essentially a political plan of action against the Right. The authors declare that force is to be used by them only in the second and third situations. The second situation is to be met by "protest meetings" pressed "as far as bloody clashes"; the third by the organisation of special shock groups . . . equipped with proper means and armaments, through which the neutralisation or destruction of the mechanical armoured machines, as well as the chemical means of the opponent, shall be possible." Neither of these contemplated reactions to moves by the Right involve the imminent overthrow of the lawful Government by force.

- (3) The fact that the respondent Government, having had full access to all available information, whether published, official or secret, has been able to produce only the very slender evidence already discussed, itself demonstrates that no Communist take-over of government by force of arms was to be anticipated.

160. The Commission further does not accept the suggestion of the respondent Government that the street demonstrations, strikes and work stoppages in the first months of 1967<sup>285</sup> attained the magnitude of a public emergency. Though the street demonstrations, as anywhere, created anxiety for persons and property in Athens and Salonica, the record does not show the police forces to have been at or even near the limit of their capacity to cope with demonstrations and disorder, and they acted without need of assistance from the armed services. In particular, they cleared the University buildings in Salonica of its illegal occupants "in a few minutes" on 11th April, 1967. The order prohibiting the "Marathon March", to be held on 16th April, 1967, and the obedience to it, is further indication that the Government was in effective control of the situation.

<sup>284</sup> Paragraphs 101-106 above.

<sup>285</sup> See paragraphs 141-151 above.

161. The picture of strikes and work stoppages does not differ markedly from that in many other countries in Europe over a similar period; indeed, as regards the length of strikes and stoppages it is more favourable than in some. There is certainly no indication that there was any serious disorganisation, let alone one involving the whole nation, of vital supplies, utilities or services, as a result of strikes.

162. The Commission here notes with regard to the Government in office between 3rd and 21st April, 1967, that Prime Minister Kanellopoulos<sup>286</sup>, and the two Ministers especially responsible for public safety and order, Rallis<sup>287</sup> and Papaligouras<sup>288</sup> expressed the firm opinion that there was on 21st April, 1967, no public emergency in Greece, actual or imminent.

163. The Commission has then to consider whether there was on 21st April, 1967, an imminent threat to the organised life of the community, in that:

- (1) given co-operation between the Centre Union and EDA parties, and the role in this connection of Georgios and Andreas Papandreou, the May elections would lead to the creation of a "Popular Front" government, dominated in effect by the Communists and their allies, these being committed to an ultimate take-over of government;
- (2) linked with this political development, street demonstrations and disorder, occupation of buildings and work stoppages, fomented by the Lambraki Youth and other subversive organisations<sup>289</sup>, would increase to a point where they passed beyond the control of the police forces or the army; and
- (3) the army, being both a conscript force and subject to some Communist infiltration, would, if confronted with massive but unarmed popular demonstrations, refuse to fire on them, and public order would break down.

164. The concrete question before the Commission is whether, on 21st April, 1967, there was a threat, imminent in that it would be realised before or soon after the May elections, of such political instability and disorder that the organised life of the community could not be carried on. The Commission gives a negative answer to this question for two reasons:

<sup>286</sup> Hearing of March 1969, Vol. I, pp. 2 *et seq.*

<sup>287</sup> Minister of Public Order, *ibid.* pp. 50 *et seq.*

<sup>288</sup> Minister of National Defence, *ibid.* pp. 36 *et seq.*

<sup>289</sup> The respondent Government mentions in this connection two organisations of the Centre Union Party: EFEE (National Union of Greek Students) and EDIN (Greek Democratic Youth) – memorial of 6th July, 1968, Annex 113.



- (1) if it is said that the possibility of the formation of a "Popular Front" government, with its probable consequence of a Communist take-over of government, constituted in itself a public emergency threatening the life of the nation, the Commission does not consider that it has been shown, from the state of the parties or the political situation generally, that the formation of a "Popular Front" government after the May elections was certain or even likely;
- (2) on the other hand, there was no indication on 21st April, 1967, that, either before or after the May elections, public disorder would be fomented and organised to a point beyond the powers of the police to control: on the contrary, the speed with which a large number of Communists and their allies were themselves "neutralised" on 21st April, 1967, suggests that, for all their supposed plans, they were incapable of any organised action in a crisis.

165. In sum, the respondent Government has not satisfied the Commission by the evidence it has adduced that there was on 21st April, 1967, a public emergency threatening the life of the Greek nation.<sup>290</sup>

#### VI. DISSENTING OPINION OF MR. BUSUTTIL

(Mr. Busuttill has stated his opinion under I below.<sup>291</sup>)

#### VII. DISSENTING OPINION OF MR. DELAHAYE

##### 1. *Preliminary remarks*

166. It is probable that when judging the danger threatening the nation a scholar with the benefit of his knowledge of patiently gathered materials and the detachment due to the passing of time will not react in the same way as a man of action who, faced with concrete facts, has generally to make an immediate decision.

It is probable too that the former "will not have the same feeling" for the facts of the situation. This "feeling" is above all proper to the man of action and will almost certainly be absent in persons who are not of the same nationality as those whose acts they are called upon to judge at a later date. But it is this almost indefinable factor which in politics makes it possible to decide to take action at the right moment.

If therefore we wish to come to grips with the true facts we should set aside pedantic learning and exaggerated logic and try to put ourselves in the place of the person or persons whose acts are to be judged.

167. The European Commission of Human Rights has not been established in the form and with the powers it requires to deal with certain very extensive cases like the present.

<sup>290</sup> Paragraph 165 was adopted by a majority of ten members.

<sup>291</sup> Paragraphs 230-237 (pp. 134-138) of the present Report.

Being made up of non-permanent members each of whom is fully taken up with his activities in his own country and incorporated in a permanent body it cannot, whatever efforts it makes, successfully deal with a considerable number of cases and particularly the most extensive among them within a reasonable time.

Working without assistants other than the administrative staff, it is impossible for it, with seven members (in the case of a Sub-Commission) or even with sixteen members (as in the case of the Commission), to deal with an inquiry involving the hearing of evidence from hundreds of witnesses and perhaps even more.

It was only possible to hear about thirty witnesses on the problems raised by paragraph (1) of Article 15 of the Convention.

Being bound by rules of procedure it cannot receive confidential information and the whole proceedings take place in the presence of both parties. For this reason many facts are not brought to its knowledge.

Having no assistants who could enter into communication with national police forces other sources of information are also closed to it. Thus the witnesses heard in this case were nominated by the Governments concerned: the Sub-Commission was forced to restrict itself to making a choice among these witnesses.

In addition when the Commission has to conduct an inquiry in a particular country it is entirely dependent on the good will of this country as it has no authority except that which emanates from itself. Thus as a result of the attitude of the respondent Government various witnesses whom the Sub-Commission wished to examine could not be heard.

168. From what has been said it follows that the Government concerned and the Commission were not able to base their assessments on the same facts and that the Commission's task was therefore particularly difficult.

## 2. *Definition of "public emergency"*

169. In the definition of the "emergency" referred to in paragraph (1) of Article 15 of the Convention as given by the European Court of Human Rights, the Commission has added to the word "imminent" the word "actual".

If this addition was not intended to modify the sense given to the word "emergency" by the Court there would have been no reason to make it. On the other hand we may ask ourselves what is the scope of this modification.

Does it mean that a state harried by a group or party which discovers that this party's plan of campaign provides for a rising which for tactical reasons is fixed for a comparatively distant date cannot consider itself as being in a state of emergency – because the emergency is not actual – and must therefore wait for the serious event to occur?

### 3. *Existence of a "public emergency"*

170. After the Second World War Greece seems to have been threatened both internally and externally by Communism, which indeed at this period tried to achieve power in many European states. As a result Greece underwent a Civil War in 1946 which lasted four years and caused the losses in men and materials which it set out in documents listed in Appendix VII to the present Report.<sup>292</sup>

As a result supporters of order were particularly sensitive when it came to dealing with the Communist Party.

171. The Civil War was followed by a long period of instability in all fields. Political instability was one of its symptoms: between 1944 and 1957 there were 41 governments i.e. an average of two per year. When we come to consider the political situation one is struck by its confusion. The Communist Party as such seems to have lost its vigour. However, it formed alliances with the left wing parties EDA and the Centre Union in such a way that it is not possible to penetrate the secret of these alliances.

172. Would it be unreasonable to suppose that the left, like the right, was waiting for a suitable occasion to seize power by unconstitutional means and was preparing itself for this purpose?

There had already been a serious political crisis in 1965 – murderous barricades and the *Aspida* conspiracy inspired by the left which in 1967 led to the conviction of many officers.

In 1966 there was the farmers rising in Salonica, convulsions in the EDA Party and the uncertainty fostered by the press (the *Glezos* and *Filinis* cases . . .).

1967 seems to mark the climax.

Firstly, in March one of the authors (*Vegleris*) of the "General Plan of Action" of leftist tendency stated that the Republic and democracy were in danger and, secondly, in April, considering that the State was in danger, a group of officers of right wing tendencies seized power.

173. This is the Government now in power. It justifies the emergency measures it has taken by alleging the danger of the Communists and their allies.

Insofar as not the Communist Party as such nor any other party as such is considered dangerous, but the Greek Communist Party, which had already undermined the internal and external security of the State and was again seeking to cause serious disturbances, the matter can be seen in proportion to the extent that it is proved that the Communist party and its allies constituted an imminent danger in 1967.

<sup>292</sup> Documents Nos. 6 *et seq.* [Not reproduced.]

174. Has this in fact been proved?

On such a subject mathematical proof is hardly possible. One is forced to rely on a series of presumptions and the conclusions drawn will necessarily be affected by a mixture of subjective and objective elements.

As already stated the basis of assessment is not the same for the Commission and the Government which considers it was in danger. The latter must therefore be granted a margin of appreciation. As the Court has stated the Commission must consider whether the existence of a public emergency was reasonably deduced by the Government from a combination of several factors.

175. As to the factors in the present case:

- (1) The road to the coup d'état of 21st April, 1967, was long. From 1950 to 1965 the opposing parties took stock of their relative strengths.

From 1965 on events followed quickly. In 1965 there was a true crisis accompanied by unrest. In 1966 the situation became worse. In 1967 came the climax.

- (2) In 1967 everyone seemed to be expecting serious events. There had been many warning signs: street demonstrations in Athens and Salonica, unrest in the universities (this unrest was earlier than the oppositionist demonstrations which from 1968 on have become general in almost all the Western European Universities), particularly in Salonica. Frequent strikes which, though the right to strike is generally conceded, become disturbing when, as in this case, they were of a political character and occurred at a rhythm of about 30 in three and a half months.

Incidents occurred more and more frequently: on 4th, 6th, 7th, 10th, 11th and 12th April in Athens and Salonica.

A most important factor should not be forgotten: parliamentary elections were due to take place in May.

There was great anxiety. It was fostered in a confused manner by the press whose exact position is not known to the Commission. The dispute over the Marathon Peace March, in which foreigners were called upon to participate and which was due to take place on 16th April but was forbidden by the Government, was not calculated to restore an atmosphere of calm.

- (3) Certain political parties took up opposing positions as for instance EDA and ERE.
- (4) Was it still a question of sporadic action or were these occurrences the result of a methodical plan? The general scheme of events makes the hypothesis of a concerted action probable. The taking up of key positions by shock troops (cf. Lambraki Democratic Youth) tends to reinforce this opinion.
- (5) The fears of the supporters of order were all the stronger because

the Communists had infiltrated the whole machinery of government and in particular the army which was not considered as reliable. It appears that it was not feared as such but it considered that it could not be relied on in the case of serious disorder. As a matter of fact it seems that the army took no part in the control of various large scale incidents.

176. It is true that the Government of the day had up to date dealt with the various difficulties which arose with normal methods and argued that though the situation was difficult it was nevertheless under control. This calls for two observations.

- (1) The statement that the Government was able with the means at its disposal to deal with the situation is based essentially on statements by ministers belonging to the Government overthrown by the coup d'état. One cannot imagine them saying the opposite.
- (2) It cannot be inferred from the fact that a government has dealt with various difficulties by normal means that the State was not in danger nor can one wait until such means prove insufficient to declare a state of emergency because by then it would be too late and the danger would have led to a catastrophe. Danger may be imminent in spite of the efficiency of the steps normally taken by the government. These steps may prove insufficient or of doubtful efficiency in certain circumstances and exceptional measures may become inevitable.

177. Some are of the opinion that any coup d'état executed by officers must itself be condemned.

That is a purely sentimental and personal consideration which is not relevant to the subject.

The question before us is whether a Government of whatever nature performs its duty of complying with the requirements of the Convention.

178. Finally, the evidence before the Commission does not lead to any definite conclusion. Under these circumstances the margin of appreciation left to the Government is a matter of particular importance.

It can be conceded that the existence of an imminent danger has reasonably been inferred by the respondent Government from the known facts taken as a whole.

#### VIII. DISSENTING OPINION OF MR. TRIANTAFYLIDIS

179. The respondent Government having complained that certain of its witnesses in connection with this issue had not been heard by the Sub-Commission, I proposed that (notwithstanding the reasons which led to decisions of the Sub-Commission as to the evidence to be heard

by it) the Commission should invite the respondent Government to place before the Commission full statements by the said witnesses (being those mentioned in the letters of the respondent Government dated 14th January, 1969, 19th March, 1969 and 24th April, 1969, and, also, in Appendix VI); and that, then, on the basis of such statements, the Commission should decide what action, if any, were to be taken under Rule 64 of its Rules of Procedure.

This proposal was not accepted by the Commission.

Furthermore, the Commission decided by majority – myself being in the minority – not to have an oral hearing of the parties, at the stage of the preparation of its Report, as requested by the respondent Government.

As I felt that the taking of the afore-mentioned procedural steps (with-in, of course, the shortest possible time-limits, in view of the urgency of the case) was an essential course, I decided that failing such a course I could not associate myself with the general conclusion of the Commission regarding the issue of Article 15, in relation to 21st April, 1967.

#### IX. DISSENTING OPINION OF MR. EUSTATHIADES

180. In cases falling under Article 15 of the Convention we are faced with two questions:

- I. Was there a public emergency threatening the life of the nation?
- II. Were the acts complained of strictly required by the exigencies of the situation?

In order to draw the conclusion that there was no violation of the Convention it must be possible to reply in the affirmative to both questions. For this reason the Commission and the Court in those cases where they have had to decide on the lawfulness of derogations made under Article 15 have examined each of these two questions separately.

181. In this case the first question is whether on 21st April, 1967, there was a public emergency within the meaning of paragraph (1) of Article 15 which would justify derogations from the Convention of the kind effected by the respondent Government.

This question leads us to the analysis of two problems:

- (1) the exact meaning of paragraph (1) of Article 15 and in particular the conditions of its application;
- (2) the examination of the facts in the present case in order to express an opinion on the application of Article 15 to these facts.

#### 1.

182. The precedents and the discussion on Article 15, which both the Commission and the Court have had to apply in earlier cases, are most

instructive with regard to the interpretation of this fundamental provision.

We may commence our reference to the precedents created by previous cases by recalling that the line taken by some members of the Commission, who in other cases (cf. the Cyprus and the Lawless cases) strongly defended an interpretation of Article 15 which only left very little place for the freedom of action of the States concerned, was not followed either by the Commission or by the Court who, as will be observed later, in interpreting Article 15 not only extended the concept of public emergency but also allowed the States concerned a considerable margin of appreciation in the application of this Article.

On this point I would observe that most of the matters which will be quoted below have been recalled in the Secretariat Note entitled "Jurisprudence of the Court and the Commission on Article 15 of the Convention on Human Rights".<sup>293</sup>

A. The Commission's report in the first Cyprus Case which represents the majority opinion adopts the following definition: "The term 'nation' means the people and its institutions, even in a non-self governing territory, or in other words, the organised society, including the authorities responsible both under domestic and international law for the maintenance of law and order".<sup>294</sup>

Again in the Lawless Case which came before the Court the Court stated in its judgment of 1st July, 1961, that "in the general context of Article 15 of the Convention, the natural and customary meaning of the words "other public emergency threatening the life of the nation" is sufficiently clear; whereas they refer to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed" (in the French text: "dans le contexte général de l'article 15 de la Convention, le sens normal et habituel des mots 'en cas de guerre ou en cas d'autre danger public menaçant la vie de la nation' est suffisamment clair; (qu')ils désignent, en effet, une situation de crise ou de danger exceptionnel et imminent qui affecte l'ensemble de la population et constitue une menace pour la vie organisée de la communauté composant l'Etat").<sup>295</sup>

I may mention that the French text of the Court's judgment in the Lawless Case which was stated to be the authentic text, perhaps because it was in the language spoken by the President – although all the oral pleadings, written memorials and documents were in English –, differs from the English text which reads as follows: "... an exceptional situation of crisis or emergency which affects the whole population and con-

<sup>293</sup> Doc. D 28.954.

<sup>294</sup> Paragraph 130, page 137, of the Commission's report.

<sup>295</sup> Lawless Case (Merits), Judgment of 1st July, 1961, *The Law*, paragraph 28, p. 56.

stitutes a threat to the organised life of the community of which the State is composed”.

The French text differs, therefore, from the English text in two respects:

- (a) the concept of “imminent” danger appears in the French but not in the English text, and
- (b) the concept of an “exceptional” situation, which in the English text applies both to a crisis and to a danger, applies in the French text only to the danger and not to the situation of crisis.

The Commission’s Report in the present case, which only refers to the first of the two differences mentioned under (a) and (b) above between the English and French texts, gives weight to the latter as being the authentic text.<sup>296</sup>

In any case, following the same line, i.e. giving weight to the French text of the Court’s judgment, we see that the judgment establishes two situations which justify the application of Article 15:

- (1) “A situation of exceptional and imminent danger which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed” (“Une situation de danger exceptionnel et imminent qui affecte l’ensemble de la population et constitue une menace pour la vie organisée de la communauté composant l’Etat”).
- (2) “A situation of crisis which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed” (“Une situation de crise qui affecte l’ensemble de la population et constitue une menace pour la vie organisée de la communauté composant l’Etat”).

B. In deciding whether one or other of the two situations referred to in A above exist, it is conceded that, subject to the control of the competent organs, the Government concerned must be granted a certain margin of appreciation.

The Commission’s report in the Cyprus Case adopted (by a majority of 10 to 1) the following wording: “The Commission of Human Rights is authorised by the Convention to express a critical opinion on derogations under Article 15, but the Government concerned retains, within certain limits, its discretion in appreciating the threat to the life of the nation.”<sup>297</sup>

Again in the Commission’s report on the Lawless Case<sup>298</sup>, the majority followed the same line as in the Cyprus Case: although it emphasised that

<sup>296</sup> See paragraph 152 and cf. paragraph 153 above.

<sup>297</sup> Paragraph 136, p. 144.

<sup>298</sup> Publications of the Court, Series B, 1960–1961.



the Commission has the competence and the duty to express an opinion on a Government's decision as to the existence of an emergency within the meaning of Article 15, it stated that "some discretion and some margin of appreciation must be allowed to a Government when assessing the legitimacy or otherwise of its recourse to the exceptional right conferred upon it by Article 15 to derogate from the provisions of the Convention".

When this case was brought before it, the Court, though not directly reproducing the Commission's wording, stated that the existence of a public emergency "was reasonably deduced by the Irish Government from a combination of several factors" ("a pu être raisonnablement déduite par le Gouvernement irlandais de la conjonction de plusieurs éléments constitutifs").<sup>299</sup>

There are no contrary precedents on the points discussed above, the two cases cited, the Cyprus Case and the Lawless Case, constituting the jurisprudence of the Commission and the Court on these points. (The Report in the present case speaks at paragraph 154 of the "constant jurisprudence" of the Commission).

## 2.

183. It is necessary to examine "the facts and circumstances" (cf. the Court's judgment cited above, *loc. cit.*) of the present case in the light of the solutions of the jurisprudence on Article 15 referred to above.

More particularly, account must be taken of the "facts and circumstances" of the present case in order to form an opinion whether these facts and circumstances do or do not amount, at least, to a "situation of crisis which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed" (cf. supra 1, A) taking into account the discretion or margin of appreciation which is allowed to a Government in this respect (cf. supra 1, B).

Most of the facts and circumstances relevant in the present case are to be found in the Report:

- The Communist danger which, moreover, had been in existence for several years (cf. paragraphs 90 *et seq.* of the Report).
- The undoubted existence of political instability and political tension which were extremely intensified during the period immediately preceding the Government's taking of power coupled with an expansion of Communist activities (cf. paragraph 156 of the Report).
- A constitutional crisis (paragraphs 116 *et seq.* of the Report).
- A crisis of public order (cf. paragraphs 133 *et seq.* of the Report) and in particular various facts (cf. paragraphs 101 *et seq.* and 159 and 160 of the Report) such as plans either for the "neutralisation"

<sup>299</sup> Judgment of 1st July, 1961, *The Law*, paragraph 28, p. 56.

of the Armed Forces (see paragraph 109 of the Report) or for other forms of action (see paragraph 159 of the Report), about 10 demonstrations carried out or planned between 4th and 20th April, 1967, etc.

It should be noted that with respect to these facts and circumstances reference should be made *not only to the Report but also to the text of the Annexes to the respondent Government's memorial of 6th July, 1968.*

On the basis of such an examination it appears that each of the facts and circumstances mentioned above taken separately would not in itself justify the conclusion that one of the situations existed which, under the jurisprudence relating to Article 15, would in principle justify derogations from certain Articles of the Convention. However, a consideration of the whole of the facts and circumstances mentioned above leads to an uncertainty as to the existence or otherwise of "a situation of crisis which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed" (cf. 1, A above). This uncertainty cannot be dissipated by general statements on the efficiency of the normal means employed to deal with the whole of the facts and circumstances referred to above. And if one bears in mind the general picture of the evidence given before the Sub-Commission, it would appear that the said uncertainty could not be eliminated. More particularly, if we refer to the evidence given before the Sub-Commission on Article 15, it would seem that certain and unquestionable conclusions could not be drawn.<sup>300</sup>

Although witnesses heard on Article 15 were asked to speak directly on certain aspects of that Article, a certain number of important witnesses on both sides said nothing relating to Article 15 and others only said very little directly referring to the internal situation of the country from the point of view of Article 15. As to the rest of the witnesses, some of whom only mentioned some facts directly connected with Article 15, and others of whom replied on the whole directly to the question, it could be observed that the facts mentioned are, in certain cases, affected by the personal attitudes of the persons concerned while in other cases we find opinions, whether in favour of the one contention or the other, which, perhaps inevitably, are not entirely foreign to the qualifications, or the position occupied by, those giving evidence. If we consider the evidence given as a whole, which is sometimes incomplete and often counter-balanced, the doubts (cf. above) as to the drawing of exact conclusions on this matter are not dispelled.

<sup>300</sup> See Verbatim Record of the hearing of witnesses before the Sub-Commission held in Strasbourg from 25th to 30th November, 1968, Vol. II - Evidence relating to Article 15; Verbatim Record of the hearing of witnesses before the Sub-Commission held in Strasbourg from 18th to 20th December, 1968, Vol. II - Evidence relating to Article 15; Verbatim Record and Minutes of the hearing of witnesses etc. in Athens from 10th to 20th March, 1969, Vols. I and II.

It should be mentioned that it has not been possible to enrich the material on the files because, *inter alia* :

- (1) the Sub-Commission did not hear further witnesses whose evidence had been offered especially on Article 15 both by the respondent Government and by the applicant Governments;<sup>301</sup>
- (2) the Commission decided not to hold a final oral hearing of the parties and not to hear further witnesses both on Article 3, with respect to which following this decision I felt unable to take part in the proceedings, and on Article 15.<sup>302</sup>

184. Arriving at the same conclusion as the dissenting opinions of MM. Busuttill, Delahaye, Triantafyllides and Süsterhenn, I am of the opinion that, for the reasons mentioned above, the facts as they appear from the material contained in the file justify hesitations in drawing exact conclusions which would lead to a finding that a situation of the type contemplated by Article 15 of the Convention did not exist and, particularly in view of the jurisprudence relating to Article 15 (see in detail under 1, A and 1, B above), it follows that it is not possible to deduce that a situation of the type contemplated by this jurisprudence did not exist on 21st April, 1967.

#### X. DISSENTING OPINION OF MR. SÜSTERHENN

185. I think it is appropriate to make a preliminary observation on the status of the present Greek Government. The latter describes itself as a revolutionary government. By doing so it makes clear that it is not claiming to have taken over the Government in a legal manner in accordance with Greek domestic constitutional law. But the Government not only exercises sovereign power within Greece but also represents Greece externally in all international organisations and maintains diplomatic relations with all States with which the preceding Greek Government maintained such relations. In these circumstances the present Greek Government is, according to the general principles of international law, the recognised representative of the Greek State in the international community.

The legal conclusion is that the present Greek Government must from the point of view of the European Convention for the Protection of Human Rights, of which Greece is one of the Contracting Parties, be considered and treated in exactly the same way as the Government of any other Contracting Party to the Convention.

186. In the Cyprus Case the Commission claimed the right to examine whether, in a case where a Government had used its power of derogation under Article 15 of the Convention, in fact an emergency threatening the

<sup>301</sup> See Appendices V and VI to this report. [Not reproduced.]

<sup>302</sup> See paragraph 37 of this Report.

life of the nation existed. In that case the Commission expressed the following opinion by a majority of 10 to 1:

“The Commission of Human Rights is authorised by the Convention to express a critical opinion on derogations under Article 15, but the Government concerned retains, within certain limits, its discretion in appreciating the threat to the life of the nation.”<sup>303</sup>

The Commission adopted the same position in the Lawless Case. Here again the Commission claimed the right and the duty to examine the question of whether a threat to the life of the nation existed. On the other hand it emphasised:

“that some discretion and some margin of appreciation must be allowed to a Government when assessing the legitimacy or otherwise of its recourse to the exceptional right conferred upon it by Article 15 to derogate from the provisions of the Convention.”<sup>304</sup>

187. In the examination of the question whether or not there is a *threat to the life of the nation* the right of decision lies with the responsible Government within the limits of its *bona fide* discretion. In its review of this decision the Commission is not entitled to put itself in the position of the responsible Government and assume the functions of a sort of super-government. The Commission has rather to examine whether the responsible Government in exercising its discretion has not manifestly behaved in an unreasonable or even arbitrary manner. I think that when reviewing the factual preconditions for a derogation under Article 15 of the Convention and the exercise of its discretion by the responsible Government the Commission must follow the principles it has regularly adopted in its decisions on Article 6 of the Convention. Here the Commission has always taken the point of view that it is not entitled to assume the function of a so called fourth instance with respect to decisions of national courts. A similar degree of caution to that which the Commission has shown with respect to judicial decisions of national courts would appear to be even more called for with respect to the political decisions of a national Government.

Political decisions always depend on the political assessment of the existing situation and the political forecast of future developments. In assessing a political situation politicians may come to different conclusions; some may allege the existence of a threat to the life of the nation while others may deny that such a threat exists. It is in the nature of things that such decisions depend on the various political analyses of the situation. Political analyses, however, contain of necessity subjective elements. So for example the question of whether it is necessary or not

<sup>303</sup> Paragraph 136, p. 144, of the Commission's report.

<sup>304</sup> Paragraph 90 of the Commission's report, see also paragraph 91.

to ban the Communist Party or whether the establishment of a popular front government would or would not constitute a threat to the life of the nation may receive a different answer depending on the subjective attitude of a politician or a government. In particular, political forecasts are decisively influenced by subjective attitudes and can thus lead to different assessments of the position.

In cases where such conflicting opinions exist the right and duty to decide lies with the responsible Government which must be allowed a reasonable margin of discretion. The fact that it is allowed a margin of discretion naturally does not mean that the responsible Government can make a manifestly unreasonable or even arbitrary decision. That would be an abuse of the discretion. In reviewing the discretionary decisions of the responsible Government, the point at issue is whether the political situation in Greece was such that a threat to the life of the nation could be assumed by the Government and not whether such a threat must have been obvious to everyone.

188. The review of the question whether the Greek Government could reasonably assume the existence of a threat to the life of the nation is extraordinarily difficult for any international body because, of necessity, it is not in possession of an exact knowledge of the material and psychological facts of the political situation. Personally, however, I have no doubt that those Greek politicians who during recent years have held responsible positions in the government or still hold such positions have, as a result of their direct experience, a better knowledge of the political facts and psychological factors which exercise an effective influence on the Greek people. They are as a result materially better equipped to judge whether a threat to the life of the nation did and does exist or otherwise.

The Sub-Commission has taken evidence from a number of personalities involved in Greek public life including previous prime ministers and ministers. In the course of such evidence a number of witnesses, in particular the last Prime Minister in office before the revolutionary take-over, Kanellopoulos, and the previous Ministers Rallis and Papaligouras, stated that on 21st April, 1967, there was no threat to the life of the nation within the meaning of Article 15 of the Convention.

General experience shows that a threat to the life of the nation in the sense of Article 15 is as a rule not a sudden occurrence which can be tied down to a particular day. Such a threat does not as a rule arrive like a *deus ex machina* on the political stage but rather becomes apparent in the course of a longer or shorter period of political development. From this point of view the record of the sitting of the Crown Council at which the King presided on 1st and 2nd September, 1965, is of particular importance.<sup>305</sup> This record shows *inter alia* that the then leader of the ERE and later Prime Minister Kanellopoulos referred to a severe crisis in

<sup>305</sup> Memorial of 6th July, 1968, Vol. II, Part 1, pp. 273-390.

Greece, the terrorist methods of the Lambrakis Organisation, the arming of the Communists and their nightly military exercises, their intimidation of the population and threat to democratic freedom.<sup>306</sup>

The former Prime Minister Athanassiadis-Novas spoke in the Crown Council sitting of a continuous political crisis which had in fact become a national crisis and in this context of serious danger for the life of the nation.<sup>307</sup>

The former Prime Minister Pipinellis who was Minister for Co-ordination in a later Cabinet under Kanellopoulos and is Foreign Minister in the present Government headed by Papadopoulos spoke in the Crown Council of a critical and dreadful state of affairs which was affecting most sectors of public life.<sup>308</sup> He also spoke of the Communist danger, of a terrible organised expansion of the Communist subversive network, of an infiltration of Communism in the highest offices of state and in the security police and of the popular front which had already established itself in the masses, the basis of the structure of the state.<sup>309</sup>

The former Prime Minister Paraskevopoulos also spoke in the Crown Council sitting of the total ineffectiveness of the state and the consequent absence of all security.

These references to the record of the Crown Council sitting may suffice at this stage to show that – apart from the then Prime Minister Papandreou – the other members of the Council including the King almost unanimously found that there was a serious Communist danger actually in existence.

The question whether this danger fell within the meaning of the legal expression “threat to the life of the nation” in Article 15 of the Convention was not considered in the Crown Council. As a result the statements of the members of the Council do not contain an expression of opinion on this legal problem. On the other hand, the witnesses Kanellopoulos, Rallis, Papaligouras and others when giving evidence before the Sub-Commission did refer to this question when describing the actual danger and expressed their opinion that there was no “threat to the life of the nation” in April 1967.

It is obvious that such expressions of a legal opinion by witnesses are of interest especially when these witnesses are themselves legally trained and, as members of the Government which was in office until 21st April, 1967, are certainly well informed as to the political facts at that time. However, it must be observed that, though it is true that these witnesses are certainly in a position to express an opinion which is worthy of respect, the right to decide whether the actual threat fell within the terms of Article 15 and the right to make a legally valid finding as to the existence of “a threat to the life of the nation” is exclusively that of the

<sup>306</sup> Memorial of 6th July, 1968, Vol. II, Part 1, pp. 289–290.

<sup>307</sup> *Ibid.* p. 304.

<sup>308</sup> *Ibid.* p. 318.

<sup>309</sup> *Ibid.* pp. 319 *et seq.*

responsible Government holding power at the time the derogation was made.

It must moreover be borne in mind in assessing the evidence of the former Prime Minister Kanellopoulos and his Ministers, to the effect that in 1967 there was a certain degree of danger but no "threat to the life of the nation", that these witnesses in giving evidence had at the same time to defend themselves against the accusation levelled against them by the present Government that they either underestimated the existing danger or had not the courage to take strong action.

Of special significance for the assessment of the danger existing in April 1967 is in my opinion the evidence of the former Foreign Minister Evangelos Averoff. Averoff, who was also a Minister in Kanellopoulos' Cabinet was thrown out of office by the coup d'état and later brought before the court by the present Government and convicted. He has until very recently continued to publish statements against the present Government in the foreign press and radio. In his evidence before the Sub-Commission he gives a very impressive description of the situation of the time.<sup>310</sup> particularly when he says that it was somewhat chaotic and that a broad section of the population feared a Communist take-over. Here he throws light on the part played by Andreas Papandreou and his close co-operation with EDA, and he adopts a critical position with respect to the famous speech of Andreas Papandreou in which the latter according to press reports threatened to inundate Athens with Communist masses and to seize power after the elections, if necessary contrary to the Constitution, and take his oath as Prime Minister in the presence of the assembled people on Constitution Square.<sup>311</sup>

It is true that Andreas Papandreou when giving evidence before the Sub-Commission denied that he had made a speech in the form stated in the press. When asked by the President of the Sub-Commission whether he had rectified the press statements which he alleges to be false, he replied that he had neither time nor inclination to make his position clear on all false press reports. As opposed to Papandreou the witness Bakopoulos states that he did read such rectifications in the press. Even if this statement of Bakopoulos is accepted as true these corrections, as appears from Averoff's evidence, had no effect on public opinion and may well have been lost in the confusion of events at the time.

The usually dangerous situation in which Greece found itself in the last years and months before April 1967 appears in particular from the evidence of the former American Press Attaché and Journalist Alexander Sedgwick who was permanently resident in Greece.<sup>312</sup> A similar description of the situation at the time was given by the Swiss national André Lambert, a former delegate of the International Red Cross who was also

<sup>310</sup> Hearing of March 1969, Vol. I, pp. 74-76.

<sup>311</sup> *Ibid.* pp. 75, 81.

<sup>312</sup> Hearing of November 1968, pp. 346 *et seq.*

permanently resident in Greece.<sup>313</sup> The same impression is given by the evidence of the Greek journalist Athanasios Paraschos,<sup>314</sup> who besides describing the situation also reports the very pessimistic judgment passed on the position at the time by the former Prime Minister Paraskeyopoulos, who was summoned to give evidence before the Sub-Commission but did not appear. The press reports including Mme. Vlachou's newspapers reflect the general uneasiness and the anxiety existing in the population at the time before the coup d'état.<sup>315</sup>

The President of the Commercial Association of Athens who was also President of the Co-ordinating Council for all the Chambers of Commerce of Greece, Mr. Anastassopoulos, described the situation in Greece immediately before the take-over as political and economic chaos.<sup>316</sup>

The Trade Union Leader, Hadji-theodorou, who had been a member of the union administration since 1945 and was since May 1964 the democratically elected General Secretary of the Panhellenic Sailors' Confederation, which has 100,000 members, stated in evidence that the danger in April 1967 was similar to that before the beginning of the Communist rising in 1944.<sup>317</sup>

The situation before 21st April, 1967, he said, was really very bad from the point of view of a threat to the nation. One strike followed another. The object of these strikes was principally political, i.e. the destruction of the existing regime. Strikes which were in origin economic or social were transmuted into political strikes.<sup>318</sup>

The former Head of the KYP and Greek Security Representative in NATO, General Papageorgopoulos, on being asked by the President of the Sub-Commission whether there was a threat to the life of the nation in Greece in the first months of 1967, replied with an unequivocal "certainly".<sup>319</sup>

In giving evidence Averoff stated that in view of the severe unrest during the last two or three years the Junta's coup d'état on 21st April, 1967, was welcomed by the Greek people and perhaps even by a majority.<sup>320</sup> He also stated that as a victim of this coup d'état on the night of 21st April, 1967, he had adopted with regard to the coup d'état a "negative but nevertheless expectant attitude". On the question of the derogations under Article 15 of the Convention he stated that even though the interpretation of the factual position before 21st April was contradictory, he took the view that in principle the important question was whether the derogations would be limited to a reasonable period or whether they

<sup>313</sup> *Ibid.* pp. 379 *et seq.*

<sup>314</sup> Hearing of December 1968, pp. 98 *et seq.*

<sup>315</sup> Memorial of 6th July, 1968.

<sup>316</sup> Hearing of December 1968, pp. 138 *et seq.*

<sup>317</sup> *Ibid.* pp. 217 *et seq.*

<sup>318</sup> Hearing of December 1968, p. 218.

<sup>319</sup> Hearing of March 1969, Vol. I, pp. 126 *et seq.*

<sup>320</sup> *Ibid.* p. 76.



would go on for twenty, ten or five years.<sup>321</sup> He further stated that in particular Papandreou's behaviour had provoked deep resentment and great uneasiness among the officers.<sup>322</sup> He described the officers' fears of a Communist take-over as sincere and expressly recognised their good faith.<sup>323</sup>

189. In view of the situation in Greece in April 1967 as described by the above-mentioned witnesses and in particular the evidence of Mr. Averoff I come to the conclusion that it is indeed possible to put different interpretations on the situation at the time but that the Junta, i.e. the responsible Greek Government, did not arbitrarily exceed its margin of appreciation when after examining the facts it came to the conclusion that there was a "threat to the life of the nation".

### E.

## The evolution of the situation from 21st April, 1967 to the present time

### I. GENERAL STATEMENTS OF THE PARTIES

#### 1. Respondent Government

190. The respondent Government submitted that, notwithstanding its success in restoring order throughout the country since 21st April, 1967, the danger of subversive acts within Greece had not been completely eliminated. This made it necessary to continue to apply exceptional measures.<sup>324</sup>

191. The respondent Government also referred<sup>325</sup> to certain statements made by Prime Minister Papadopoulos at a press conference on 15th March following a speech of 6th March, 1969. On 6th March, Mr. Papadopoulos had said *inter alia*:<sup>326</sup>

"We do not face any danger, coming from whatever side. The country's armed forces and security forces, exploiting the vast support which our people provides to their organs, have succeeded so that the situation today (is) to be described as completely secure . . . We had but a few Communists in our country . . ."

At the press conference on 15th March, 1969, Mr. Papadopoulos

<sup>321</sup> *Ibid.*

<sup>322</sup> *Ibid.* p. 88.

<sup>323</sup> *Ibid.* p. 89.

<sup>324</sup> Letter No. 1683 of 22nd July, 1969 – reproduced at Appendix IV to this Report. [See this Yearbook, Vol. XII, p. 46f.]

<sup>325</sup> Letter of 19th March, 1969, see hearing of March 1969, Vol. IV, p. 1182.

<sup>326</sup> Hearing of March 1969, Vol. IV, p. 1184.

“affirmed that Greeks, by upbringing and tradition, do not reconcile themselves to Communist world theory”. The Communist danger which existed on 21st April, 1967, “did not lie in the number of Communists”; it was the “social conditions prevailing at the time, which allowed a handful of Communists to find ready response to their propaganda.”<sup>327</sup>

## 2. *Applicant Governments*

192. The applicant Governments submitted generally that a public emergency within the meaning of Article 15 of the Convention does not exist, and has not existed, in Greece at any time since 21st April, 1967.<sup>328</sup>

## II. EVIDENCE BEFORE THE COMMISSION

### 1. *Witnesses*

193. The Sub-Commission has heard the following witnesses with regard to the evolution of the situation from 21st April, 1967, to the present time:

#### *Officers of the respondent Government*

Georgis Kekkos, Director General of the Ministry of the Interior<sup>329</sup>  
Constantinos Papaspyropoulos, Director, General Security Service, Athens<sup>330</sup>

#### *Armed Forces*

Odysseus Anghelis, General, Chief of the Armed Forces<sup>321</sup>  
Georgios Engolfopoulos, Rear Admiral, former Chief of Naval Staff<sup>332</sup>  
Ioannis Kritselis, Brigadier General, Director of the Judicial Services of the Army<sup>333</sup>  
Alexandros Natsinas, General, former Chief of KYP<sup>334</sup>

#### *Members of former Governments*

Panayotis Kanellopoulos, former Prime Minister<sup>335</sup>  
Steaphanos Stephanopoulos, former Prime Minister<sup>336</sup>  
Evangelos Averoff, former Minister<sup>337</sup>

<sup>327</sup> *Ibid.* p. 1183.

<sup>328</sup> Hearing of June 1969, p. 130.

<sup>329</sup> Hearing of March 1969, Vol. I, pp. 327–328, 336–339.

<sup>330</sup> *Ibid.* Vol. II, pp. 627–631, 635–636, 645–647.

<sup>331</sup> Hearing of March 1969, Vol. I, pp. 319, 321.

<sup>332</sup> *Ibid.* p. 99.

<sup>333</sup> *Ibid.*, Vol. II, p. 756.

<sup>334</sup> Hearing of December 1968, Vol. II, p. 208.

<sup>335</sup> Hearing of March 1969, Vol. I, p. 21.

<sup>336</sup> *Ibid.* Vol. II, pp. 705–707.

<sup>337</sup> *Ibid.* Vol. I, pp. 79–80.

Panayotis Papaligouras, former Minister<sup>338</sup>  
 Andreas Papandreou, former Minister<sup>339</sup>

*Economic life*

Demetrios Galanis, Governor of the Bank of Greece<sup>340</sup>

*Legal profession*

Phillipos Anghelis, President, Athens Bar Association<sup>341</sup>

*Press*

Athanasios Paraschos, Publisher and Journalist<sup>342</sup>

Alexander Sedgwick, retired American Journalist resident in Greece<sup>343</sup>

Panayotis Troubounis, Vice-President, Union of Athens Newspaper Writers<sup>344</sup>

2. *Documents*

194. The respondent Government has submitted a number of documents concerning the evolution of the situation from 21st April, 1967, to date. These are listed at Appendix XI<sup>345</sup> to the present Report.

III. EXAMINATION OF THE EVIDENCE BY THE COMMISSION

195. The Commission finds, in the evolution of the situation from April 1967 to the present time, three factors which must be considered for the determination of whether the continuance of measures of derogation is justified by a public emergency, actual or imminent:

- (1) manifestations of public disorder,
- (2) declared policies of the Greek authorities, and
- (3) the relaxation of certain measures of derogation under Article 15 of the Convention.

196. A list was given to the Sub-Commission by the witness Papaspyropoulos, Director of the Government Security Service in Athens, of thirty-six "illegal anarchic organizations in existence after April 1967".<sup>346</sup> The witness observed:

"It is reasonable that the political forces which have temporarily

<sup>338</sup> *Ibid.* pp. 47-48.

<sup>339</sup> Hearing of November 1968, Vol. II, p. 466.

<sup>340</sup> Hearing of March 1969, Vol. I, pp. 352 *et seq.*

<sup>341</sup> *Ibid.* Vol. II, pp. 781-782, 786-787.

<sup>342</sup> Hearing of December 1968, Vol. II, p. 123.

<sup>343</sup> Hearing of November 1968, Vol. II, pp. 355-356.

<sup>344</sup> *Ibid.* pp. 403-406.

<sup>345</sup> [Not reproduced.]

<sup>346</sup> Hearing of March 1969, Vol. II, p. 631 and Vol. IV, p. 991.

been excluded from active participation in public affairs should develop an intensive activity. This is the reason why I am in a position to deposit with you a list of 36 organisations which were created after the revolution,<sup>347</sup> which are aimed against it in every possible way and which try, either by dynamic means or through propaganda, to excite the Greek people against the revolution.”<sup>348</sup>

197. He also provided the Sub-Commission with a list of a number of acts of violence or attempted violence, and of sabotage, from September 1967 to March 1969.<sup>349</sup> These comprised:

- 19 placings of bombs in the Athens area found before explosion;
- 29 bomb explosions in Athens, one woman being killed in one case; two bomb explosions in Salonica, one in Herakleion, one in Chania and one in Patras;
- cutting of telephone cables, once in Kastellio in Crete and once in Patras;
- one case of arson in the Public Power Co-operative in Patras; and
- an incident in Herakleion where several people were wounded by machine gun fire.

198. In connection with eleven of the incidents mentioned above, the list names those responsible for placing bombs:

- on 4th September, 1967, members of D.E.A. (Democratic Resistance Commission) were arrested for placing four bombs at central points in Athens; and
- on 13th August, 1968, “the group of Panagoulis” placed bombs at eight points in the Athens area. In seven cases, the bombs were found before their explosion. The eighth bomb, placed on the Prime Minister’s route, exploded.

199. According to a recent statement of the respondent Government,<sup>350</sup> an explosion took place at a private house near Athens on 14th July, 1969, causing injury to one of the persons living there. In the house, the police found “twelve time-bombs and twelve devices liable to cause an explosion”. One of the rooms in the basement had been “transformed into an explosives dump and home-made bomb laboratory. The bombs . . . were ready for use . . .”

<sup>347</sup> The Communist Party of Greece (KKE) is however included in the list.

<sup>348</sup> *Ibid.* Vol. II, p. 627.

<sup>349</sup> *Ibid.* p. 631 and Vol. IV, p. 991.

<sup>350</sup> Letter No. 1683 of 22nd July, 1969, from the respondent Government to the Secretary General of the Council of Europe, reproduced at Appendix IV to this Report. [See this Yearbook, Vol. II, p. 46f.]

200. Speaking generally of these illegal activities, Papaspyropoulos stated: "as long as the present surveillance exists, no danger exists and if it does it can be faced squarely. However, I did maintain that if the surveillance in force today is suspended, all the organisations I mentioned will have the chance of activating themselves to the highest degree, and they will be helped by all those persons who are affected by the Government's political, social and administrative measures in general. I mentioned those things indicatively in order to show the mania and aggressive attitude of these groups, these organisations."<sup>351</sup>

201. Questioned as to the scale and effect of the bomb incidents, the same witness replied that:

"Before 1967, bomb explosions did not exist as a form of activity. There were other forms of activity. Today this form of action is one of those which are more suitable to those organisations<sup>352</sup> . . . such symptoms did not exist before the Revolution . . . The purpose of the bomb explosions was not merely to cause a certain amount of destruction. They also aimed at giving a clear indication of the dynamism of a certain organisation which can break the morale of lawful citizens and boost the morale of illegally acting members of the organisations. Because if one places a bomb inside the 'Palace' cinema, a cinema with a seating capacity of 2,000, as a bomb was placed and in fact did explode, if you place bombs in the Ministries, in important public institutions, in cities and in squares, the fear caused to the citizen is intense, the dynamism of the organisation becomes felt, thus the preparation of the ground for the phase you referred to becomes easier."<sup>353</sup>

202. The declared policies of the Greek authorities in regard to public order and security was explained to the Sub-Commission by witnesses proposed by the respondent Government in terms designed to show that, while the measures of derogation under Article 15 had reduced the dangers threatening the Greek nation, they could not yet be completely relaxed.

(1) Thus Brigadier General Ionnais Kritselis, Director of the Judicial Services of the Army, said:

"Naturally, there is no danger today to the extent which existed at the time of the Revolution. This means that, in my opinion, the danger exists today to a lesser extent. This is why these extraordinary measures are being maintained though on a smaller scale. I repeat, therefore, the danger in my opinion still exists but is no

<sup>351</sup> Hearing of March 1969, Vol. II, p. 645.

<sup>352</sup> The organisations mentioned in paragraph 196 above.

<sup>353</sup> Hearing of March 1969, Vol. II, pp. 645-646.

longer so great as it was before the Revolution. . . . I think that the maintenance of these measures, on a reduced scale, is what has actually reduced the danger. That is my answer. We cannot know whether the present reduced danger would not become aggravated if the measures ceased to exist. These extraordinary measures, taken by the Government and still maintained on a reduced scale, are the reason why the danger has been reduced. I think, too, that the maintenance of these measures is justified until the danger has been completely eliminated.”<sup>354</sup>

- (2) Papaspyropoulos, whose statement on illegal activities since April 1967 has already been quoted, commenting on the public speech by Prime Minister Papadopoulos at Kavala on 6th March, 1969,<sup>355</sup> said:

“And the Prime Minister very correctly mentioned this subject which is in no way contradictory to what I said. Because, as long as the Security Forces and the National Armed Forces exist and continue to watch out, no danger exists for the Nation. A danger exists for the Nation when the Security Forces no longer have the possibility which they have today to exercise this surveillance in the way they exercise it. The Prime Minister referred to the assistance of the Greek people. I referred to those groups and to those persons who, because their interests are affected, turn against the whole Nation and who, even if they are limited in number, enjoy a special social prominence because of their special position in society.”<sup>356</sup>

However, this witness also said that the danger which exists in Greece today is greater than that which existed prior to 21st April, 1967.<sup>357</sup>

- (3) General Anghelis, stressing the character of Greece’s Northern frontiers, stated:

“The Communist danger will always be there. So long as Communism remains as a conspiratorial, treasonable and subversive movement, the Communist danger will always be there and it will always be greater in Greece for special reasons.

However, this does not mean that the present regime should be preserved. When the statutory changes provided for in the Constitution take place, when the Government machine is purged and becomes more effective, and when certain social measures already announced by the Government are taken, then it will be possible to deal with Communism with the usual constitutional and democratic methods. If it were possible at this moment to transplant

<sup>354</sup> Hearing of March 1969, Vol. II, p. 756.

<sup>355</sup> See paragraph 191 above.

<sup>356</sup> Hearing of March 1969, Vol. II, p. 633.

<sup>357</sup> *Ibid.* p. 627.

Greece to France or Belgium or Great Britain, then the regime could be changed now. But not with Greece where it is. Because they are ready on our frontiers.”<sup>358</sup>

- (4) Finally Kekkōs, Director General of the Ministry of the Interior, also commenting on the speech of the Prime Minister, gave a similar account of the policies of the respondent Government:

“I believe that the Prime Minister’s speech does not mean what you have indicated, namely, that the Communist danger in this country has been completely eliminated. Naturally, the Army and the Security Forces try to prevent the Communists from expressing themselves and from obtaining what they believe in. But I think that, in addition to this, I mean the disruption of Communism in which the Government has succeeded but which is not sufficient, certain other measures must be taken subsequently, measures which are provided for in the Constitution and will prepare the ground for a normal political life. I think that the extraordinary measures must be maintained until those measures, which the Government intends to take, have been completed. Besides, as time goes by, the Government tries to abolish certain measures which had been taken in the beginning. For example, the citizens are now free to assemble and an amnesty has been granted to those who had acted against the Government. Similarly, certain measures were taken in regard to the press so that the strict supervision of censorship which had been imposed initially has now been eased so much that there are today certain papers and magazines that are not subjected to any censorship or supervision. Therefore, the Government is trying, little by little, to take all those measures that will ensure normal conditions which will permit us to achieve a sound parliamentary system. Also, certain other measures have been taken aiming at the establishment of the institutions provided for by the Constitution. The Government has already started preliminary work on this. I believe that there is reason to maintain the extraordinary measures until all those conditions have been fulfilled.”<sup>359</sup>

It is noted that these witnesses stressed, as did Prime Minister Papadopoulos<sup>360</sup>, that the influence of the Greek Communists lay not in their numerical strength, which was and always has been small, but in their role in particular social and economic situations.

203. Other witnesses, not active members of the Government Service or Armed Services, considered that the present situation was less secure

<sup>358</sup> *Ibid.* Vol. I, p. 321.

<sup>359</sup> *Ibid.* pp. 331-332.

<sup>360</sup> See paragraph 191 above.

than it appeared<sup>361</sup> and that it was aggravated by the maintenance of measures of derogation. According to former Prime Minister Kanellopoulos, "the prolongation of this regime is dangerous for Greece, for . . . in the silence of the cemetery it is only the Communists who can act".<sup>362</sup> Similarly former Prime Minister Stephanopoulos found "that any further prolongation of this situation is pregnant with great dangers for the country" because, following the dissolution of the political parties, the underground movement of the Communists "keeps spreading and becoming better organised".<sup>363</sup> Former Minister Papaligouras pointed out: "Those who are dissatisfied, those who oppose the regime, and I believe that the great majority of the country is opposed to it, have at the moment no way to react. If, one fine day, the Communist Party reacts it will be in the way it alone can and knows how to react."<sup>364</sup> According to former Minister Averoff, the fact that there is no freedom of thought or expression "only provokes dangerous reactions".<sup>365</sup> Kanellopoulos<sup>366</sup>, Averoff<sup>367</sup> and Papaligouras stressed the danger that "a good many of the youth . . . will be deceived by the Communists".<sup>368</sup>

204. Kekkos and the witness Galanis, Governor of the Bank of Greece, both testified to economic progress since April 1967.<sup>369</sup>

(1) The former spoke of social and economic measures to improve living standards:

"The application of some of these economic measures has already been started, especially for farmers and workers. Farmers owed the Agricultural Bank an amount of approximately seven billion drs. These debts were cancelled and the farmers were freed from them. They also receive economic assistance through the Agricultural Bank to enable them to improve their economic situation. They are given special housing loans. We, at the Ministry of Interior, acting in co-operation with the Ministry of Co-ordination and the Ministry to the Prime Minister, have now drafted a bill on regional economic development which will be a unit, a new unit; naturally not a department with decisive powers but with a power to co-ordinate all the programmes implemented by the Provinces."<sup>370</sup>

<sup>361</sup> Witness Philippos Anghelis (hearing of March 1969, Vol. II, pages 781, 786) and witness Natsinas (hearing of December 1968, Vol. II, p. 208).

<sup>362</sup> Hearing of March 1969, Vol. I, p. 21 (English translation by the Council of Europe).

<sup>363</sup> *Ibid.* Vol. II, pp. 705-706.

<sup>364</sup> *Ibid.* Vol. I, p. 47 (Engl. transl. by the Council of Europe).

<sup>365</sup> *Ibid.* p. 80 (English translation by the Council of Europe).

<sup>366</sup> *Loc. cit.*

<sup>367</sup> *Loc. cit.*

<sup>368</sup> Papaligouras *loc. cit.* (Engl. transl. by the Council of Europe).

<sup>369</sup> A different opinion as to the economic situation was expressed by Averoff (*loc. cit.*) and Stephanopoulos (*loc. cit.*).

<sup>370</sup> Hearing of March 1969, Vol. I, pp. 344-345.



- (2) Galanis referred in the period 1965–67 to the withholding of capital from new investment, a rise of 10% in the price index, the economic insecurity caused by strikes and then to the “complete restoration of the public’s psychology”. This was “reflected in the increase of deposits by 15,377 million drachmas during 1968, that is, by an amount approximately twice that of the highest increase in deposits ever achieved up till now. Secondly, in the course of 1968, two major loans of a 20 year term were floated on the Greek capital market, one by the Public Power Corporation (P.P.C.) and another of three billion drachmas by the State, a fact which constitutes an achievement for the small Greek market. These facts are indicative of the situation, of the public’s confidence in the political stability on the one hand and the country’s economic future on the other hand, whereas such phenomena did not exist prior to 1967.”<sup>371</sup>

205. Certain of the measures of derogation under Article 15 have been cancelled or relaxed since April 1967, and the Commission will examine the consequences under particular Articles of the Convention in Chapter II below.<sup>372</sup>

#### IV. OPINION OF THE COMMISSION ON THE SITUATION SINCE 21ST APRIL, 1967

206. Although the respondent Government has found itself able to annul or relax certain measures of derogation since 21st April, 1967, the state of siege continues and the Government has pointed out two new factors of which the Commission has taken account:

- (1) the bomb incidents and acts of sabotage, which have been often repeated since the summer of 1967; and
- (2) the formation and activities of a number of illegal organisations also formed since April 1967.

207. The Commission does not find, on the evidence before it, that either factor is beyond the control of the public authorities using normal measures, or that they are on a scale threatening the life of the Greek nation.<sup>373</sup>

#### V. CONCURRING OPINION OF MR. BUSUTTIL

(Mr. Busuttill has stated his opinion under I below.<sup>374</sup>

<sup>371</sup> *Ibid.* p. 354.

<sup>372</sup> See paragraphs 268, 306 and 362 below.

<sup>373</sup> Paragraph 208 was adopted by a majority of ten members.

<sup>374</sup> Paragraphs 238–239 (p. 138) of the Report.

## VI. OPINION OF MR. DELAHAYE

209. The success of a coup d'état implies that the danger to which it was due has been overcome at any rate provisionally.

It is possible that new events create a fresh danger for the State. A few bomb outrages and the existence of illegal or anarchist organisations whose subversive activity remains underground would not appear to be of this nature so that looked at narrowly from the point of view of the question whether after 21st April, 1967, Greece was still in danger one would come with the majority of the Commission to the conclusion that it was not.

210. This, however, is not the true problem. For we must ask ourselves whether assuming that all these exceptional measures which motivated the coup d'état were terminated the danger would not nevertheless exist.

In principle we cannot exclude the hypothesis that the state of emergency has completely disappeared for the present and the near future when for example a purge in the party from which the danger arose prevents this party from regaining its strength within a foreseeable time.

Is this so in the present case?

The evidence submitted makes it impossible to form an opinion in one way or another.

This being so we must ask ourselves what would happen if the respondent Government was to put an end at once to all the exceptional measures taken on 21st April, 1967, including the arrests.

Setting aside the assumption made above that all danger had disappeared it could be that the party against whom the coup d'état was directed has remained what it was and in that case when it had reorganised its key personnel the danger would remain essentially the same. It is even possible that the danger would be increased by the desire for vengeance and the bitterness created by its repression.

But these are only hypotheses.

211. In fact the question whether the danger exists, has increased or diminished after the coup d'état seems to be a question of to what extent and possibly at what rate the respondent Government could without exposing the nation to danger put an end to the emergency measures and replace them by others more in line with the requirements of the situation than those which existed before the coup d'état. Above all measures that would be in accordance with the Convention and give the country a sense of moral and material well-being which is generally speaking the most efficient barrier against subversive attempts.

Opinions on this matter would seem to be best included under the heading dealing with the examination of the necessity for the measures taken on 21st April, 1967, and their continuation after that date.

212. In order to determine as far as possible whether the exceptional measures were proportionate to the danger of the situation it would be desirable to have available evidence with which to form a picture of the political, economic, financial and social situation both on 21st April, 1967, and subsequently and in particular at the time when the situation is being examined.

The respondent Government gives us some information on this point.

#### VII. OPINION OF MR. EUSTATHIADES

(Mr. Eustathiades has stated his opinion under F below.<sup>375</sup>)

#### VIII. DISSENTING OPINION OF MR. ERMACORA

213. In my opinion there exists in Greece, at the time of the adoption of this Report, a public emergency as has been defined in paragraphs 152 *et seq.* above. The elements mentioned in paragraph 206 are, in spite of the declarations of Mr. Papadopoulos of March 1969,<sup>376</sup> similar to those which the European Court of Human Rights has found in connection with the Commission's report in the Lawless Case, namely being such as indicate the existence of a public emergency. Furthermore, a series of witnesses in the Athens hearings before the Sub-Commission has described the danger of the present situation, in particular MM. Averoff and Stephanopoulos and the Director of the Athens General Security Service, Papaspyropoulos.<sup>377</sup> There is no dispute that the witnesses are divided in respect of their suggestions concerning the reasons and origins of this situation.

214. Nevertheless, the respondent Government could only refer to Article 15 of the Convention if there did not exist particular, specific reasons preventing it from doing so. In the case before us, however, an appeal to Article 15 of the Convention seems to be incompatible. As shown in this Report, the present situation in Greece is caused by the respondent Government and, in particular, by the fact that the Government has taken no effective step to apply Article 3 of the First Protocol in such a way as is intended by the democratic governments referred to in the Preamble to the Convention as well as in the Statute of the Council of Europe. One may have the impression that the respondent Government misunderstands the function of a revolutionary government under the regime of the Convention.

This leads me to the conclusion that the respondent Government has engaged in activities or has performed acts aiming at the limitation of the

<sup>375</sup> Paragraph 219 (pp. 122-129) of this Report.

<sup>376</sup> See paragraph 191 above.

<sup>377</sup> Hearing of March 1969, Vol. II, pp. 626 *et seq.*

rights under the Convention to a greater extent than is provided for in the Convention (Article 17 of the Convention).

All these considerations and, in particular, the fact that the respondent Government makes no sign of respecting Article 3 of the First Protocol seem to prove that this Government applies the restrictions permitted under the Convention for a purpose other than those for which they have been prescribed (Article 18 of the Convention).

215. Therefore, in my opinion, the reference to Article 15 of the Convention is excluded with regard to the factors mentioned in paragraph 206 above although these elements, as already stated, constitute as such a public emergency in the sense of Article 15. In other terms, a revolutionary government under the regime of the Convention, having disregarded the aims of the Convention and therefore being itself responsible for a situation which it has itself created, may not refer to Article 15 of the Convention as a valid defence of its restrictions of the human rights and fundamental freedoms guaranteed under the Convention.

#### IX. DISSENTING OPINION OF MR. SÜSTERHENN

216. It is naturally very difficult for an outsider to establish in detail whether and to what degree in the time from 21st April, 1967, to the present day the danger which the responsible Government assumed to exist has changed, i.e. whether it has become more acute or less so or whether it has completely ceased to exist. In any case after the statement by Prime Minister Papadopoulos on 15th March, 1969, that there were only "a handful of Communists" in Greece and the official statements of the respondent Government of 22nd July, 1969, that the position has considerably improved since the coup d'état, I personally have no doubt that the requirements of Article 15 of the Convention no longer exist. The Greek Government must draw the logical conclusions from this position and re-establish as soon as possible the rights and freedoms which have been suspended. A continuation of such suspension or any delay in re-establishing the suspended rights and freedoms constitutes in my opinion a violation of all the suspended Articles of the Convention.

#### F.

**Whether the measures taken by the respondent Government were strictly required by the exigencies of the situation**

#### I. OPINION OF THE COMMISSION<sup>378</sup>

217. The Commission has stated as its opinion that the evidence

<sup>378</sup> Paragraph 217 was adopted by a majority of nine members.

adduced by the respondent Government does not show the existence of a public emergency threatening the life of the Greek nation on 21st April, 1967<sup>379</sup>, or at any later date<sup>380</sup> and that, consequently, the main condition of Article 15 of the Convention is not satisfied in the present case.

The Commission is not therefore itself called upon to express a view on the further question under Article 15 whether the measures taken by the respondent Government in derogation from its obligations under the Convention were or are "strictly required by the exigencies of the situation".

However, an account of such measures, and of the relevant submissions of the parties, will be given under particular Articles of the Convention in Chapters II and III below. In that connection, the Commission will also examine the question whether or not these measures could be regarded as strictly required by the exigencies of the situation, if the situation existing in Greece at the material time should be considered as constituting a public emergency threatening the life of the nation.

## II. OPINION OF MR. BUSUTTIL

(Mr. Busuttill has stated his opinion under I below.<sup>381</sup>)

## III. OPINION OF MR. DELAHAYE

218. If on 21st April, 1967, there was no imminent danger threatening the State, the exceptional measures taken by the respondent Government would be contrary to the Convention, as, indeed, is considered to be the case by the majority of the Commission.

Opinions with regard to some of these measures<sup>382</sup> are thus only relevant to the extent that one assumes that, in acting as it did, the respondent Government was countering a threat within the meaning of paragraph 1 of Article 15 of the Convention.

In fixing a measure or assessing proportionality we must of necessity leave wide scope for a margin of appreciation. Opinions can differ widely and have only a very relative value.

## IV. OPINION OF MR. EUSTATHIADES<sup>383</sup>

219. After the conclusion reached above<sup>384</sup> on the existence of a public emergency on 21st April, 1967, and independently of any doubts one may have as to the continuance for a long period after that date of a public emergency within the meaning of Article 15, or at least of an

<sup>379</sup> Paragraph 165 above.

<sup>380</sup> Paragraph 208 above.

<sup>381</sup> Paragraphs 238-239 (pp. 138-139) of this Report.

<sup>382</sup> See Chapters II and III of this Report.

<sup>383</sup> Cf. page above.

<sup>384</sup> Paragraph 184.

emergency of the same nature as that existing on 21st April, 1967, or as to its continuation with the same intensity for a long period after that date, we are faced at any rate with the question whether, during the period of the existence of a public emergency within the meaning of Article 15, the condition was observed that measures may only be taken to the extent strictly required by the exigencies of the situation.

The mere fact of admitting that an emergency within the meaning of Article 15 exists does not imply the expression of an opinion on whether the measures which form the subject-matter of the present applications are in accordance with the Convention. Therefore, in order to give an affirmative reply to that question, one must also be able to find that the measures taken were strictly required by the exigencies of the situation.

With regard to the present case if we do not exclude the applicability in principle of Article 15 within the meaning of the jurisprudence,<sup>385</sup> one must go on to consider whether the measures taken by the respondent Government, in respect of which allegations have been made of the violation of various Articles of the Convention which could be the subject of derogations under Article 15, were "strictly required by the exigencies of the situation" (Article 15). In the circumstances this refers to Articles 5, 6, 8, 9, 10, 11 and 13 of the Convention. It is only if one makes the opposite assumption, i.e. if one rejects from the beginning the applicability of Article 15 – and this is the position adopted by the Commission's Report – that it is not necessary to express an opinion on whether the measures were "strictly required by the exigencies of the situation". Accordingly, the Commission's Report states<sup>386</sup> that the Commission is not called upon to express an opinion as to whether the measures were "strictly required by the exigencies of the situation". And this position is later confirmed when the Report deals with each of the allegations relating to the above cited Articles. Paragraph 240 of the Report reads: "The Commission will now examine the above allegations irrespective of the question of the applicability of Article 15." Then in its conclusions on Article 5 (paragraphs 284–287), Article 6 (paragraphs 325–328), Article 8 (paragraph 345), Articles 9 and 10 (paragraph 369), and Article 11 (paragraphs 392–396), the Report finds that the measures complained of are not in accordance with these Articles considered in themselves and not in conjunction with Article 15 so that the question was not examined from the point of view of whether such measures were or were not strictly required by the situation.

It should be noted that when very exceptionally the Report does consider in a subsidiary manner the hypothesis of the existence of a public emergency (see paragraphs 287 and 328 relating to Articles 5 and 6) the treatment of the question of whether the strict requirements of the situation had been observed is of a somewhat summary nature. Since the

<sup>385</sup> See paragraph 182 above.

<sup>386</sup> Paragraph 217.

Report was drawn up by the Commission on the original assumption that a public emergency undoubtedly did not exist, it does not enter further the area of strict requirements of the situation.

Generally speaking, whether dealing with the rare exceptions mentioned above or applying the rule which has been followed concerning the other allegations (Articles 8, 9, 10 and 11) for which the Report does not examine at all the question whether the measures adopted were strictly required by the situation, it may be stated that there is no examination of each concrete measure falling under a particular article in the light of the relevant concrete situation in order to know whether each particular measure was or was not taken or maintained "to the extent strictly required by the exigencies of the situation", namely during different periods after 21st April, 1967.

Because of the statement that there was no public emergency, the Report did not deal with the above-mentioned question, whose examination, however, would be necessary for those members who were not of the same opinion on the aforesaid statement. Thus, its method makes it very difficult, if not impossible, to take a precise position on the question of the analogy between the measures taken and the situation, a question which is one of the most delicate in the Convention.

The general orientation of the Report is not the only obstacle, there are others. Thus with regard to the respondent Government it would be noted that at the beginning it linked the derogations from various articles of the Convention with Article 15. In its letter of 3rd March, 1967, it refers to Article 15 and informs the Secretary General of the Council of Europe that by Royal Decree No. 280 of 21st April, 1967, the application *inter alia* of Articles 5, 6, 8, 10, 11, 12, 14 and 20 of the Constitution was suspended on account of an internal danger threatening public order and the security of the State, the above-mentioned articles containing provisions similar to those of Articles 5, 6, 8, 10 and 11 of the Convention. Subsequently, the Greek Government was attached to the thesis that it had not violated these articles of the Convention. In its submissions it maintained in a subsidiary way that "in any case the conditions required for the application of Article 15 had been met".<sup>387</sup>

This subsidiary argument was maintained without being accompanied by a specific argumentation on the correspondance of the measures falling under Articles 5, 6, 8, 9, 10, 11 with the strict requirements of the situation on 21st April, 1967, or as it could have been subsequently developed.

Generally speaking, there was no thorough research on the problem of the correspondance of each of the measures taken with the requirements of each respective situation, although the previous practice had shown this to be necessary. Thus in the Lawless Case which constitutes

<sup>387</sup> See in this respect the Government's memorial of 6th July, 1968, p. 15 with respect to Article 5 of the Convention, p. 22 with respect to Article 6, p. 24 with respect to Article 8, p. 26 with respect to Article 9, p. 36 with respect to Article 10 and p. 39 with respect to Article 11.

a fundamental precedent on the various aspects of Article 15, and the more so since the case was brought before the Court, both the parties and the competent organs made a very careful and detailed examination both of the situation in Ireland at various periods and of the various means which might "have made it possible to deal with the situation" ("aurait pu permettre de faire face de manière efficace à la situation"), and in doing so considered, for example, the functioning of special criminal courts and military courts in order to see whether, if administrative detentions had not been applied, such means would have been sufficient, and also examined, although from the same point of view, other concrete elements such as the difficulty of obtaining sufficient proof against the person detained, or against the release of the detained persons who agreed to undertake to respect the law and abstain from illegal activities. See for example the passages of the Court's judgment of 1st July, 1961,<sup>388</sup> which answers to the arguments advanced by the Irish Government and by the Commission.

Under these circumstances sufficient elements are lacking in the present case in order to permit to form an exact view concerning the analogy of each measure in force at one period or another with the strict requirements of the situation during the corresponding period.

Such detailed elements are all the more necessary as those who are required to control whether the measures were "strictly required by the exigencies of the situation" (Article 15) must, at any rate to a certain extent, take account of the margin of appreciation allowed in this respect to every Government, as follows from the precedents hereafter referred to. This makes the task of those who are called on to assess more or less exactly whether or not the use of this margin of appreciation by the Government concerned was abusive still more difficult, if not impossible, as detailed and adequate evidence of the facts and circumstances has not been included in the file or sufficiently debated. A margin of discretion or appreciation is allowed to Governments not only on the basic question of whether a state of emergency within the meaning of Article 15 exists<sup>389</sup> but also on the question of the exact correspondence between the means chosen and the exigencies of the situation.

On this point the jurisprudence of the Commission is fixed since its opinion on the first Cyprus Case. The Commission's Report reads as follows: "The Commission unanimously considers itself competent to decide whether measures taken by a Party under Article 15 of the Convention have been taken 'to the extent strictly required by the exigencies of the situation'. In general, the Commission takes the same view as it did with regard to the question of a 'public emergency threatening the life of the nation', namely that the Government of Cyprus should be able

<sup>388</sup> The Law, paragraphs 35-37.

<sup>389</sup> See paragraph 182 (B) above.



to exercise a certain measure of discretion in assessing the 'extent strictly required by the exigencies of the situation'."<sup>390</sup>

In that case the Commission did in fact apply the principle which it had stated and the question of whether such measures complied with the exigencies of the situation was examined separately with respect to each of the measures taken by the respondent Government. It may be noted that the criterion applied by the Commission was "what alternative measures might possibly have been applied to counteract the activities of EOKA, and whether any such alternative measures might have been considered adequate for the purpose."<sup>391</sup>

The Commission followed the same method in the Lawless Case in which the majority agreed with the following opinion of Sir Humphrey Waldock, the President of the Commission: "I interpret the task of the Commission in the same way as it was interpreted by the majority of the Commission in Application No. 176/1956 relating to the emergency in the Island of Cyprus . . . the express purpose of Article 15 being to give governments the necessary authority to take special measures to meet a threat to the life of the nation, that Article must be interpreted as leaving to the government a reasonable discretion in judging the needs of the situation. It is also clear that a government is in a better position than the Commission to know the relevant facts and to weigh the various considerations to be taken into account in deciding which of the different possible lines of action to adopt to deal with the emergency. Accordingly, the Commission, in examining measures taken by a government under Article 15, must allow it a certain margin of appreciation."<sup>392</sup>

In this case both the majority of the Commission (8 members) and the minority (6 members) undertook extensive research to discover whether there were alternative solutions less oppressive than administrative detention but equally effective, in order to be able to express an opinion on the question of the analogy of this measure with the strict requirements of the situation, and later, when the matter came before the Court, it also undertook similar research (cf. above).

It follows that, in order to permit members of the competent control organs to make an exact assessment in a case before them as to whether the margin of appreciation allowed to a government, with respect to whether the measures taken were strictly required by the exigencies of the situation, has or has not been exceeded, they must have at their disposal full and detailed evidence of the facts.

With respect to the present case, it should be noted that apart from the general orientation of the Report referred to above and the insufficiency of the evidence on the file, it is not possible to obtain from other sources useful elements for an exact appreciation of the exigencies of the situation

<sup>390</sup> Paragraph 143, p. 160, of the Commission's report of 26th September, 1958.

<sup>391</sup> *Ibid.* paragraph 318 (p. 360) and *passim*.

<sup>392</sup> Paragraph 106, p. 114, of the Commission's report.

at various times from 21st April, 1967, onwards with respect to any particular measure taken. The evidence heard on Article 15 (cf. the documents cited above) does not include particular information relevant to the aspect of the strict requirements of the situation, since this evidence, apart from some rare exceptions, referred to the question of whether in principle an emergency within the meaning of Article 15 did or did not exist, and did not go on to deal with the question of the strict requirements of the situation with respect to each particular measure. In this respect it may be remembered that there was neither a final oral hearing before the full Commission nor was it decided to hear additional witnesses on Article 15.<sup>393</sup>

The Sub-Commission did hear witnesses on the situation following 21st April, 1967,<sup>394</sup> but this evidence dealt with the question of the existence in principle of a public emergency and not with the concrete aspects relating to the compliance of the measures taken with the exigencies of the situation. On the other hand, a long list of witnesses offered especially with regard to Article 15 both by the applicant Governments and by the respondent Government is set out in Appendix VI of this Report.<sup>395</sup> These witnesses who were not heard might have been able to give useful evidence on the question of the strict exigencies of the situation, either from the point of view of the applicant Governments or that of the respondent Government.

Generally speaking, it follows from what has been stated that one cannot find convincing evidence either in other documents or in the Report, which is based on the statement that a public emergency within the meaning of Article 15 did not exist and thus devotes only very little space to the problem of whether the measures adopted were strictly in accordance with the exigencies of the situation, though it would have been desirable that those members of the Commission who were not in agreement with the said basic statement of the Report, that is to say the initial finding that at no time a public emergency existed, should have been in a position to form an opinion on the conformity of the measures adopted with the strict exigencies of the situation.

In these circumstances owing to the lack of necessary elements on whether there had been compliance with what was required by the exigencies of the situation, and bearing in mind the margin of appreciation which the jurisprudence allows governments in this respect, it is not possible, assuming that the same public emergency existing on 21st April, 1967, continued for a long period, to draw any exact conclusions as to whether all the measures taken at various stages as the situation developed were or were not in accordance with these exigencies (cf. the opinion of Mr. Süsterhenn).

<sup>393</sup> See paragraph 37 of the present Report.

<sup>394</sup> See paragraph 193 of this Report.

<sup>395</sup> [Not reproduced.]

Because on the basis of such a research as referred to above the exact conclusions which might have been drawn as to a compliance with the strict necessities of the situation might very well have been different – and they would probably have been different – with respect to one or other of the measures concerned and also different with regard to the same measure according to the period contemplated.

With regard to this last important point, there are various factors going to make up a situation, factors which, in their development, may accumulate, disappear, show a greater or lesser intensity and which may thus in the course of time change the situation in one direction or another. This means that measures derogating from the Convention must be examined not only with respect to their object but also with regard to time.<sup>396</sup>

#### V. OPINION OF MR. SÜSTERHENN

220. In the Cyprus and Lawless Cases, the Commission has already taken a stand on the question whether, when a threat to the life of the nation exists, the steps taken remained strictly within the framework of what was required by the exigencies of the situation. In this respect I share the opinion which was stated by Mr. Waldock in the Lawless Case. It reads as follows:<sup>397</sup>

“The burden lies upon the State concerned to satisfy the Commission that a measure derogating from the Convention was one strictly required by the exigencies of the emergency at the time when the measure was imposed. On the other hand, the express purpose of Article 15 being to give governments the necessary authority to take special measures to meet a threat to the life of the nation, that Article must be interpreted as leaving to the government a reasonable discretion in judging the needs of the situation. It is also clear that a government is in a better position than the Commission to know the relevant facts and to weigh the various considerations to be taken into account in deciding which of the different possible lines of action to adopt to deal with the emergency. Accordingly, the Commission, in examining measures taken by a government under Article 15, must allow it a certain margin of appreciation.”

In accordance with this statement the respondent Government must be allowed a certain margin of appreciation. I have considerable doubts whether the Government has in fact in the steps taken limited itself to what was absolutely necessary. For example it suspended Article 8 of the Convention which deals with the privacy of correspondence but accord-

<sup>396</sup> Cf. also Publications of the European Court of Human Rights, 1962, De Becker, Series B, p. 133.

<sup>397</sup> Paragraph 106, p. 114, of the Commission's report.

ing to its own declarations it never made use of the right to control correspondence thereby attained. Again the fact that the majority of persons detained for political reasons were released after a comparatively short time seems to raise a presumption that the detention was imposed on a much wider scale than was objectively necessary.

### G.

#### Whether Articles 17 and 18, read together with the Preamble, exclude the present derogations under Article 15 of the Convention

221. As stated above,<sup>398</sup> the question was raised in this case whether the present derogations under Article 15 were excluded by Articles 17 and 18, read together with the Preamble, on the ground that they were:

- (1) aimed at the destruction of rights and freedoms set forth in the Convention or at their limitation to a greater extent than provided for in the Convention (Article 17); or
- (2) applied for purposes other than those for which the restrictions permitted under Article 15 have been prescribed (Article 18).

#### I. SUBMISSIONS OF THE PARTIES

##### 1. Respondent Government

222. The respondent Government observed that Articles 15 and 17 of the Convention were designed to protect democratic regimes against totalitarian conspiracies<sup>399</sup>. The Government maintained that the measures which it had itself taken under Article 15 were intended to save democracy from the danger that threatened it<sup>400</sup> and it declared that Greece would return to parliamentary life when "a normal state of affairs has been restored and appropriate conditions created"<sup>401</sup>.

##### 2. Applicant Governments

223. The applicant Governments referred to the Preamble and to Articles 17 and 18 of the Convention<sup>402</sup>. They submitted that, as stated in Article 18, the right to take derogatory measures under Article 15 was

<sup>398</sup> Paragraph 52.

<sup>399</sup> Memorial of 6th July, 1968, p. 46.

<sup>400</sup> *Ibid.* pp. 74-76.

<sup>401</sup> *Ibid.* p. 76.

<sup>402</sup> Hearing of January 1968, p. 33; memorial of 25th March, 1968, pp. 47, 76-80; hearing of September 1968, pp. 150-153; hearing of June 1969, pp. 136-139.

linked with the purpose of such measures<sup>403</sup>. To derogate from “democratic rights and human rights and freedoms” was permitted in exceptional cases “for specific purpose only of protecting these very institutions, rights and freedoms”<sup>404</sup> Article 17 excluded derogations which were aimed at the destruction of the rights and freedoms set forth in the Convention<sup>405</sup>.

224. The applicant Governments, while agreeing with the respondent Government that Articles 15 and 17 were designed to protect democratic regimes against totalitarian conspiracies,<sup>406</sup> maintained that the respondent Government had itself introduced a totalitarian regime in Greece and destroyed human rights and fundamental freedoms;<sup>407</sup> it was therefore prevented from invoking Article 15 as a justification of its measures of derogation.<sup>408</sup>

## II. OPINION OF THE COMMISSION<sup>409</sup>

225. The Commission has already stated as its opinion that the main condition of Article 15 – the existence of a public emergency threatening the life of the nation – is not satisfied in the present case. It is therefore not called upon to express a view on the further question whether the respondent Government’s derogations under Article 15 were also excluded by Articles 17 and 18 of the Convention.<sup>410</sup>

### H.

## Whether the measures taken by the respondent Government are consistent with other obligations of Greece under international law

### I. INTRODUCTION

226. Article 15, paragraph(1), excludes derogations from the Convention by a High Contracting Party which are “inconsistent with its other obligations under international law”.

<sup>403</sup> Memorial of 25th March, 1968, p. 47.

<sup>404</sup> Hearing of June 1969, p. 138.

<sup>405</sup> *Ibid.* p. 137.

<sup>406</sup> Hearing of September 1968, p. 150; hearing of June 1969, p. 136.

<sup>407</sup> Hearing of June 1969, p. 137.

<sup>408</sup> *Ibid.* p. 138.

<sup>409</sup> See also the opinion of Mr. Busuttil (paragraphs 238–239 below) and the dissenting opinion of Mr. Ermacora (paragraphs 214–215 above).

<sup>410</sup> Paragraph 225 was adopted by a majority of ten members.

227. The respondent Government maintained that its measures of derogation “related to a matter in which Greece is not bound by any contrary obligation under international, contractual or customary, law”<sup>411</sup>. Due care had been taken “that the international obligations of Greece should be completely observed”<sup>412</sup>.

228. No submissions were made on this issue by the applicant Governments.

## II. OPINION OF THE COMMISSION<sup>413</sup>

229. The Commission has already stated as its opinion that the main condition of Article 15 – the existence of a public emergency threatening the life of the nation – is not satisfied in the present case. It is not therefore called upon to express a view on the further question whether the respondent Government’s derogations under Article 15 were consistent with its other obligations under international law.<sup>414</sup>

### I. OPINION OF MR. BUSUTTL<sup>415</sup>

#### I.

230. I find myself unable to subscribe to the conclusion reached by the majority on the question whether there existed on 21st April, 1967, a public emergency in Greece threatening the life of the nation. I have accordingly voted against the adoption of that part of the Report embodying the conclusions of the Commission on this important question.

231. My own conclusion is based on three preliminary findings of principle:

- (1) A revolutionary government established in a High Contracting State is entitled to declare a public emergency in the context of Article 15 as from the moment that it exercises effective control within the territory of the State concerned.
- (2) A “public emergency threatening the life of a nation” means a situation of exceptional and imminent danger or crisis, which affects the whole nation and constitutes a threat to the organised life of the community.
- (3) A certain latitude or “margin of appreciation” must be left to a derogating Government in determining the existence of a public emergency threatening the life of the nation.

<sup>411</sup> Memorial of 6th July, 1968, p. 86. See also *ibid.* p. 44.

<sup>412</sup> Hearing of September 1968, p. 279.

<sup>413</sup> See also Chapter II, F (IV), below.

<sup>414</sup> Paragraph 229 was adopted by a majority of ten members.

<sup>415</sup> Cf. pages 76, 100 and 104 above (footnote 416).

232. It follows from the first statement of principle that the present Greek Government was entitled not only to declare a public emergency in Greece from the moment that it assumed power on 21st April, 1967, but also to take into account, as an element for appreciating the situation on or after 21st April, 1967, the situation which existed before that date.

233. As to the factual situation in the instant case, my opinion that a state of public emergency existed in Greece on 21st April, 1967, is based on a combination of the following factors which emerge from the voluminous evidence adduced before the Commission:

- (1) Democracy in Greece during the period between June 1963 and April 1967, when ten different Governments followed one another in rapid succession, had reached a very low ebb. Graft, corruption and nepotism were rampant, and scenes inside Parliament, had engendered a feeling of insecurity among the population at large.
- (2) The so-called "Aspida" conspiracy in 1965, resulting in the conviction of a group of Army officers who had planned to replace the constitutional monarchy by a socialist dictatorship, had further accentuated the feeling of insecurity among the general public.
- (3) The open clash between the King and Georgios Papandreou in July 1965 about the position of the Monarchy under the Greek Constitution succeeded in spreading an atmosphere of constitutional crisis over the political events that followed, culminating in Andreas Papandreou's declaration, in a speech delivered on 22nd February, 1967, that the new Government after the May elections would ignore the constitutional form of taking the oath before the King, assume power by swearing in a minority Government in Constitution Square, present itself before Parliament with a minimum programme, and proclaim new elections on its own initiative and without the formal approval of the King if Parliament rejected such a programme.

In my view, this omnibus proposal of Andreas Papandreou's would, if implemented, have been tantamount to a technical coup d'état. Admittedly, the evidence before the Commission as to the precise language employed by Papandreou is conflicting, but of one thing I am certain, namely, that the newspaper reports of what he said, whether true or false (and, in view of the general attitude of the Centre Union Party towards the Monarchy at the time, it is more likely that they were true rather than false), were bound to aggravate still further the existing tension and sense of general insecurity in the community.

- (4) Strikes, mostly unofficial and politically motivated, were almost a daily occurrence during the period between January and April 1967.

- 5) Street demonstrations reached a crescendo in the first half of April 1967. On 4th April, there was a street demonstration in Athens, when fifteen demonstrators and two policemen were injured; on 6th April, there was a demonstration in the University of Salonica, when twenty-two demonstrators were injured and three hospitalised; on 7th April, there was a street demonstration in Athens; on 8th April, there was a student demonstration in Athens, when eighteen students and one policeman were injured; on 10th April, there was another street demonstration in Athens; on 11th April, students occupied Salonica University; on 12th April, building workers attempted to occupy the centre of Athens, injuring eighty-five persons, including fifty-one members of the security forces; on 14th April, there was a further street demonstration in Athens. Furthermore, a "Marathon March" through the streets of Athens had been planned for 16th April (though later cancelled), and on 23rd April, Georgios Papandreou was to address a mammoth rally at Salonica, with the open support of the Union of the Democratic Left (EDA).
- (6) The even-present danger of exploitation, by the Communists and their allies, of any and every situation that promised to lead to a revolutionary situation. In point of fact, militant groups of the Communist "Lambrakis" youth organisation were constantly exploiting the prevailing sense of insecurity by terrorising the rural areas and organising demonstrations in the urban centres of Athens and Salonica.

234. In my opinion, these various factors were closely interrelated and interacting and, taken together, they created on 21st April, 1967, an exceptionally dangerous situation in the urban nerve-centres of Athens and Salonica which was liable at any moment to erupt into a nation-wide explosion that would have entailed a breakdown of law and order and a suspension of organised communal life in Greece.

235. *This being said, however, it should also be recorded that the appraisals of the situation existing on and immediately before 21st April, 1967, tendered by a number of leading Greek personalities before the Sub-Commission were essentially at variance. Broadly speaking, former politicians affirmed that the Government of the day had the situation firmly under control, while other witnesses, chiefly those having direct charge of security matters, declared that the situation was permeated with a revolutionary atmosphere.*

236. Prime Minister Kanellopoulos, and the two Ministers responsible for public order and security on 21st April, 1967, Rallis and Papaligouras, were at pains to emphasise that no actual or imminent threat to the



organised life of the community existed at the time. In almost the same breath, however, we are told by former Minister Rallis that on 15th April, 1967, on the eve of the so-called Marathon March he was told by the organiser of the March, Pyromaglou, that by his intransigence in prohibiting the March, he was endangering the situation in Greece and "that blood would flow". Furthermore, the same Minister refers in another part of his evidence to the rally planned in Salonica for Georgios Papandreou on 23rd April, 1967, and states that he had advised his colleague Papaligouras, Minister of Defence, to order the Army to be put in a state of alert. In these circumstances, the evidence given by Papageorgopoulos, Chief of Central Intelligence Service (KYP) at the time of the military take-over, appears to me to be much more cogent. Papageorgopoulos stated that the prevailing atmosphere was such as was calculated to lead to "a subversion of the Constitution or a clash between the Army and the popular masses, serious bloodshed, and either a military dictatorship or the complete imposition of a popular revolution with left wing slogans".<sup>416</sup> In any event, one may perhaps be pardoned for remaining unconvinced by the evidence of Kanellopoulos and his colleagues in office, who after having been duly warned of the dangers inherent in the situation by the Chief of Central Intelligence a few days before the event, had remained impervious to such warnings and, indeed, were totally unaware of what was happening on the night in question until the worst had already happened. How then, it becomes necessary to ask, can we accept their appraisal of the situation on 21st April, 1967, when they were quite literally "caught napping"? How can one be sure, in the circumstances, that if the coup d'état had come from the Left instead of the Right, they would not similarly have been caught un-awares?

237. In the light of the foregoing, therefore, and while recognising that in the conflicting state of the evidence before the Commission it is not possible to dispel all doubt in the matter, I am myself satisfied that the respondent Government have produced sufficient evidence of the existence of a public emergency at the material time which enables me to conclude that they have proved their case to the point where the "margin of appreciation" concept comes into play and thereby permits them to claim, as it were, the benefit of the doubt. In this connection, two additional factors seem to me to be of crucial importance. First, the dilemma inherent in a situation of cumulative public disorder which makes it extremely difficult to determine the precise moment when the police have lost, or are likely to lose, control of the situation and intervention by the military becomes necessary. Secondly, the Greek Army is not a professional army, and it was extremely doubtful if the rank- and-file conscripts, some fifteen to twenty per cent of whom were Commu-

<sup>416</sup> Hearing of March 1969, Vol. I, p. 127.

nists, would have fired on the crowds if they were confronted with massive unarmed popular demonstrations (*vide* evidence of Generals Papageorgopoulos and Anghelis). In these circumstances, it is understandable that the Army elected to act, and act decisively, before the crowds had assembled for the mammoth rally fixed for 23rd April, 1967, when a refusal by the rank and file to obey superior orders would have resulted in a complete breakdown of public order and security.

## II.

238. Having stated my opinion that the respondent Government has succeeded in demonstrating the existence of a public emergency in Greece on 21st April, 1967, it becomes incumbent upon me to consider:

- (1) whether there is or has been since 21st April, 1967, a public emergency in Greece threatening the life of the nation;
- (2) whether the measures taken by the respondent Government were strictly required by the exigencies of the situation;
- (3) whether Articles 17 and 18, read together with the Preamble to the Convention, exclude the derogation of the respondent Government under Article 15.

239. My conclusions on these three points are, in brief compass, as follows:

- (1) The Army having intervened, and intervened so successfully that it was able to assume complete and absolute control of the whole country during the night of 21st April without any bloodshed, it seems to me almost irrelevant to talk of the existence of a public emergency in Greece threatening the life of the nation *after* 21st April, 1967, except for a short period immediately following that date. In other words, the public emergency existing on 21st April, 1967, can be said to have ceased to exist shortly after that date.
- (2) This being so, it is not necessary for me to express a view on the question whether the measures taken by the respondent Government after 21st April, 1967, were strictly required by the exigencies of the situation following the successful take-over of power, except for the period immediately following that date, since a reasonable period of time (ideally the shortest possible but largely depending on the particular circumstances of the case) should be allowed to a revolutionary government for the purpose of putting its house in order.

I find that in the present case a reasonable period of time would have been a period of a month or so from 21st April, 1967. In so finding, I have particularly taken into account the utter disarray into which the counter-revolutionary forces had been thrown by

the swiftness and success of the coup. Furthermore, I have taken note of the wording of Article 2, paragraph (2), of Constitutional Act "Alpha" promulgated by the respondent Government on 5th May, 1967, which runs as follows:<sup>417</sup>

"The basis of the New Constitution is the Constitution now in force, revised with regard to those Articles that are not fundamental and do not involve a change of the regime".

Now my reading of this provision is to the effect that the present Greek Government was itself satisfied that the emergency had substantially ceased to exist on 5th May, 1967; that the old Constitution was by and large adequate to cope with the situation after that date; that any constitutional revision required was not of a fundamental character and could, presumably, have been put through immediately after the promulgation of the said Constitutional Act.

Accordingly, it follows that, beyond the period referred to above, the emergency had ceased to exist and the necessity for taking emergency measures did not arise. Within that period, however, the measures taken by the respondent Government were strictly required by the exigencies of the situation, since the respondent Government is entitled to rely on the "margin of appreciation" doctrine in a post-revolutionary situation which even in the best of circumstances is necessarily ticklish from a security point of view.

- (3) As already stated in Part I of this Opinion, the revolutionary military Government of Greece was entitled to declare a public emergency in Greece as soon as it assumed power on 21st April, 1967, and to invoke Article 15 in justification of its measures of derogation. Indeed, nowhere in the Convention is there a distinction drawn between revolutionary and constitutional governments in this or any other context.

On the other hand, the Preamble to the Convention makes a clear-cut distinction between democratic and totalitarian governments, so that revolutionary governments can only continue to find acceptance within the framework established by the Convention if the aim of the revolution is that of restoring democracy where it has been suppressed. In this connection it is a truism to say that the underlying purpose of the Convention was the protection of democracy and not its suppression. Hence, we find it stated in Article 17 that no High Contracting State may do anything which is aimed at the destruction of any of the rights and freedoms guaranteed in the Convention or at their limitation to a

<sup>417</sup> The full text of Constitutional Act "Alpha" is reproduced at Appendix XVIII of this Report (p. 691).

greater extent than the Convention allows; and Article 18 adds that the restrictions which a State is permitted to impose shall not be applied for any purpose other than that prescribed under the Convention.

It follows, therefore, from Articles 17 and 18 and the Preamble, read together with Article 15, that, while a High Contracting State remains free to invoke its right to derogate under Article 15, such derogation, or other restrictions applied, must not be aimed at destroying any of the democratic rights and freedoms guaranteed in the Convention. Thus, a revolutionary government is entitled to derogate under Article 15, provided that it is able to show that the measure of derogation is ultimately aimed at restoring democratic rights and freedoms and not at destroying them. Hence, a reasonable period of time, as construed in sub-paragraph (2) above, should be allowed to a revolutionary government to enable it to demonstrate its democratic aims.

This, in my opinion, the present Greek Government has manifestly failed to demonstrate, with the result that it was legally precluded from continuing to invoke Article 15 after the lapse of a reasonable period after 21st April, 1967.